



Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions (June 2024)

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 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 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.

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 2021, the increase in foreign investment limits for Indian insurance companies was raised from 49% to 74%, which is welcomed by the European (re)insurance industry. It was also indicated that foreign control may be permitted subject to certain safeguards.

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

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 (eg requirements for resident Indian citizens in 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 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.**

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 the 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. The 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 welcomes the IRDAI guidelines, as they appear to be a step in the right direction to increase the transparency of the registration process.

Furthermore, the IRDAI released an exposure draft in February 2024, proposing the implementation of **collateral requirements** for reinsurance business from India with CBRs. As a consequence of the proposed rules, Indian cedants would be responsible for collecting collateral on cross-border reinsurance business as follows:

- An irrevocable Letter of Credit from the CBR (minimum 80% of aggregated outstanding claims liabilities and IBNR reserves based on a A- or above credit rating); or
- Premium / funds withheld by the ceding insurer (minimum 50% of the premiums ceded by the insurer to a CBR).

The imposition of collateral for CBRs will hinder the competitiveness of reinsurance business leading to fewer and more expensive reinsurance options for Indian cedants, thereby weakening policyholder protection and the resilience of the domestic insurance industry.

Operations of Foreign Branches Offices (FRBs) in India

In December 2023, IRDAI launched a consultation on the Draft of Registration and Operations of Branch Offices of Foreign Reinsurers Regulations, which provides for:

- The introduction of the Chief Compliance Officer as Key Management Personnel (KMP);
- Interpretation of services provided by parent organisation as outsourcing have been a concern; FRBs are typically part of a parent group and hence are expected to take advantage of the parents' systems and resources that are available across the world.

Insurance Europe continues to urge the 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 43% plus surcharge/education cess. 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 22% plus surcharge/education cess. This large 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, FRBs should be considered as resident under the Income Tax Act.

Digital Personal Data Act, 2023

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.

On August 14, 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.

The Act may not overrule industry specific requirements with respect to data localisation. For example, financial sector regulators such as RBI and IRDAI may continue to insist on data localisation or storage of data in servers located in India. Even though branches have limited/more confined operations as compared to insurance companies, IRDAI has not provided any exemptions from data localisation requirements. In addition, the Act 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.

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

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 and if the requirements were more goal-based, instead of being overly prescriptive.

Recommendations and preferred outcome

In light of the ongoing 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 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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