



No. IRDA/NL/ORD/RIN/131/08/2010

17th August, 2010

**ORDER
OF INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
AGAINST
IFFCO TOKYO GENERAL INSURANCE CO. LTD.
IN THE MATTER RELATING TO AIRPORT LIABILITY
INSURANCE POLICY**

1. This order is directed against Iffco Tokyo General Insurance Company Ltd., having its registered office at 4th and 5th Floor, Iffco Tower, Plot No. 3, Sector 29, Gurgaon - 122 001 (hereinafter referred to as ITGI) on account of their failure in complying with the provisions of law specified by the Insurance and Regulatory Development Authority (hereinafter referred to as the Authority).
2. The facts and circumstances necessitating the issuance of this order are given under:-
3. The Delhi International Airport Limited (DIAL) and Mumbai International Airport Limited (MIAL) issued a tender notice inviting bids for the issuance of a Liability Insurance Policy. Pursuant to the same, many insurance companies submitted their respective bids. National Insurance Co. Ltd. (NIC) also submitted its price-bid for issuance of the policies to cover the Delhi and Mumbai International Airports for a sum insured of ₹ 2500 crores and ₹ 2450 crores respectively.
4. Amidst reports that NIC had failed to comply with the relevant regulatory provisions issued by the Authority while submitting the said bids, the Authority, in exercise of the powers conferred upon it under Section 110C of the Insurance Act, 1938 (the Act) called for information from NIC vide letter no. IRDA/NIC/MIAL&DIAL/09-10 dt. 11.08.2009.
5. In response to the same, NIC submitted the required information, upon perusal of which, it was inter alia noted that NIC had failed to comply with the File & Use Guidelines issued by the Authority vide Circular Nos. 021/IRDA/F&U/Sep-06, IRDA/20/F&U/07-08 and IRDA/30/F&U/07-08 dated 28th Sep 2006, 25th June 2007 and 13th August 2007, respectively, in the course of submission of its price bid and that ITGI was one of the co-insurers

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having its share of 20% and 5% in Mumbai International Airport Limited and Delhi International Airport Limited respectively, for the said insurance policy.

6. In view thereof, the Authority issued a notice no. IRDA/NL/ITGI/DIAL & MIAL/09-10 dated 23.10.2009 to ITGI listing out the charges framed against them and advised them to show cause as to why action should not be initiated against them for the violations specified therein and to make their written submissions within the stipulated period of fifteen days. ITGI furnished their reply vide letter no. Nil dated 10.11.2009, which was also forwarded to the Members of the Consultative Committee for their comments, who upon consideration of the reply of ITGI recommended action against ITGI by the Authority.

APPRECIATION OF EVIDENCE

7. I have examined the charges leveled as against ITGI, the gist of submissions made by ITGI in response to the same, the material on record as well as the facts and circumstances of the case and my views on the same are as under:-

- (i) Failure of ITGI to adhere to the following File & Use Guidelines, issued by the Authority, which read as under:

(a) Circular No.021/IRDA/F&U/Sep-06 dt. 28th Sep 2006

“v) Insurances of large risks: For the purpose of these guidelines, large risks are:

(1) Insurances for total sum insured of Rs.2,500 crores or more at one location for property insurance, material damage and business interruption combined;

(2) Rs.100 crores or more per event for liability insurances.

These are typically insurances that are designed for individual large clients and where the rates, terms and conditions of cover may be determined by reference to the international markets. It is not permissible to place a product under this category by merely referring to a reinsurer for the rates and terms. It should genuinely relate to risks that are not within the underwriting or rating capability of Indian insurers. Merely because an insurer places facultative reinsurance on a policy will not make it a large risk. It is expected that in respect of such products, the insurer will quote terms in line with the terms quoted by reinsurers including the extent of cover and deductibles or claims conditions. If the insurer varies the terms quoted



by the reinsurers while quoting the terms to the proposer, such variation of terms and any increased retention that results from it, shall be consistent with the underwriting policy and reinsurance policy approved by the Board for underwriting of business and also for retention and reinsurance. The insurer shall charge an additional premium over the rates secured from the international market that is commensurate with the additional risk carried by it. Such additional premium charged should have the concurrence of the officer designated by the Board under para 15(f) above. Full particulars of such cases where the insurer varies the terms from those quoted by the reinsurer shall be filed with IRDA as soon as the terms are quoted and where considered appropriate, IRDA may raise queries about the terms and the premium quoted.

(b) Circular No.IRDA/20/F&U/07-08 dated 25th June 2007

“(x) Insurance of Large Risks under Para 19B(v) of the F&U Guidelines dated 28th Sep 2006 -

a) where a specialized class of insurance is necessarily rated by reference of the international markets because of its technical nature, regardless of which Indian insurer handles the insurance, the insurers may file with the Authority with justification for treating such specialized insurance as ratable under para 19(B) (v) of the guidelines even if it does not qualify according to the sum insured criterion.

b) any client who wants the benefit of international terms of his insurance requirements qualifying as a large risk should be willing to accept the rates, terms and conditions of cover as received from the leaders in the international market without requiring the Indian insurer to provide wider cover than obtained from the international market.

c) where terms are developed from the international market on ‘net rates’ basis, the rates quoted to the Indian client should be loaded to include the direct insurance commission or brokerage and reinsurance brokerage payable and a reasonable margin to cover the Indian insurer’s expenses of management and profit margin.

d) an Indian insurer shall not issue a difference in conditions or any additional insurances in connection with the risk insured under para 19B(v) of the guidelines that has the effect of avoiding directly or indirectly compliance with the above conditions.”



(c) Circular No.IRDA/30/F&U/07-08 dated 13th August 2007

"As reiterated at the meeting, the condition that where a risk is rated on terms developed from international markets, the terms offered to the client must not be different from those secured from the international market, will not be relaxed. The insurers are not compelled to go to the international markets to develop terms but where the risk qualifies for international terms and choice to develop such terms is exercised, the terms must be followed."

- (ii) The circulars reproduced above mandate that the terms quoted to the client on large risks should not vary from the terms developed from the reinsurers. This mandate was also clearly spelt by the Authority at the meeting held on 6th August 2007, with the CEOs of various general insurers.
- (iii) ITGI vide their letter dated 10.11.2009 have submitted that the business was offered to them on co-insurance basis on the terms and conditions quoted by the NIC and the reinsurance for their surplus was arranged through Ace Insurance Brokers.

8. The information submitted to the Authority by NIC, the lead insurer and ITGI, one of the co-insurers with specific emphasis on the details of the risk cover offered by them, read as under :-

Details of Terms	Delhi International Airport Limited		Mumbai International Airport Limited	
	Rate received from the Reinsurer	Rate quoted to client	Rate received from the Reinsurer	Rate quoted to client
Sum insured	Rs.2500 crs	Rs.2500 crs	Rs.2450 crs	Rs.2450 crs
Deductibles	Rs.12.5 crs	Aircraft : Rs.30 Lacs EEL Other than Aircraft : Rs.6 lacs EEF	Rs.12.5 crs	Aircraft: Rs.12.25 Lacs EEL Other than Aircraft : Rs.2.45 lacs EEF
Gross Premium	Rs.1.973 Crs	Rs.2.40 Crs (Incl of ST)	Rs.1.88 Crs	Rs.2.22 Crs (Incl of ST)

The subject risk was noted to be co-shared, as follows :-

Mumbai International Airport Limited	Delhi International Airport Limited
i) National Insurance Co. Ltd - 50%	i) National Insurance Co. Ltd - 50%

ii) United India Insurance Co. Ltd	- 10%	ii) United India Insurance Co. Ltd	- 20%
iii) Iffco-Tokio General Insurance Co. Ltd	- 20%	iii) Oriental Insurance Co. Ltd	- 25%
iv) ICICI Lombard General Insurance Co. Ltd	- 10%	iv) Iffco-Tokio General Insurance Co. Ltd	- 5%
v) Reliance General Insurance Co. Ltd	- 10%		

8. The information as reproduced above clearly indicates that NIC who is the leader in both the risks, developed the terms for quotation for the aforesaid cover through the brokers; Cooper Gay & Co Ltd and with the support of ACE Insurance Brokers. Further, though NIC represented that the rate, terms and conditions offered are prevalent and earlier offered by the other market players and that the Airport Owners Legal Liability Policy was written in the aviation department as per International market with relevant AVN clauses, upon examination of the information as submitted by NIC (as reproduced in para 8), it is seen that NIC had proposed deductibles to their clients, that varied significantly from NIC to those offered by the reinsurer. Thus, NIC along with ITGI and other co-insurers had taken on their books a liability not only in blatant violation of the relevant regulatory provisions but also exposed themselves to further risk, which in the event of any eventuality would have impacted the company's financials. This practice is contrary to the directions of the Authority and is a clear violation of the earlier referred to circulars.

10. Para 18 of the Circular No. 021/IRDA/F&U/Sep-06 dated 28.09.2006 states that though the primary responsibility to comply with these guidelines will rest with the leading co-insurer, all those co-insurers will remain respondents to satisfy themselves that the guidelines have been complied with. On the said basis, the contention of ITGI that they had accepted the coinsurance share allotted by the insured would not absolve them of the said violations. It is clear that if such instructions are violated, occurrence of loss is inevitable as the interest of the orderly growth of the insurance and re-insurance business is jeopardized. Hence, sufficient cognizance has to be taken of such disregard of the instructions by ITGI and responsibility should be fixed with punitive effect thereupon else, the entire purpose of enactment of the statute and guidelines issued thereunder would become redundant.

11. Based on the facts and circumstances discussed earlier, I had, vide order no. IRDA/NL/ORD/RIN/118/07/2010 dated 26.07.2010 levied upon National Insurance Co. Ltd., a penalty of ₹ 5,00,000/- (Rupees Five lakhs only), under section 102 of the Insurance Act, 1938.

12. Accordingly, based on the facts and circumstances discussed earlier and bearing in mind the fact that ITGI, which is an insurer registered with the Authority and on account of the same ought to have exercised greater

professional care, skill and diligence, in the present case, which they failed to do, I am of the considered view that a similar penalty also be imposed upon ITGI. Accordingly, on a judicious exercise of the powers conferred upon me, under Section 102 of Insurance Act, 1938, I hereby impose a penalty of ₹ 5,00,000 (Rupees Five Lakhs) on M/s. Iffco Tokyo General Insurance Co. Ltd.

13. The penalty amount of ₹ 5,00,000/- shall be paid by Iffco Tokyo General Insurance Company Ltd. within a period of ten days from the date of receipt of this order, through a crossed demand draft in favour of Insurance Regulatory and Development Authority and payable at Hyderabad which may be sent to Shri Prabodh Chander, Executive Director at the Insurance Regulatory and Development Authority, 3rd Floor, Parisrama Bhavan, Basheerbagh, Hyderabad - 500 004.0

Place: Hyderabad
Date: 17th August, 2010


J. HARI NARAYAN
CHAIRMAN