Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions

INDIA

The recent changes in Indian reinsurance regulations have introduced some positive developments towards the further opening of the (re)insurance sector. Nevertheless, the European (re)insurance industry remains concerned about discriminatory measures applied to foreign (re)insurance players.

Order of preference

Reinsurance Regulations outline the way in which the order of preference is applied to local cedants when placing reinsurance business. While the new approach provides more business opportunities to European reinsurers, it still limits their ability to compete on equal terms with national reinsurers.

Specifically, the Reinsurance Regulations came into force on 1 January 2019 with the intention of maximising retention within the country, subject to adequate diversification of risks. They envisage a two-step procedure for reinsurance placements from which life (re)insurers are exempt:

- Step 1: Obtaining the best terms for cessions:
  - Indian and foreign reinsurers can offer their terms to cedants on an equal basis.
- Step 2: An offer of participation taking into account the order of preference:
  - Every cedant must offer the best terms obtained firstly to reinsurers licensed in India and, subsequently, to foreign ones.

It should be noted that the previous law granted full right of preference to national reinsurers. The two-step approach therefore constitutes a partial reopening of the Indian market to foreign players, since they are now able to compete with Indian reinsurers while offering their best terms. However, the approach does not allow for the equal treatment of Indian and foreign players as there is still an order of preference that favours local reinsurers.

In August 2023, the Insurance Regulatory and Development Authority of India (IRDAI) approved a series of amendments to its reinsurance regulations. While under the initial proposal Foreign Reinsurance Branches (FRBs) would be brought on par with domestic reinsurers, it was disappointing to see that this change was not included in the final text and that, in practice, the new regulations did not significantly improve the situation for foreign reinsurers.

IRDAI's notification no. RI/6/213/2025 mandates that for the financial year 2025–2026, insurers must cede 4% of the sum insured on each general insurance policy to Indian re-insurer(s), specifically the General Insurance Corporation of India (GIC Re), with exceptions for terrorism and nuclear pool premiums, continuing the above-described trend.

The European (re)insurance industry is calling on the Indian authorities to **completely remove any form of order of preference** and to achieve a level playing field between national and foreign reinsurers.

Management control/foreign direct investment (FDI) cap

In December 2024, the government announced that the FDI limit in the insurance sector would be further increased to 100%, although this would only be available to companies which invest their entire premium in India. This has not yet been implemented but the

Insurance Laws (Amendment) Bill, which proposes this increase and other reforms, is likely to be taken up in the monsoon session of Parliament starting from July 2025. These developments are positive, reinforcing the Indian government commitments to align FDI norms with global practices and would help place India as an attractive destination for foreign investors.

That said, IRDAI released guidelines to implement the Insurance Act which unexpectedly interpreted the statutory definition of "ownership and control" of a jointly held company as remaining with Indian residents or Indian companies. Furthermore, the guidelines retroactively apply to all existing joint ventures including those that do not intend to increase their investment beyond 26%. The increase in FDI limit to 100% will necessitate a revision to the guidelines pertaining to ownership and control.

In addition, the Indian Insurance Companies (Foreign Investment) Amendment Rules 2021 entered into force in May 2021, amending the Indian Insurance Companies (Foreign Investment) Rules 2015. These rules **intensify restrictions on foreign investments** in Indian insurance companies and require **resident Indian citizens to hold key positions in the corporate governance structure** of **foreign-controlled insurers.**

These developments are unfortunate, as they seem to contradict the Indian government's commitment to refrain from retroactive legislation and rules, and to build a transparent and clear regulatory framework to encourage growth and long-term investment in the Indian insurance market. **While Insurance Europe and the Reinsurance Advisory Board (RAB) are supportive of the increase in the equity cap, they are concerned about other types of requirements being introduced for foreign (re)insurers, which in fact diminish the potential outcomes of the intended market opening.**

Restrictions on the operation of cross-border reinsurers (CBR)

To conduct cross-border business in India, reinsurers without a physical presence in India are required to register with IRDAI (as per 2016 Guidelines on Cross-Border Reinsurers, "CBR") and apply for the allotment of a Filing Reference Number (FRN) through the CBR portal. IRDAI issued new guidelines on the registration process in January 2023, which permit insurers to auto-renew their assigned FRN, provided they meet the required criteria. An auto-renewal facility is available for three consecutive financial years, following the issuance of an FRN.

Insurance Europe and the RAB welcome IRDAI's guidelines, as they appear to be a step in the right direction to increase the transparency of the registration process.

However, IRDAI released a Master Circular on Reinsurance on 31 May 2024, introducing **new collateral requirements** for Cross-Border Reinsurers (CBRs), thereby diverging from global trends where such mandates are being reduced. As a consequence of the proposed rules, Indian cedants are responsible for collecting collateral on cross-border reinsurance business as follows:

i) The collateral will be either in the form of irrevocable Letter of Credit (LC) from the CBR or premium / funds withheld by the ceding insurer.
ii) An irrevocable Letter of Credit from the CBR (minimum 75% of aggregated outstanding claims liabilities and incurred but not reported (IBNR) reserves based on a A- or above credit rating) and below A- 100% of aggregate of outstanding claims liabilities and IBNR reserves; or
iii) Premium / funds withheld by the ceding insurer (minimum 50% of the premiums ceded by the insurer to a CBR).

The imposition of CBRs may deter international reinsurers from participating in India's market at a critical time when economic growth and increasing insurance penetration require greater reinsurance capacity. This move may lead to fewer and more expensive reinsurance options for Indian cedants, ultimately weakening policyholder protection and the resilience of the domestic insurance industry. The additional compliance costs will likely be passed on to Indian insurers and policyholders, potentially hindering market expansion. This development will need to be monitored over the next cycle of renewals. A risk-based supervision approach, as adopted by other jurisdictions, would be a more effective and less restrictive alternative. Maintaining an open, competitive reinsurance market is essential for economic resilience, ensuring fair competition among Indian reinsurers, FRBs, and CBRs. Rather than imposing new trade barriers, India should encourage international participation to support its growing insurance sector and broader economic ambitions.

Operations of Foreign Branches Offices (FRBs) in India

In March 2024, IRDAI issued (Registration and Operations of Foreign Reinsurers Branches & Lloyd's India) Regulations 2024. The regulations seek to harmonise the previous legal and regulatory framework in relation to the set-up and governance of reinsurance operations in India.

In addition, the Master Circular on Reinsurance that was issued in May 2024 requires:

- FRBs not to engage with related parties or group entities in order to avoid potential conflict of interest.
- FRBs may outsource permitted non-core activities of value not more than 20% of its total operating expenses during a financial year. Information Technology (IT) expenses and one-off initiatives like RBC, IFRS, etc. shall not be considered for determining the limit of 20%.
- FRBs leverage support or expert advisory from group entities. This should not be considered outsourcing. These support activities often involve a certain level of head office costs, which are inherent to the global operating model of FRBs. The industry recommends that such costs and expert advisory services provided by group entities should be clearly excluded from the scope of outsourcing restrictions under the new framework.

The European (re)insurance industry continues to urge IRDAI to focus only on requirements and restrictions that are truly necessary to develop and maintain the Indian reinsurance market. Otherwise, the Indian market may be deprived of new reinsurance solutions if international reinsurers find that the cost of compliance is higher than the profits to be made in India. This would have negative consequences for the overall development of the Indian (re)insurance market.

Taxation

For tax purposes, FRBs are treated as "non-residents", requiring them to pay a corporate tax of around 35% (previously 40%) of their total taxable income, plus an additional 2% surcharge if the total taxable income exceeds INR 10 million. This high tax rate has to be reflected in the reinsurance premiums charged, making FRBs less competitive than local players, which enjoy a tax rate of only 25% plus surcharge/education cess. This difference in the effective tax rate cannot be absorbed by FRBs and so heavily constrains the viability of their business. This puts them at a significant disadvantage to local reinsurers. To create a proper level playing field, it is essential that the tax rate applicable to FRBs be aligned with that of the domestic players.

Data Protection

With regard to data localisation, IRDAI regulations and other acts currently require data to be localised on servers in India. As branches operate under a group framework, they rely on the group infrastructure to leverage governance and risk-mitigation standards applicable to data storage and processing. Data localisation requirements therefore lead to increased costs and are not in line with other jurisdictions such as Singapore, Hong Kong and Australia.

In August 2023, the highly anticipated **Digital Personal Data Protection Act 2023 ('DPDPA')** was enacted, establishing data protection principles, data subject rights, as well as data controller obligations.

Unlike sector-specific regulations, the DPDPA does not impose mandatory data localisation requirements. It allows cross-border transfer of personal data by default, except to jurisdictions that may be placed on a negative list by the government—such a list has not yet been published.

The DPDPA is an additional development to the financial sector regulator rules (eg IRDAI Maintenance of Records regulations), which do explicitly insist on data localisation or storage of data in servers located in India. Therefore, while the DPDPA itself is not currently a barrier to international data transfers, it does not override sector-specific rules such as IRDAI's Maintenance of Records regulations. It is important to note that under a 2019 circular, IRDAI had exempted reinsurance entities from the provisions of these regulations. However, this exemption has now been removed. Even though branches have more confined operations as compared to insurance companies, IRDAI has currently not provided any exemptions from data localisation requirements.

In addition, the DPDPA incorporates the transfer of personal data 'freely' to 'trusted' jurisdictions which are to be notified at a later stage. There is some uncertainty on precisely what that means for jurisdictions that are not 'trusted', so in essence, all data transfer flows outside of India are banned unless a country/jurisdiction has received a notification or been whitelisted.

Insurance Europe and the RAB would support the EU being classified as a 'trusted' jurisdiction under the DPDPA, which would facilitate compliance and operational efficiency. While the DPDPA's framework would in principle allow such transfers, the binding constraint today remains the IRDAI regulations. Maintaining a high level of IT and information security is often easier to achieve in a centrally managed environment rather than in smaller, localised offices. In fact, centralised and secure data storage may ultimately provide better protection for affected individuals.

Given the more stringent requirements of data localisation prescribed by IRDAI, the relaxations provided under the DPDPA are, unfortunately, not likely to have any significant benefit for the insurance sector.

Furthermore, the Ministry of Electronics and Information Technology released the draft Digital Personal Data Protection Rules 2025 on 3 January 2025 for public consultation. The rules apply general requirements on use of data but do not cover processing data outside of India. Some requirements are ambiguous and greater clarity in the finalised rules would be helpful for industry.

In addition, the 2025 IRDAI Maintenance of Insurance Records (Maintenance of Information by the Regulated Entities and Sharing of Information by the Authority) Regulations contain specific provisions that raise concerns for the (re)insurance industry. Notably:

- Clause 9(i) requires every insurer to maintain a record of every policy issued and every claim made, as per clause (a) and (b) of sub-section (1) of section 14 of the Insurance Act. These records must be complete, accurate, and maintained in electronic form, regardless of whether they are also maintained in other formats.
- Clause 9(iii) extends this obligation to reinsurers and foreign reinsurance branches, requiring them to maintain such records—including electronic records—in data centres located and maintained in India only.

These provisions further reinforce the strict localisation framework, posing operational challenges for global insurers and reinsurers that typically rely on centralised, cross-border systems for data governance and compliance.

Cyber Security Guidelines

The Information and Cyber Security Guidelines 2023, 'Section 1.10. Compliance', mandates that every insurer, including FRBs, must conduct an independent assurance audit annually. This audit should cover various aspects outlined and must be performed by an external auditor who meets the criteria specified in Annexure IV of the guidelines. In addition, the guidelines are extremely detailed, which may cause issues for groups where IT systems are harmonised at group-level as IRDAI requirements would have to be implemented in the group processes and systems.

Such requirements are burdensome, complex, and ultimately expensive. It would be therefore beneficial for FRBs if such audits were conducted on a multi-annual basis, with the possibility of utilising internal audits, and if the requirements were more goal-based, instead of being overly prescriptive.

For instance, Australia's CPS 220 regulation mandates that internal audits assess different parts of the risk management system annually, with a comprehensive external audit occurring every three years to confirm the overall system's effectiveness. Implementing a similar approach could provide a more efficient and proportionate means of ensuring compliance while reducing operational strain on FRBs.

Maintenane of insurance records

As stated in Chapter 2 of IRDAI's Maintenance of Insurance Records (Maintenance of Information by the Regulated Entities and Sharing of Information by the Authority) Regulations 2025, every insurer shall maintain a record of every policy issued and a record of every claim made, and ensure that such records pertaining to all the policies issued and claims made in India, including those held in electronic mode, shall be held in data centres **located and maintained in India only.**

However, reinsurers do not issue insurance policies or receive direct claims under such insurance policies but instead reinsure the ceding insurer's liability. Reinsurance treaties cover a bundle of individual insurance policies and hence, for the purpose of providing reinsurance, limited information is shared by ceding insurers to reinsurers (including FRBs and CBRs). Such limited information is received in bordereaux format for some lines of business or types of reinsurance.

Furthermore, FRBs operate through global systems and leverage upon global expertise. They use global systems for their operations, and separating such systems only for information to be placed on separate data centres in India is operationally ineffective and will lead to additional governance and compliance costs.

Parent entities of FRBs are regulated through stricter data protection regulations, such as the General Data Protection Regulation (GDPR) which is applicable to EU member states and the Health Insurance Portability and Accountability Act (HIPAA) which is applicable in the US. FRBs, being branch entities of such global companies, are required to have robust security safeguards and protocols. Hence, any data received by the FRBs benefits from the same level of security and is very well protected. In addition, as per the Digital Protection of Personal Data Act issued by the government of India in 2023, the government has stated that they will permit transfer of data outside India, except to countries listed in negative list to be issued by them. In light of this, foreign reinsurance companies operating in India have requested that IRDAI allow the sharing of data with parent/group entities and retrocessionaires, as part of normal global reinsurance operations.

Insurance Europe and the RAB recommend that IRDAI continue to exempt FRBs from the provisions of the Maintenance of Records regulation, in line with the exemption granted in 2019.

Value added services

IIn December 2024, the Department of Financial Services (DFS) inserted a new provision in the Insurance Act, 1938 which says that an insurer may engage in "doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company". This is viewed as a positive step that enables Indian insurance and reinsurance entities to exchange skill, knowledge and expertise across the borders.

This will also help position India as a global reinsurance hub. The country's vast talent pool and large, underpenetrated market present a perfect opportunity to develop the industry step by step and transform it into a centre for global risk exchange.

This positive change is likely to be taken up in the monsoon session of Parliament starting from July 2025. (Re)insurers will monitor its implementation.

Recommendations and preferred outcome

In light of the ongoing trade negotiations between the EU and India, Insurance Europe and the RAB take the view that there is momentum to address market access barriers and discriminatory requirements applied to foreign (re)insurers. Any form of order of preference and foreign direct investment cap should be abolished, value added services should be included as a part of regulatory reform, and any concerning developments on the situation of foreign branch offices should be addressed.

The European (re)insurance industry also welcomes the IRDAI's vision to move towards a risk-based supervisory approach as opposed to a compliance-centric approach. Insurance Europe would encourage the Indian (re)insurance sector to expedite its migration towards risk-based prudential supervision

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