



बीमा विनियामक और विकास प्राधिकरण  
**INSURANCE REGULATORY AND  
DEVELOPMENT AUTHORITY**

No. IRDA/F&I/ORD/EHP/232/10/2012

October 05, 2012

**ORDER**

**Order under Section 34 of the Insurance Act, 1938 on the application of MetLife India Insurance Company Ltd. (MLIC) dated 14<sup>th</sup> May, 2012 seeking transfer of 30 per cent of the existing shareholding in favour of Punjab National Bank (PNB) under Section 6A of the Insurance Act, 1938**

The Insurance Regulatory and Development Authority (the Authority) had observed financial strain in MetLife India Insurance Company limited (MLIC) from 2007 onwards and despite prolonged interaction with the Company and its promoters, it is now becoming clear that this Company cannot operate on a sustained basis unless the problems and weaknesses of its fundamental structure are satisfactorily addressed. The Authority is satisfied that to ensure that the affairs of the insurer are not conducted in a manner detrimental to the interests of the policyholders and, in public interest, it is necessary to issue directions to MLIC under Section 34 of the Insurance Act, 1938.

**Background:**

2. Metlife India Insurance Company Ltd. was set up by Indian promoters along with a joint venture foreign partner viz., Metlife International Holdings Inc., USA, (Metlife International). The Insurance Company was granted registration by the Authority on 6<sup>th</sup> August 2001 with registration number 117.

3. At the time of grant of registration to carry on life insurance business, the paid up capital and shareholding pattern of MLIC was as under:

Name of the Shareholder	Paid Up Capital (Rs. Crore)	% holding
<b>Indian Promoters</b>		
Jammu & Kashmir Bank (J&K Bank)	27.50	25
M. Pallonji & Co. Pvt. Ltd.	34.10	31
Private investors : Chintalapati Holdings Pvt. Ltd. Indian Syntans Investments Pvt. Ltd. Elpro International Ltd. Better Deals Developers Pvt. Ltd. (renamed as Manimaya Holdings Pvt Ltd)	19.80	18
<b>Joint Venture Foreign Partner</b>		
Metlife International Holdings Inc. USA	28.60	26
<b>Total</b>	<b>110.00</b>	<b>100</b>

#### **Financial Constraints faced by MLIC:**

4. Life insurance companies require funds to maintain the stipulated capital/solvency requirements at all times. This is caused by the initial 'new business strain' which continues till operations attain a significant mass supported by renewal premiums.

5. In case of MLIC, the paid up capital increased from the initial Rs 110 crore to the current Rs 1969.57 crore. However, MLIC started facing constraints as regards capital contribution soon after the grant of Registration either due to the inability of the shareholders to subscribe to their 'rights' shares or because some of the shareholders wanted to withdraw from the venture. To address these capital constraints, MLIC inducted a new promoter/shareholder viz., M/s Pallonji Enterprises Pvt. Ltd. The insurer also requested for a number of intra-group share transfers /rights renunciations within the Indian Promoter companies. The details of various requests for transfer/rights renunciations received by the Authority are provided in Annexure I.

6. More particularly, the problems were magnified with respect to the contributions of capital by J&K Bank and Faridabad Investment Company Ltd., (FICL), a Non-Banking Finance Company (NBFC) since 2008. The constraints arose on account of the fact that these entities breached the 'exposure limits' applicable to banks and NBFCs respectively, and those laid down on them particularly by Reserve Bank of India (RBI) as regards investments in insurance company. FICL an NBFC, could invest in the equity capital of MLIC only to the extent of 10% of its owned funds or Rs 50 crore whichever is lower. J&K Bank could invest to the extent of 10% of the Bank's paid-up Capital and Reserve (net owned funds) in a single joint venture viz., MLIC.

#### **Intervention by the Authority:**

7. In view of the constraints being faced by the insurer, the Authority raised concerns over the ad hoc manner in which capital calls were being made vide letter dated 13<sup>th</sup> April 2007. The insurer was advised to "carry out a review of the



constraints on mobilizing capital from different shareholders at the Board Level to identify optimal solution”.

8. Against the background of the inability of J&K Bank in funding MLIC through subscriptions to capital call, MLIC had difficulty in getting its rights issues fully subscribed. The problem was further aggravated because of the following:

- i) any allotment of shares to the shareholders (to the exclusion of J&K Bank) would result in Metlife International violating the 26% Foreign Direct Investment cap; and
- ii) RBI's circular dated 13<sup>th</sup> November 2007 under FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 requires a company to issue shares to its JV partner within a period of 180 days of the remittances, in the absence of which FDI needs to be returned.

9. In view of the above, MLIC sought approval for an intra-group transfer on account of renunciation of rights of J&K Bank.

**Interactions with J&K Bank:**

10. On account of J&K Bank's continued inability to subscribe to capital calls, in May 2009, the Authority wrote to J&K Bank seeking clarifications on the following:

- i) reasons for persistent delay in subscribing to the capital calls made by the insurer;
- ii) whether the Bank continued to be committed to participate in the insurance venture; and
- iii) the roadmap on the Bank's commitment in terms of capital contribution and plans to raise funds for the equity requirements of the insurance company along with necessary clearances from the RBI.

11. J&K Bank in its response sent in June 2009 indicated the following:

- i) Due to RBI's restrictions on their investments in MLIC, they had brought down their holding in the insurance company from 25% to 13.94% of the paid up capital;

- ii) Since the Bank's request to RBI seeking relaxation in the stipulations was not acceded to, J&K's holding was likely to reduce further; and
- iii) RBI in April 2009 allowed J&K Bank to continue to hold the existing investments under Held to Maturity (HTM) category upto 30<sup>th</sup> September 2009. In case the Bank was not able to exit the JV by 30<sup>th</sup> September 2009, the investment had to be transferred to Available for Sale (AFS) category on 1<sup>st</sup> October 2009 and marked to market.

12. The Authority reviewed the above directions of RBI and the continuing inability of J&K Bank to bring in additional capital against the fact that the insurer must continue to adequately maintain the stipulated solvency ratio. The insurer was further advised to immediately identify suitable partner who could step in to take over the J&K Bank's holding. While furnishing monthly reports to the Authority on the matter and on the solvency position, as per the Authority's directions in this regard, MLIC informed the Authority that they had appointed Ernst and Young to take up the process of identifying potential investors for picking up equity stake in the company.

#### **FICL's investment in MLIC**

13. MLIC applied for renunciation of rights shares by FICL in favour of Elpro. While their application was being examined, in March 2010, RBI wrote to the Authority informing that

- i) FICL, an NBFC, had acquired shares in MLIC without its prior permission and its investment in the insurance company was also in excess of ceilings prescribed; and
  - ii) RBI was examining the violations committed by NBFC.
14. While processing the application of MLIC, the following were observed:
- i) RBI's approval was not sought for the proposed investment.
  - ii) Elpro was unlikely to meet the financial due diligence being carried out by the Authority.



15. In August 2010, the CEO of the insurer was summoned to explain reasons for

- (i) breaching RBI's stipulations as regards investment by an NBFC; and
- (ii) status as regards RBI's instructions to J&K bank to divest their stake in the insurance venture.

16. The Authority was informed that FICL was unable to subscribe to further capital calls and following the breach, FICL had represented to RBI indicating measures undertaken to bring down their exposure in MLIC. Further, with a view to fall outside the purview of RBI, FICL had sought to merge with IGE (India) Ltd., (IGE) a non-NBFC. The scheme of merger was approved by the Hon'ble High Court of Calcutta vide order dated 22<sup>nd</sup> December 2010.

17. A detailed due diligence was carried out on incumbent new shareholder viz., IGE and it was observed that the proposed shareholder may not be in the position to meet the capital calls of the insurer in the future. The approval as regards their continuation as shareholder of MLIC was withheld by the Authority.

**Request under Consideration:**

18. Against the background of financial constraints faced by the insurer, it sought approval under section 6A of the Insurance Act, 1938 read with Authority's circular IRDA/F&A/CIR/DRSH/183/08/2011 dated 11<sup>th</sup> August 2011. Under the proposal, MLIC intended to issue 30 per cent equity shares i.e., 88,28,57,143 shares each of face value of Rs 10/- to Punjab National Bank (PNB) on non-cash consideration basis (viz., 10 year commitment of corporate agency with MLIC and usage of PNB brand by MLIC).

**Due diligence on the proposed shareholder:**

19. Due diligence was carried out on PNB and no adverse comments were received from their bankers, Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI). On a review of the financials of PNB it was observed that it is capitalised to support capital requirements of MLIC from time to time.

### **Concerns in the proposed transaction with PNB:**

20. The proposed transaction raised the following questions/concerns:
- (i) What were the implications on solvency calculations as the issue of share capital to the extent of Rs 882 crore are not supported by corresponding tangible asset?
  - (ii) Whether the creation of acquisition of brand value as asset was in compliance with AS-26 requirements?
  - (iii) Permissibility or otherwise of non-cash transactions for purchase of shares in an insurance company under the Companies Act and/or Insurance Legislation.

### **Response to various concerns:**

21. The concerns pertaining to query (i) at 20 above were examined internally by the Authority, while those at (ii) and (iii) above were referred to Standing Committee on Accounting Issues (SCAI) of the Authority.

22. While MLIC confirmed that the proposed transaction had no impact on the solvency calculations as both the asset and liability part of the transaction were not considered for solvency purposes, the solvency position of MLIC per se, for the year 2010-11 is 140 per cent which is 10 per cent below the mandated 150 % owing to the following reasons:

- i. Share application money cannot be considered as capital for solvency calculations
- ii. Leasehold improvements have to be valued zero for solvency purposes.

23. The SCAI while giving its opinion on the matter, expressed the view that no share based payment be permitted for acquiring/right to use of an intangible asset.

24. After deliberating on the various concerns in the proposed transactions and the recommendations of the SCAI, the Authority took a view that permitting an entity to be the shareholder of insurance company for non-cash consideration would lead to unhealthy practices and was not in the interests of the harmonious growth and development of financially sound insurance industry.



**Decision in the initial proposal as regards PNB Transaction:**

25. During a discussion with the management of the insurer in March 2012, the Authority expressed its inability to grant approval to the proposal of acquisition of 30 per cent stake by the Bank for "consideration other than cash". Based on the request of the applicant, Chairman, IRDA granted MLIC time to reconsider their proposal and to file it with the Authority afresh.

**Revised Proposal of MLIC:**

26. MLIC in May 2012 submitted the revised proposal as under:

- i. PNB to be inducted as 30 per cent shareholder, with existing shareholders of MLIC selling their shares to PNB;
- ii. Inter-se sale and transfer of shares between the existing shareholders of MLIC;
- iii. Name of MLIC to be changed to PNB Metlife India Insurance Co. Ltd.;
- iv. Metlife International to be allotted 2,35,11,572 shares at par representing their rights shares (not allotted due to J&K bank not subscribing to their rights);
- v. Metlife International to be allotted 1,98,01,833 shares at par out of the unsubscribed rights of 6,69,17,550 shares of J&K Bank from previous capital call.

27. As a result of the revised proposal PNB would acquire 603,865,285 shares in the insurance company and Rs 43.31 crore shall be brought into the insurance company to meet its capital and solvency requirements through issue of fresh capital.

28. The revised proposal is intended to be completed through four-stage transactions. The details of the said transactions are provided in **Annexure II**.

**Clarifications/Confirmations from PNB:**

29. Against the background of the proposed transaction, PNB was asked to clarify the "consideration" being paid by it for acquisition of shares from the existing

shareholders and the manner in which the acquisition would be reflected in their books of accounts.

30. PNB in its response has indicated as under:
- i. MLIC offered its 30 per cent stake in consideration of it being allowed to use the PNB brand at a notional value of Rs 1/-.
  - ii. RBI has accorded its approval to PNB to acquire 30 per cent stake in MLIC at a notional value of Rs 1/-.
  - iii. The shares so acquired would be accounted for and carried in its books at a notional value of Rs 1/-.
  - iv. No other consideration is being paid by PNB to existing shareholders.
  - v. The terms of the proposed agreement forming part of the initial proposal (reference para 18) shall continue to apply.

**Further confirmations sought from MLIC:**

31. The RBI vide its circular reference RBI/2009-10/445 dated 4<sup>th</sup> May 2010 as amended from time to time lays down the pricing guidelines on Foreign Direct Investments (FDI) on transfer of Shares/Preference Shares/Convertible Debentures pursuant to a sale transaction. MLIC was asked to confirm that the transactions where transfer of shares shall occur from (i) Resident to Non-resident and (ii) Non-resident to Resident, the parties to the transactions shall be in compliance with the regulatory/pricing stipulations as spelt out in the RBI's circular.

32. MLIC has confirmed compliance with the following stipulations of RBI:
- a. In case of the sale of shares by a non-resident to a resident, the sale price should not be higher than the price of the shares computed as per the pricing guidelines; and
  - b. In case of the sale of shares by a resident to a non-resident, the sale price should not be lower than the price of the shares computed as per the pricing guidelines.

33. On being asked to furnish a copy of the certificate providing the fair value of the shares proposed to be transferred as determined by SEBI registered Category I



Merchant Banker or a Chartered Accountant in line with the RBI's circular under reference, MLIC has confirmed that it shall obtain the valuation certificate for submission to the RBI on receipt of the Authority's approval to the proposed transactions, and a copy of the same shall be filed with the Authority.

**Financial performance of MLIC for the year 2011-12:**

34. Financials of MLIC for the year 2011-12 show that they have witnessed a growth of 33.28% in 2011-12 as against negative growth of 43.91% in 2010-11. Total Business grew by 6.75% as against a negative growth of 1.10% in the previous year. Briefly the financial position of the Company over the last three years is indicated as under:

(Rs. crore)

	2011-12	2010-11	2009-10
Capital	1969.57	1969.57	1774.79
Networth	350.07	259.99	191.23
Debit balance in P&L account	46.17	79.34	104.62
Deficit in revenue account	1573.33	1653.75	1663.83
Total premium	2677.50	2508.17	2536.01
Growth in total premium	6.75%	-1.10%	27.01%
First Year Premium	738.14	553.81	987.31
Growth in first year premium	33.58%	-43.91%	-7.42%
Total Commission	118.44	87.32	292.51
Total Operating Expenses	554.17	563.61	681.99
Surplus	53.85	8.27	-256.13
Profits for the year	33.17	25.28	25.06
Solvency *	1.65*	1.40	1.04
Expenses of Management (EoM) (Rule 17D) (%) <sup>&amp;</sup>	127.19 <sup>&amp;</sup>	104.96 <sup>&amp;</sup>	109.68 <sup>&amp;</sup>

\* Although the company has indicated a solvency position of 1.65 for the year ending 31<sup>st</sup> March 2012, the same is being examined actuarially by the Authority.

<sup>&</sup> MLIC has been non-compliant with EoM under Rule 17D with the actual expenses being more than the permitted levels. Even in 2008-09 the proportion was 102.86%

35. As can be observed from the details provided in the tabulation, MLIC had injected capital of Rs 194.79 crore each in the years 2009-10 and 2010-11. There was no further infusion of capital in the year 2011-12.

**Summation of the concerns:**

- i. The Authority has noted with concern the continuing default in compliance with the solvency stipulations for the years 2009-10 and 2010-11. As per the filings for the FY 2011-12, the Company's solvency position is 1.65 which is under examination of the Authority.
- ii. J&K Bank is presently not in the position to inject capital in the insurance company as the RBI has not relaxed its stipulations on J&K Bank requiring it to exit from the insurance venture.
- iii. The Authority is not fully satisfied with the financial due diligence on IGE and has concerns on its ability to meet its commitments towards future capital calls of the insurance company.

36. Given the above concerns, MLIC may be required to cease insurance operations in the country in case the issues relating to shareholding structure and financial stability are not suitably addressed and steps taken to induct a financially strong shareholder into the insurance company. Such a situation would not be in public interest and may also result in jeopardizing protection of the interests of the policyholders.

37. The Authority notes that the acquisition of shares as detailed at para 26 above and the other various transactions for shareholder transfers are compliant with the RBI's circular under reference. The completion of the proposed transaction would address concerns on capital and would lay a firm foundation for the future growth of the company.

38. The revised proposal was considered by the Authority at its 73rd meeting held on August 31, 2012 at New Delhi. The Authority approved the proposal for inducting Punjab National Bank as a shareholder and stipulated compliance with section 48A of the Insurance Act, 1938 on appointment of directors, dilution in the equity stake by some of the existing shareholders and maintaining solvency margin as per the directions issued by IRDA. The Authority further directed that in public interest and with a view to protect policyholders' interest, directions be issued to the insurer under section 34 of the Insurance Act, 1938, subject to compliance with



the due regulatory process. The due process of consultation with the Consultative Committee set-up under Section 110(G) (1) of the Insurance Act, 1938 has since been completed.

39. Considering the insurer's proposal to transfer 30 per cent of shares of MLIC to Punjab National Bank, and with a view to facilitate the transaction, the Authority has ratified the transfers as at para 16 by which IGE acquired 20.27% stake of MLIC vide Authority's letter reference no.110.1/2/F&A/MLIC-Restr./Oct-12, dated 5<sup>th</sup> October, 2012.

40. In view of the above facts, the Authority hereby approves the proposal of MLIC for transfer of shares as detailed as Annexure-II, under the provisions of section 6A(4)(b)(ii) and (iii) of the Insurance Act, 1938 read with IRDA Circular No. IRDA/F&A/CIR/DRSH/183/08/011 dated August 11, 2011, subject to the following:

- i. Shares held by PNB shall be locked-in for a period of five years from the date of such transfer;
- ii. MLIC shall ensure compliance with all the regulatory, legal and statutory requirements as may be applicable.

41. The Authority by virtue of the powers vested with it under Section 34(1)(a) & (b) of the Insurance Act, 1938 and in consultation with Consultative Committee directs MLIC to:

- i. Desist from allotting any further shares to IGE India Limited;
- ii. Comply with the provisions of Section 48A of the Insurance Act, 1938;
- iii. Enhance capital with a view to strengthen solvency position by 31<sup>st</sup> March, 2013; and
- iv. Comply with Authority's stipulations/Regulations on Bancassurance/Corporate Agency at all times.

42. In accordance with the proviso to section 34(1) of the Insurance Act, 1938, the MLIC was given an opportunity to be heard and to present their case. The hearings took place on 3<sup>rd</sup> September, 2012 and 1<sup>st</sup> October, 2012. The hearing on 3<sup>rd</sup> September, 2012 was chaired by Shri R. K. Nair, Member (F&I) along with Dr.

Mamta Suri, Joint Director, IRDA and attended by Shri Shailendra Ghorpade, Chairman, Shri Rajesh Relan, MD & CEO and Shri S. V. Rangan, Director of MLIC. Further, the hearing on 1<sup>st</sup> October, 2012 was chaired by Shri R. K. Nair, Member (F&I) along with Dr. Mamta Suri, Joint Director, IRDA and attended by Shri Rajesh Relan, MD & CEO and Shri S. V. Rangan, Director of MLIC.

43. It is explicitly stated, however, that this approval of the proposal of MLIC shall not be construed as regularizing or validating any irregularities, contravention or lapses, if any, under the provisions of any laws/regulations.

  
**(J. Hari Narayan)**  
**Chairman**

**Encl:** Annexure I & II



## Annexure-I

Share transfer requests				
Sl. No.	Date	Name of the Transferor	No. of Shares	Name of the Transferee
1	22/09/2001	Venkatesh S. Mysore (Signatory to Memorandum)	5000	Chintalapati Holdings Pvt. Ltd.
2	22/09/2001	S. Raju (Signatory to Memorandum)	5000	Chintalapati Holdings Pvt. Ltd.
3	11/10/2002	Indian Syntans Investments Pvt. Ltd.	5500000	Elpro International Ltd.,
4	02/12/2004	Better Deals Developers	3200000	Manimaya Holdings (P) Ltd
5	16/08/2005	M. Pallonji & Co. Pvt. Ltd.	25850000	Elpro International Ltd.,
6	27/11/2006	Manimaya Holdings (P) Ltd	4700000	Faridabad Investment Co. Ltd.
7	19/02/2008	M. Pallonji & Co. Pvt. Ltd.	30000000	M. Pallonji Enterprises (P) Ltd.,
8	06/08/2008	Chintalapati Holdings Pvt. Ltd.	30000000	M. Pallonji & Co. Pvt. Ltd.
9	11/03/2011	Elpro International Ltd.,	19400000	IGE (India) Ltd.
Rights Renunciation				
Sl. No.	Date	Name of the Transferor	No. of Shares	Name of the Transferee
1	2007	M. Pallonji & Co. Pvt. Ltd.	46216215	M. Pallonji Enterprises (P) Ltd.,
2	2008	Chintalapati Holdings Pvt. Ltd.	10702703	M. Pallonji & Co. Pvt. Ltd.
3	2008	Elpro International Ltd.,	12275084	Faridabad Investment Co. Ltd.
4	2008	Jammu & Kashmir Bank Ltd.,	129729730	Faridabad Investment Co. Ltd.
5	2008	Jammu & Kashmir Bank Ltd.,	45000000	Elpro International Ltd.,
6	2009	Elpro International Ltd.,	19500000	Faridabad Investment Co. Ltd.

Annexure II

Sl. No.	Name of the Shareholder	No. of Shares	Proportion of Shareholding (%)	Step 1 Trns to PNB	% Trns	No. of Shares post trns to PNB	Proportion of Shareholding (%)	Step 2 Rights share allotment to ML	No. of Shares post rights	Proportion post rights %	Step 3 Trns additional shares to PNB	No. of Shares post trns	Proportion post rights %	Step 4 Trns. Of Shares to MLIC	No. of Shares post trns	Proportion post rights %
1	MetLife International Holdings Inc.(MLHI).	512,088,428	26	153626528	30	358,461,900	18.20	43313405	401,775,305	19.96	(12,994,022)	388,781,283	19.31	134,568,630	523,349,913	26
2	Faridabad Investment Co. Ltd (now merged with IGE (India) Ltd.	399,254,347	20.27	196766323	49.28	202,488,024	10.28		202,488,024	10.06		202,488,024	10.06	(27,166,667)	175,321,357	8.71
3	Elpro International Ltd.	256,633,397	13.03		0	256,633,397	13.03		256,633,397	12.75		256,633,397	12.75		256,633,397	12.75
4	Manimaya Holdings Pvt. Ltd.	8,978,491	0.46	2693547	30	6,284,944	0.32		6,284,944	0.31		6,284,944	0.31		6,284,944	0.31
5	M. Pallonji enterprises Pvt. Ltd.	206,292,601	10.47	61887780	30	144,404,821	7.33		144,404,821	7.17		144,404,821	7.17		144,404,821	7.17
6	M. Pallonji & Co. Pvt. Ltd.	286,907,682	14.57	86072305	30	200,835,377	10.20		200,835,377	9.98		200,835,377	9.98		200,835,377	9.98
7	The Jammu & Kashmir Bank Ltd.	220,270,270	11.18	66081081	30	154,189,189	7.83		154,189,189	7.66		154,189,189	7.66	(52,000,000)	102,189,189	5.08
8	Chintalapati Holdings Pvt. Ltd.	79,145,662	4.02	23743699	30	55,401,963	2.81		55,401,963	2.75		55,401,963	2.75	(55,401,963)	-	0
9	Punjab National Bank					590,871,263	30		590,871,263	29.35	12994022	603,865,285	30		603,865,285	30
	<b>Total</b>	<b>1,969,570,878</b>	<b>100</b>	<b>590,871,263</b>		<b>1,969,570,878</b>	<b>100</b>		<b>2,012,884,283</b>	<b>100</b>	<b>0</b>	<b>2,012,884,283</b>	<b>100</b>	<b>-</b>	<b>2,012,884,283</b>	<b>100</b>