

CHAPTER IX : MINISTRY OF FINANCE

Department of Economic Affairs

Insurance Regulatory and Development Authority

9.1 Irregular expenditure

Insurance Regulatory and Development Authority irregularly transferred Rs. 11.00 crore to the Institute of Insurance and Risk Management.

In January 2002 the Insurance Regulatory and Development Authority (IRDA) signed a Memorandum of Understanding (MoU) with the Andhra Pradesh Industrial Infrastructure Corporation (APIIC) for establishing the Institute of Insurance and Risk Management (IIRM). The investment of APIIC was to be equivalent to the cost of land to be transferred to IIRM and IRDA was to contribute to the equity capital of IIRM. In July 2002, IIRM was incorporated as a company under the Companies Act, 1956. The Chairman of IRDA was also appointed Chairman of the IIRM. IRDA paid Rs. 11 crore to IIRM during 2002-03. As on December 2004, APIIC was yet to transfer the land to IIRM.

However, IRDA had collaborated with APIIC for establishing IIRM without obtaining the approval of the Ministry. This came to the notice of the Ministry in November 2002. The Ministry sought an explanation from IRDA in January 2003 on this issue. IRDA responded (January 2003) that it was competent to do so under the IRDA Act and there was no need to obtain the approval of the Ministry. However, the Ministry of Law, Justice and Company Affairs opined (June 2003) that IRDA was not empowered under the IRDA Act, 1999 to create IIRM. Accordingly, the Ministry directed (June 2003) IRDA to cancel all action taken with regard to the establishment of IIRM and obtain a refund of Rs. 11 crore transferred to the latter.

Audit pointed out this irregular transfer of Rs. 11 crore in March 2004. In response, the Ministry stated (October 2004) that they had since decided to promote IIRM through IRDA and had asked the latter to frame guidelines for regulating its activities. However, the reply of the Ministry is inconsistent with its earlier stand in which it was stated that the function of IRDA was to regulate professional organisations connected with insurance and re-insurance business. The duties, power and functions of the Authority did not include establishing and running such institutions. Further, it was the view of the

Ministry that the regulator should stand apart from the system and work objectively on the specific tasks assigned to them and the establishment of such an institute did not fall within the purview of Section 14 of the IRDA Act. Hence, the Ministry completely reversed its stand without any alteration in the legal framework within which IRDA was constituted and without obtaining any fresh opinion from the Ministry of Law, Justice and Company Affairs.

9.2 Avoidable refund of renewal fee

Injudicious decision of Insurance Regulatory and Development Authority to reduce rates of renewal fee from 0.2 per cent to 0.1 per cent with retrospective effect resulted in irregular refund of Rs. 8.94 crore.

Insurance Regulatory and Development Authority (IRDA) was established under the Insurance Regulatory & Development Authority Act, 1999 with a view to protecting the interests of the holders of insurance policies. Rule 16 of the Act provides for constitution of 'Insurance Regulatory and Development Fund' (Fund) wherein all grants, fees and charges received by the Authority are to be credited. The provisions of the Act do not provide for remission, waiver or refund etc. of the fees and charges already recovered/received and credited to the fund.

Clause 20 of the IRDA (Registration of Indian Insurance Companies) Regulations 2000 lays down that an insurer, who has been granted a certificate of registration under Section 3 of the Act, shall make an application for the renewal of the certificate to the Authority before 31 December of each year. Such application shall be accompanied by evidence of payment of the fee which shall not be less than Rs. 50,000 or 0.2 per cent of the total gross premium of the financial year preceding the year in which the application for renewal of certificate is required to be made subject to a maximum of Rs. 5 crore.

The Governing Body of the IRDA in its meeting held in October 2001 decided to reduce the renewal fee from 0.2 per cent to 0.1 per cent of the gross premium. Regulation 20(1) of IRDA (Registration of Indian Insurance Companies) Regulations was amended on 26 February 2003 in accordance with this decision. Audit observed that the minutes did not record the rationale for this decision and only stated that it was explained by the chairman to the members. The reduction of renewal fee was made effective retrospectively from 1 April 2001 and renewal fee amounting to Rs. 8.94 crore

for the year 2001-02 was refunded to the insurance companies. The decision of IRDA to refund renewal fee already collected and credited to the fund was irregular as the Authority is not vested, under the provisions of the Act *ibid*, to refund receipts/revenues already collected and credited to the fund nor was the renewal fee paid under mis-application of law. Further, the reduction in rates of renewal fee recoverable from insurance companies should have been made operative from a prospective date i.e. after October 2001 as the burden of the renewal fee at higher rates was likely to have already been passed on by the insurance companies to the individual policy holders in the form of higher premium etc.

The decision of the Authority to reduce the fee with retrospective effect from April 2001, resulted in irregular and injudicious refund of Rs. 8.94 crore to the insurance companies for the year 2001-02.

In response, the Ministry agreed (October 2004) with Audit's view that the reduction of renewal fee with retrospective effect was not in order.