



No. IRDA/NL/ORD/RIN/118/07/2010

26<sup>th</sup> July, 2010

**ORDER  
OF INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY**

**AGAINST**

**NATIONAL INSURANCE CO. LTD.**

**IN THE MATTER RELATING TO AIRPORT LIABILITY  
INSURANCE POLICY**

1. This order is directed against National Insurance Co. Ltd having its registered office at 3, Middleton Street, P.B. No. 9229, Kolkata - 700 071 (hereinafter referred to as NIC) 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. NIC too submitted its price-bid for issuance of the policies to cover the Delhi and Mumbai International Airports for a sum insured of Rs. 2500 crores and Rs. 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
4. In response to the same, NIC submitted the required information. Upon perusal of the same, it was inter-alia noted that NIC had failed to comply with the provisions of File & Use Guidelines issued by the Authority vide Circular

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Nos. 021/IRDA/F&U/Sep-06, IRDA/20/F&U/07-08 and IRDA/30/F&U/07-08 dated 28<sup>th</sup> Sep 2006, 25<sup>th</sup> June 2007 and 13<sup>th</sup> August 2007, respectively.

5. In view thereof, the Authority issued a notice no. IRDA/NIC/MIAL&DIAL/09-10 dated 21.10.2009 to NIC advising 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. NIC furnished their reply vide letter dated 05.11.2009, which was also forwarded to the Members of the Consultative Committee for their comments. Upon perusal of the reply of NIC, all the Members of the Consultative Committee recommended action against NIC by the Authority. Hence, IRDA issued a notice to show cause no. IRDA/NL/NTC/F&U/ 052/03/2010 dated 22<sup>nd</sup> March 2010 to NIC. In response to the same, NIC vide their letter dated 30<sup>th</sup> April 2010 denied the charges leveled against them and inter alia submitted that their actions were based on their understanding of the regulatory framework and prevalent market practices.

#### APPRECIATION OF FACTS

6. I have examined the charges leveled as against NIC, the gist of submissions made by NIC 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 NIC 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. 28<sup>th</sup> 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 25<sup>th</sup> June 2007**

(x) Insurance of Large Risks under Para 19B(v) of the F&U Guidelines dated 28<sup>th</sup> 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 13<sup>th</sup> 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 06<sup>th</sup> August 2007, with the CEOs of various general insurers.
- (iii) NIC have submitted that this was not the first time that an airport owners liability policy was being issued in the market in that, prior to even the private operators demanding such policies, the Airport Authority of India used to take a single policy for 63 airports in India. This policy was issued by PSU and booked under the Aviation Department.
- (iv) For the airports in India other than in Delhi and Mumbai, policies had been issued by other insurers on similar terms and the same practice had been followed by various insurance companies in India.
- (v) Apart from the legal liability of the insured, there are several types of policies like Ground Handlers Liability, Aviation Refueling Liability, and Aviation product which are basically legal liability policies but written in the aviation department on account of the fact that the highest exposure in any of these policies came from damage to an aircraft which cannot be insured under any other class of business. Reference was drawn to the mail of GIC dated 30<sup>th</sup> April, 2010, which opined that



Airport Owners Legal Liability policy will be written in Aviation class and therefore cannot be ceded to Liability treaty.

- (vi) The exposure to their net account was within the net retention level of Rs.5 crores for aviation liability risks. There was thus adequate adherence to all the relevant regulations/instructions issued by IRDA.

7. The information submitted by NIC to the Authority, especially the details of risk cover offered by them read as under :-

Details of Terms	Delhi International Airport Limited		Mumbai International Airport Limited	
	Rate received from the Reinsurer	Rated quoted to client	Rate received from the Reinsurer	Rated 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.



9. I have noted that although NIC have 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 mentioned in para 7), it is seen that NIC had proposed deductibles to their clients, that varied significantly from NIC to those offered by the reinsurer. Thus, NIC has taken on its 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 above mentioned circulars.

10. It is thus undisputed that NIC have misinterpreted the said circulars and instead of confessing their faults have presented their own line of argument to justify their actions, which is not acceptable and also in contravention of the guidelines issued by the Authority. In the process, they have also overlooked the fact that their action constitutes improper competitive practice that is detrimental to the general interests of the market in maintaining sound market practices.

11. At stake here is also the oft expressed desire of the Regulator to maintain proper standards in underwriting in the insurance sector which has to be adhered to in all eventualities. 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 NIC 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.

12. Accordingly, based on the facts and circumstances discussed earlier and bearing in mind the fact that NIC is an insurer registered with the Authority and on account of the same ought to have exercised greater professional care, skill and diligence which they failed to do, the Authority, is of the considered view that a penalty of Rs.5,00,000/- (Rupees Five lakhs) be imposed upon National Insurance Company Limited, Kolkata. Accordingly, on a judicious exercise of the powers conferred upon me, under Section 102 of Insurance Act, 1938, I hereby impose a penalty of Rs.5,00,000 (Rupees Five Lakhs) on M/s. National Insurance Co.Ltd.

13. The penalty amount of Rs.5,00,000/- shall be paid by National Insurance Company 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, 3<sup>rd</sup> Floor, Parisrama Bhavan, Basheerbagh, Hyderabad - 500 004.0

Place: Hyderabad  
Date: July 26, 2010

  
J. HARI NARAYAN  
CHAIRMAN