

## Consultation Paper 1.5

### Mandatory Third Party Liability Insurance for Road Vehicles

#### Executive Summary

There are invariably two or more parties involved in any road accident - the vehicle at fault (offending driver) and the injured party or parties (aggrieved parties). Under the Third Party Liability (TPL) insurance scheme, the insurer undertakes to pay compensation to the aggrieved parties on behalf of the offending driver. The insurer will not compensate the offending driver for damage/loss to his own personal property.

The introduction of a Third Party Liability (TPL) Insurance scheme for Afghanistan will be to its advantage as it will reduce public expenditure on health and maintenance of road side property which are susceptible to damage through accidents. It will also reduce pressure on the judicial system as it will encourage alternative dispute resolution among parties. The Road Traffic Law requires all vehicles to be insured prior to the vehicle licence being issued.

There are, however, critical issues that must be tackled prior to making the Scheme mandatory for all vehicles. Of particular concern are weaknesses in the registration of vehicles and licensing of drivers, poor management of vehicle safety, limitations in the capacity of the Afghan National Insurance Company (ANIC) to provide services, weak enforcement of the road traffic laws and poor security on parts of the road network. These basic issues must be addressed and rectified before any mandatory TPL Scheme could be introduced nationwide.

The strategy for the implementation of the TPL Scheme should therefore be gradual, introduced progressively over a pre-determined schedule. The Schedule should take into account all factors including progress made in the strengthening of the vehicle registration and driver licensing systems, better enforcement and improvement in the capacity of the ANIC to provide services in the provinces.

The Road Traffic Law should be amended to allow for the progressive introduction of the scheme and to make it more explicit as to the details of the scheme. Regulations should also be drawn up relating to the detailed nature of the policies to be issued, limitations and exceptions and its implementation.

Much of Afghanistan's trade and services moves by road transport. This would be adversely affected without proper security and safety. Improved security will allow ANIC to increase its range of services and coverage of the road transport industry and improve its commercial viability. Capacity building for the insurance industry must be undertaken immediately simultaneously with the gradual introduction of the TPL scheme.

Prior to the introduction of the mandatory scheme, publicity campaigns must be conducted to make the public aware of the benefits.

Recommendations:

Third party insurance should be made mandatory for all road vehicles in Afghanistan, but should be introduced gradually following other actions to improve the management of road traffic.

Actions:

An inter-ministerial implementation committee should be immediately set up for the implementation of the Scheme. The Committee should be chaired by the MOT with members drawn from the Ministry of Interior (Traffic Department), Ministry of Finance, Ministry of Information and ANIC. The inter-ministerial committee should be assisted by the Capacity Building Unit in the Ministry of Transport; see Consultation Paper 1.7.

## **Introduction**

This Consultation Paper addresses the major issues associated with the proposal to introduce third party liability insurance and suggests a strategy for its implementation in Afghanistan.

Motor insurance is one solution to manage risks posed by the road transport industry and a means to ameliorate damages arising from accidents and other mishaps. With compulsory insurance in place financial risks arising from the operations of vehicles can be better managed. Damage to personal property (such as to vehicles and personal items), public property (road signs, lights and other infrastructure) and personal injuries arising from accidents can be managed without imposing an undue burden on private or public persons and organizations. Further private mediation and dispute settlement would be encouraged by the insurance industry thereby avoiding a strain on the courts. Health costs may also be met by the insurance industry and not become entirely a strain on the public health system.

## **Definition**

When an accident occurs, there are invariably two parties involved - the vehicle at fault (offending driver) and the injured party or parties (aggrieved party). The offending driver and aggrieved party may suffer injury, death, damage and loss. The offending driver may not be in a position, financially or otherwise, to compensate for the damages/loss suffered by the aggrieved party especially if it is substantial. The insurer, under the Third Party Liability (TPL) insurance scheme, will then step in to pay compensation to the aggrieved party on behalf of the offending driver. The insurer will not pay any compensation to the offending driver for damage/loss to his own personal property. Under a comprehensive policy (which is not the recommended scheme here) however, the insurer will also be liable to pay for the latter category of damage/loss.

## **Current Situation**

One of the components of the National Priority Sub-Programme of the National Development Framework (NDF) is accelerated investment in road construction and completion of key links. These improvements in road infrastructure will inevitably result in an increase in the number of vehicles and average speeds. This increase in numbers and speed, combined with the current poor driver discipline witnessed on the roads, will inevitably result in an increase in serious accidents.

There are an estimated 49,654 licensed trucks, over 13,000 buses and nearly 50,000 taxis in Afghanistan<sup>1</sup>. According to the estimates of the Afghan National Insurance Company (ANIC) there are an estimated 70,000 vehicles in Kabul alone. It is predicted that the number of vehicles will increase sharply over the years. The ANIC for example currently issues insurance covers for 60-120 vehicles a day and it is expected that these numbers will increase.

The ANIC is the sole insurance company in Afghanistan. It has provided insurance cover for about 20,000 vehicles in Kabul and about 7,000 vehicles in Mazar i Sharif (as at March 2003).

---

<sup>1</sup> Source: Ministry of Transport Afghanistan

The Company has an agreement with the Traffic Department, Ministry of Interior, to provide cover to vehicles. It has offices only in Kabul and Mazar i Sharif. The Company is currently severely constrained by a lack of resources to expand its services to other places in the country.

The proposal to introduce third party liability insurance cover for all vehicles has generally received positive feedback from the relevant Afghan agencies including the Ministry of Transport, Ministry of Interior and the Attorney Generals. It was stated by the Deputy Director of the Traffic Department that all vehicles appearing for inspections for new or renewal of licensing are required to obtain insurance coverage. However anecdotal evidence suggests that there is a serious problem with annual renewal of licensing by private vehicles and therefore a substantial number of vehicles may not be covered by insurance.

A review of all the relevant laws related to road transport has been completed (See Information Paper 4.1). It appears that, under current legislation, insurance is a mandatory requirement for all vehicles. The Road Traffic Law (25 JADI 1352) (Gazette Number 484) stipulates that “no motor driven means of transport can enter the public road unless insured beforehand”. Further it requires “the Insurance Company” to insure all vehicles. The owner/violator of an uninsured vehicle shall bear any compensation that he is liable for in the event of an accident.

Information on the average premiums being paid by motor vehicles in Afghanistan can be obtained. However such information is not critical to this study at this stage. An expert on insurance would have to be engaged to find out if the current insurance rates are reasonable or not given the circumstances under which the Afghan National Insurance Company is operating. It does appear however that there is currently no differentiation in the premiums charged for right hand drive vehicles. These vehicles pose a danger to traffic safety and it was estimated by the Director of the Traffic Department that a very high percentage of accidents are actually caused by these vehicles.

In Afghanistan a significant element of risk to the commercial operations of ANIC (or any other insurance company that may wish to start up) is the current poor security and safety situation in the country. Poor security in parts of the country poses a significant risk to the successful commercial operations of the insurance industry. The insurance industry, perhaps much more than any other commercial operation, depends on how successfully it manages risks. “Security” here may be broadly defined as the ability of members of the public including commercial and private operators to carry out daily chores and their trade and services in relative safety. If the element of security is unquantifiable or perceived to be very bad, then insurance cover may either be provided at very prohibitive cost or not at all. The security factor, so long as it is not resolved, will continue to be a significant element that will influence ANIC’s ability to provide continued services and support to the commercial sector.

### **Issues Related to Implementation**

Mandatory insurance cover scheme for road vehicles is a requirement in Afghanistan’s law. The issue would really be the timing and manner in which the requirement may appropriately be strictly enforced through out the country. Many factors have to be taken into consideration prior

to the introduction of a mandatory nation wide scheme for the road transport sector in Afghanistan. Some of these would include:

### Economic and Financial Considerations

At this stage due consideration must be given to economic and financial constraints to the implementation of a mandatory scheme. The ability to pay by the various categories of owners of road vehicles is one consideration. However the reaction in many official circles is that a person who is able to afford and maintain a car should be in a position to afford a reasonable increase in additional maintenance costs for insurance cover. The situation may be different for different categories of vehicles depending on the amount of premiums demanded by ANIC. This will have to be investigated. The very basis of a mandatory cover is to ensure that every vehicle owner is put in a position to meet major costs that may arise from an accident irrespective of his personal resources to meet such costs. This has to be weighed against the cost of insurance premiums which has to be forked out annually by vehicle owners.

### Capacity of the Local Insurance Industry

It would appear that the only insurance company in Afghanistan is the ANIC. It is mandated by the Road Traffic Law to provide insurance to vehicles. The ANIC is a Government Corporation and currently is faced with severe resource constraints. Its current outreach is only within Kabul and Mazar i Sharif. The introduction of any form of mandatory insurance cover will therefore be largely constrained by the ability of the Company to meet the service requirements throughout the country. A prerequisite for the introduction of any mandatory scheme would be the ability of the insurance industry to provide services throughout the country or at least in the major regional centres. The ANIC would therefore have to be strengthened to undertake this task. ANIC has proposed to the Government to allow foreign investment in the Company and to be privatized. Also changes to the Insurance Act have been proposed to allow for foreign investment in the industry.

### Risk Management for the Insurance Industry

The ability of the insurance industry to manage its risks will, to a great extent, be dependant on the state of security in the country. If security is enhanced on the main highways then ANIC may also be in a better position to provide support and services. The creation of security outposts on the highways and the creation/strengthening of the highway police are possible solutions to the problem. Immediate attention to the improvement of security is a prerequisite for commercial operations and viability of the insurance industry. The capacity of ANIC to undertake various risks will be dependant, to a significant extent, on increasing the level of security for normal road operations.

### Vehicle Registration, Driver Licensing and Enforcement

The introduction of any mandatory insurance scheme must be based on better governance and management of the road transport industry. Basic steps in the management of the road transport industry must first be in place. It would appear that not all vehicles in the country are registered, inspections carried out and their licences renewed annually. Similarly not all drivers are licensed.

The large numbers of right hand drive vehicles on the roads pose an increased element of risk for the insurance industry. The Laws, whilst requiring all vehicles to be insured, does not appear to impose any penalty for failure to do so. It is also not clear on the requirement for foreign vehicles to take out insurance. There are very little safety standards being imposed on the road transport industry. Enforcement is negligible or ineffective. There is no differentiation in rates imposed by the insurance industry itself to discourage unsafe vehicles and drivers. Without these basic issues being addressed the introduction of a mandatory insurance cover scheme for every vehicle may well be indeterminate and ineffective.

### Type of Schemes

ANIC currently provides third party liability insurance cover for all vehicles. There should however be on offer other alternatives to this basic cover such as comprehensive cover. Public transport (busses and taxis) vehicles may be required to carry cover for passenger liability whilst commercial vehicles (trucks and other vehicles engaged in common carrier tasks) may be required to have minimum cover for damage to cargo. ANIC already provides some of these covers. An appropriate assessment should be made as to the type of schemes which should be embarked upon and when these may be made mandatory for the road industry in Afghanistan.

### Insurance for Foreign Vehicles

Mandatory insurance for all local vehicles must also mean that the mandatory cover should be extended to all foreign vehicles entering Afghanistan. The Road Traffic Law requires that all vehicles must be insured. It is not clear as to whether this requirement is being enforced on international vehicles. The enforcement of this requirement will need bilateral/multilateral arrangements to be made with neighbouring countries.

### **Strategy**

TPL insurance for all vehicles cannot be made mandatory immediately due to the issues identified earlier. These issues will take time to be rectified. Implementation of TPL insurance for vehicles in Afghanistan should therefore be gradual as the issues identified above are addressed and improved. A time frame for the progressive introduction of the TPL Scheme should be worked out and announced well in advance. Both long term and short-term plans will have to be drawn up. The current voluntary (or semi mandatory) situation should not be halted but be allowed to continue. ANIC's plans to encourage all government vehicles to carry mandatory insurance covers for their activities could, for example, be mandated as the first of many such progressive steps. Commercial vehicles could be next in line with private vehicles the final target. Bilateral arrangements with neighbouring countries should be considered to extend the application of the scheme to foreign vehicles.

An inter ministerial implementation committee should be set up immediately to oversee the implementation of the scheme and the proposals herein. The Committee should be chaired by the Ministry of Transport with members drawn from the Ministry of Interior (Traffic Department), Ministry of Finance, Ministry of Information and ANIC. The Committee shall decide on the exact details of the Scheme and an appropriate time frame for its implementation.

## **Recommendations**

The introduction of a mandatory third party liability insurance scheme for road vehicles in Afghanistan will be to the benefit of the country. The Scheme should be introduced gradually, over a predetermined time frame, for the whole country.

Current law should be amended to allow for the progressive introduction of mandatory insurance cover, imposition of penalties, detention or suspension of usage of the vehicle until it is insured and provide for other issues such as the nature and validity of the policy and the proper role of the insurance company. Regulations should be drawn up on some of the detailed aspects.

Rigorous enforcement and better governance of the road transport sector has to be given higher priority by the authorities. Improved road safety in general and in particular stringent licensing of drivers and vehicles is a prerequisite for the implementation of the mandatory scheme.

Much of Afghanistan's trade and services moves by road transport. This would be adversely affected without proper security and safety. The authorities concerned must give due consideration to the adoption of appropriate measures for the improvement of security on the roads. The creation of a Highway Police should be accelerated. Improved security will allow ANIC to increase its range of services and coverage of the road transport industry and improve its commercial viability.

The introduction of the Scheme has to be progressive, undertaken simultaneously with an increase in the capacity of the local insurance industry to provide the required level of service. Capacity building for the insurance industry must be undertaken immediately simultaneously with the gradual introduction of the TPL scheme.

Publicity campaigns must be conducted prior to the introduction of the mandatory scheme. It is important that the public is made well aware of the benefits of the scheme and informed well in advance of the time table for its implementation. Dialogues with the various vehicle unions may also be considered in the preparatory stage.

## **Actions**

An inter-ministerial implementation committee should be immediately set up to oversee the implementation of the scheme and the proposals herein. The Committee should be chaired by the Ministry of Transport with members drawn from the Ministry of Interior (Traffic Department), Ministry of Finance, Ministry of Information and ANIC. The Committee shall decide on an appropriate time frame for the implementation of the Scheme.

Other issues such as privatization of the insurance industry, alternative dispute resolution and attraction of investment into the industry should be given due consideration over time as its implications are not confined only to the road transport sector.

The inter-ministerial committee should be assisted by the Capacity Building Unit in the Ministry of Transport; see Consultation Paper 1.7.