Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions (June 2022)

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

Recent regulatory developments amended 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 Indian reinsurers 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 provide for equal treatment of Indian and foreign players as there is still an order of preference that favors local reinsurers.

For this purpose, 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.

Situation of Foreign Branches Offices (FRBs) in India

Insurance Europe welcomes the fact that foreign reinsurance branches have garnered a market share of 20%, compared with 0.2% in 2016. There are now a total of nine foreign reinsurance branches and Lloyd's functioning in India.

Operations of FRBs

In January 2021, IRDAI launched a consultation on the Draft of Registration and Operations of Branch Offices of Foreign Reinsurers Regulations, which contain some concerning provisions. Specifically, it provides for:

- The introduction of the right of first preference and cap on Intragroup retrocessions (IGRs);
- The requirement for branches to localise all core and non-core activities in India;
- Limits on the integration of global infrastructure that the foreign reinsurance branches enjoy due to the global MSAs/service agreements their parent companies have with the IT companies;
- Mandatory dedicated underwriters for each line of business; and,
- The requirement of data to be held in centres located and maintained in India.

The proposals appear to signal that foreign business in India is unwelcome. In its comments on the draft Regulations, Insurance Europe recommended that foreign reinsurance branches should be allowed to use the data centres in the parent companies to ensure efficient use of the data infrastructure within the overall entity.

In another development, as per the Data Protection Bill 2021, it is expected that the government, in consultation with concerned sectoral regulators, prepare and pronounce an extensive policy on data localisation. The IRDAI might have to reframe Data Protection rules for operations of insurers in India. Reinsurers expect that this would create additional burden, imply additional costs, and would be detrimental to the business model established and approved by IRDAI for foreign companies.

Insurance Europe continues to urge the IRDAI to focus only on requirements and restrictions that are truly necessary to build up 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.

Cross-border registration of FRBs

To conduct cross-border business in India, reinsurers without a physical presence in India are required to register with the IRDAI (as per 2016 Guidelines on Cross-Border Reinsurers, "CBR") and apply for the allotment of a Filing Reference Number (FRN). The IRDAI issued new guidelines on the registration process in January 2021, which confirmed that participation on risk and premium receipt confirmation is now linked to the issuance of the FRN. Failure to provide the necessary confirmations can result in either a delay in a syndicate's future CBR registration or the rejection of its CBR application.

Insurance Europe continues to take the view that a regulatory level playing field, as well as legal and regulatory certainty, are of the utmost importance in achieving the objective of both the regulator and the Indian government to establish India as a future reinsurance hub.

Management control/foreign direct investment (FDI) cap

In early 2015, after more than a decade of consideration by successive Indian governments, the Indian Parliament decided to increase the FDI cap on foreign investment in the insurance sector from 26% to 49%. This was undertaken in line with Prime Minister Modi's cross-cutting efforts to increase foreign investment in India to create jobs and economic growth.

This was further increased in February 2021, when the Finance Minister of India presented the Union Budget for the Financial Year 2021-22 and proposed an increase in foreign investment limits for Indian insurance companies from 49% to 74%. He also indicated that foreign control may be permitted subject to certain safeguards. This increase was passed by the Indian Parliament in March 2021 and is welcome by the European (re)insurance industry.

However, 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 apply retroactively to all existing joint ventures including those that do not intend to increase their investment beyond the 26%.

In addition, in April 2021, the government released draft rules amending the Indian Insurance Companies (Foreign Investment) Rules 2015 for consultation, which **intensify restrictions on foreign investments** in Indian insurance companies (eg requirements for resident Indian citizens in corporate governance structure of foreign controlled insurers). These rules entered into force on 19 May 2021, as the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2021.

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 Indian insurance. **While Insurance Europe is supportive of the increase in the equity cap, it is concerned about other types of requirements being introduced for foreign (re)insurers, which in fact diminish the potential outcomes of the intended market opening.**

IRDAI's risk-based supervisory approach

The European (re)insurance industry welcomes the IRDAI in expressing its vision of a risk-based supervisory approach as opposed to a compliance-centric approach, which is currently being pursued. This is also in line with the recommended approach by the International Association of Insurance Supervisors (IAIS). Insurance Europe would encourage the Indian (re)insurance sector to expedite its migration towards risk-based prudential supervision.based prudential supervision.

Increasing pension penetration

The The European (re)insurance industry stands ready to support the development of private pension solutions to cope with India's demographic challenges, provided there is an adequate regulatory framework.

Recommendations and preferred outcomes

In light of the recent decision to relaunch trade negotiations between the EU and India, Insurance Europe takes 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 and concerning developments on the situation of foreign branches offices should be addressed.