



Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions (June 2021)

INDONESIA



Indonesia is moving gradually towards the liberalisation of market access for foreign (re)insurers. However, new market access regulations could create an uneven playing field between foreign reinsurers, while the recent interpretation of a finance regulation denies the tax deduction of paid claims for all life insurers. Insurance Europe considers that the ongoing EU-Indonesia trade negotiations would provide the opportunity to address concerns related to current trade barriers and to support the business potential of European (re)insurers in Indonesia, in the spirit of trade and investment liberalisation.

Foreign ownership

On 17 April 2018, the Indonesian government issued Regulation GR14/2018 on Foreign Ownership of Insurance Companies. This confirmed the 80% cap on foreign ownership of (re)insurance companies. Entities that had already exceeded the 80% foreign ownership cap at the time the Regulation came into force are not required to comply with it but are prohibited from further increasing the percentage of foreign ownership.

In July 2019, the Ministry of Finance proposed that there would be no restriction on foreign ownership of insurance companies that are granted “grandfathering” benefits or are excluded from the 2018 Regulation (capping foreign ownership in local insurance companies at 80%). It does, however, appear to keep the cap at 80% for new market entrants, thereby maintaining market access barriers.

(Re)insurance retention limits

Significant restrictions remain on placing reinsurance business offshore, with local compulsory cessions diminishing the possibility to diversify risk. This creates high local exposure in the event of, for example, a natural disaster.

- As of 1 January 2016, Indonesian insurers are required to place all reinsurance of motor, health, personal accident, credit, life and surety business (“simple risks”) with Indonesian reinsurers. The Indonesian regulator (Otoritas Jasa Keuangan, OJK) specifies only a few limited exceptions to this restriction.
- For other insurance business (“non-simple risks”), a minimum of 25% of the (re)insurance must be placed with domestic (re)insurers.
- “Non-simple risks” and exempted “simple risks” must run through a tiered declinature procedure before they can be placed with foreign (re)insurers.

In June 2020, the Indonesia financial regulator issued a new regulation to gradually remove market access barriers for foreign reinsurers by the end of 2022, but on condition that an agreement between Indonesia and the market of the reinsurer’s domicile is in place. The financial regulator is currently in the process of identifying applicable agreements and this could create an unlevel playing field between foreign reinsurers. As agreements are already in place for the US, Australia and Japan, this condition would be likely to disadvantage European reinsurers at the expense of healthy market competition in Indonesia.

Data

- Offshore data centre

Under the regulation POJK No.38/2020, insurance companies in Indonesia are now allowed to operate offshore data centres and disaster recovery centres, but only after approval by the OJK that they fulfil a number of requirements. However, the OJK still has the

authority, subject to conditions, to revoke the approval and order an insurance company to move the offshore data centre and disaster recovery centre back to Indonesia.

- Use of personal data

POJK No.38/2020 is silent on whether the personal data of the insurance company's customers and policyholders regulated under Clause 50 of POJK No.69/2016 (eg, citizenship information) can be stored in the offshore data centre and disaster data centre. This topic requires further guidance from the OJK, as it creates legal uncertainty.

The European (re)insurance industry therefore calls on the OJK to eliminate the threat that the approval to operate offshore data and disaster recovery centres may be revoked and to clearly state that personal data can be stored in such centres.

Tax treatment of paid claims for life insurance companies

There are increasing and significant concerns regarding recent developments in the taxation area, which deny recognition of claims as expenses. This is contrary to commonly accepted practice and has a significant negative impact on European insurers in Indonesia.

Specifically, in 2018, the Indonesian tax authority reinterpreted the 2009 Ministry of Finance regulation with the intention of denying the tax deduction of paid claims for all (domestic and foreign) life insurers. Under the new interpretation, those insurers not accepting the Indonesian tax assessment are allowed to file an objection and, if rejected, can appeal to the Tax Court. However, insurers would be subject to potentially 50% penalties at the objection level and 100% penalties in the event of losing at the Tax Court. Recently, a group of life insurance companies were subjected to higher taxes for 2018 and this remains a risk for all market players.

Recommendations and preferred outcomes

In addition to encouraging progress in the EU-Indonesia trade negotiations, Insurance Europe supports the removal of all market access barriers for foreign (re)insurers. In particular, the new regulation removing retention limits should be applied to all foreign (re)insurers to allow domestic insurers to choose from a diverse range of competitive, globally diversified reinsurers for risk mitigation and the tax deduction of paid claims for all life insurers should be authorised again

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