

# Frequently Asked Questions: Admitted and Non Admitted Insurance

## What is Admitted and Non Admitted Insurance ?

**Admitted insurance:** Insurance written on locally approved policy forms by an insurer licensed, registered or authorized to do business in the country where the insured risk is located e.g. a company incorporated in India purchasing a Property Insurance from an insurer licensed in India say Tata AIG General Insurance Company Limited.

**Non-admitted insurance:** It is the coverage that is written by an insurance company from another jurisdiction that is not authorized by the host country's regulation to cover risks in that jurisdiction e.g. Company incorporated in India purchasing a Property Insurance directly from say AIG London (AIG on its own is not licensed to operate in India).

## Why should you know of these regulations ?

Often there are potential penalties for the insured, the insurer and/or the broker that facilitate such non-admitted transactions in the countries which prohibit such insurance. These restrictions are designed to protect policyholders, preserve capital outflow and protect the local insurance industry.

## When should you check for these regulations ?

**Structuring a Global Program for an Indian Client:** Where broker is structuring a Global Insurance Program for an Indian company to cover its overseas subsidiaries, it is necessary to check the Admitted Regulations for the places where these subsidiaries are domiciled or the risks are located.

**Structuring a local program for a Foreign subsidiary located in India:** Most of the Global clients operating in India would have substantial coverage for Indian operations under the Global Program. A broker should advise the controlling Marsh office and the local client on the prevailing regulations in India to achieve a proper alignment of local Insurance program with the Global program.

## What are the implications of a non-admitted insurance ?

- ✓ Many countries prohibit the procurement of non-admitted Insurance.
- ✓ Where premiums are paid by the overseas parent on behalf of the Indian subsidiary, the expense may not be recharged to that Indian entity. Consequently the parent company may not get income tax relief on that premium expense in its own jurisdiction. If the premium is recharged, the subsidiary may not get tax relief on that expense.
- ✓ The non-admitted insurance company may not be able to adjust the claim locally
- ✓ Non-admitted insurance could potentially lead to double taxation. Claims recoveries under a non-admitted insurance policy may not be payable to the local entity where the risk is located, but may have to be paid to the purchasing entity i.e. Global Head Office in that entity's domicile country. Such recoveries may be taxed as income by the tax authorities in that jurisdiction at the purchasing entity's at the effective corporate tax rate. Moreover, remittance of a claim recovery to the "at risk" subsidiary by the "parent" might also be taxed as income by the tax authorities in the subsidiary location.

Example: a property claim paid to the parent company in the USA could be taxed by the US Tax Authorities since the US Company has suffered no loss. Remittance by the parent to the local subsidiary might also be taxed by local authorities.

- ✓ Non-admitted insurance can create difficulties in providing evidence of local insurance to satisfy contractual or licensing obligations: financing agreements from lenders and financial partners as well as leases, vending agreements with suppliers, engagement contracts and other contracts may oblige the insured to show evidence of insurance from a locally admitted carrier. In such cases, coverage under Non-admitted Insurance may not be acceptable.

## What are the relevant regulations in India ?

Non-admitted Insurance is strictly prohibited in India. The following are the extracts of relevant regulations governing this issue in India:

Section 25 of General Insurance Business (Nationalization) Act, 1972, provides:

- ✓ "No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government".
- ✓ "If any person contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both".

To the best of our knowledge, we are not aware that the Central Government has given permission to take out or renew non-admitted insurance.

Section 3 of Foreign Exchange Management Act (FEMA) Regulations, 2000,

- ✓ "Save as otherwise provided in the Act, rules or regulations made or orders or directions issued under the Act, no person resident in India shall take any general or Life Insurance policy issued by an insurer outside India".
- ✓ "Provided further that the prohibition against taking general insurance policy issued by an insurer outside India shall not apply to a unit located in Special Economic Zone". It is required that the premium for such general insurance policy is paid by the units out of their foreign exchange balances.

Furthermore section 3 of the Foreign Exchange Management (Insurance) (Amendment) Regulations, 2003 states:

3. Permission to take or hold a general insurance policy issued by an insurer outside India

- i) A person resident in India may take or continue to hold a general insurance policy issued by an insurer outside India, provided that, the policy is held, under a specific or general permission of the Central Government.
- ii) A person resident in India may continue to hold any general insurance policy issued by an insurer outside India when such person was resident outside India.

Provided further that where the premium due on a general insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt thereof.

## Are there any relaxations towards purchase of non-admitted insurance in India ?

- ✓ Marine Cargo Insurance (As per INCO terms) and Protection & Indemnity (P&I) Insurance can be bought from an insurer not registered in India on Non Admitted basis.
- ✓ The Units/Companies / facilities located in a "Special Economic Zone" can buy non-admitted insurance. The premium for this insurance should be paid from the company's Foreign Exchange account.

## What is the procedure for applying to Central Government towards purchase of non-admitted insurance in India ?

The permission of Central Government is to be taken prior to the purchase of non-admitted cover. However it is very difficult to get such permission from the Central Government. It generally follows a declinature process as mentioned below:

**Declinature Process:** The process for approval of non-admitted insurance requires that the Client/Customer seek the required non-admitted cover with proper details about the insurance coverage from at least two Government & Private insurance companies. If all the insurance companies decline in writing (declination from their Head office) then the customer can approach the Central Government for permission to buy such insurance on non-admitted basis from an insurance company not registered in India. The government may consider such request after this due diligence process. Therefore the insurance cover sought with proper underwriting information needs to be provided and if a specific insurance policy is required then the same needs to be produced.

# Admitted and Non Admitted Insurance: India

## NON ADMITTED INSURANCE: INDIA

Non-Admitted Insurance is one in which a client can directly take a policy from an insurer not registered in India under international terms and conditions

Non-admitted insurance is not permitted in India. As per the provisions of the General Insurance Business (Nationalisation) Act, 1972, Section 25 states that non-admitted insurance is prohibited in India.

*Section 25: Properties in India not to be insured with foreign insurers except with permission of Central Government.*

(1) No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India save with the prior permission of the Central Government.

(2) If any person contravenes any provision of sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

## EXCEPTIONS:

The Foreign Exchange Management Act (FEMA) Regulations, 2000 also prohibits any Indian resident from taking any insurance policy from a non-admitted insurer without the specific permission of the Central Government.

Some of the covers for which a person can take insurance cover with an insurer whose principal place of business is outside India are:

- Protection and Indemnity cover.
- Marine Liability.
- Marine Cargo cover.(Imports and Exports)
- Inland Multimodal Transportation Cover

As per Section 3 of Foreign Exchange Management Act (FEMA)(Insurance) Regulations, 2000,

"The prohibition against taking general insurance policy issued by an insurer outside India shall not apply to a unit located in Special Economic Zone". It is required that the premium for such general insurance policy is paid by the units out of their foreign exchange balances.