reinsurance advisory board

Market access challenges: India

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The review of the Indian Reinsurance Regulations has produced some positive moves towards the further opening of the (re)insurance sector for international (re)insurance companies, which have long recognised the potential of the Indian market and transferred resources and experience to India accordingly. Nevertheless, the RAB remains concerned about discriminatory measures applied to foreign reinsurance branches and cross-border reinsurers.

Existing legislation and recent developments

Order of preference/offer of participation

The Reinsurance Regulations 2018, which came into force on 1 January 2019, amended the way in which the order of preference is applied to local cedants when placing reinsurance business. While the revised approach gives more business opportunities to international reinsurers, it still limits their ability to compete on equal terms with local reinsurers. The Regulations now envisage a two-step procedure for reinsurance placements (from which life (re)insurers are exempt):

- Obtaining the best terms for cessions:
  - Indian and foreign reinsurers can offer their terms to cedants on an equal basis.
- An offer of participation taking into account the order of preference:
  - Every cedant must offer the best terms obtained first to Indian reinsurers (currently only the General Insurance Corporation of India (GIC Re)) and then to foreign ones. Consequently, Indian foreign reinsurer branches (FRBs) are placed second in order of preference, while cross-border reinsurers are fourth (after International Financial Service Centre insurance offices meeting required credit rating).

Compulsory cessions and similar restrictions targeting foreign reinsurers

The Reinsurance Regulations 2018 maintained the compulsory non-life reinsurance cession to GIC Re at 5% for the financial year 2020¬21. Terrorism and nuclear risks are, however, exempt from 1 April 2020 to 31 March 2021. Unless the cedant has sought prior regulatory approval, the following overall limits on cessions to cross-border reinsurers apply, based on the reinsurer's rating (S&P or equivalent):

- to companies with ratings higher than A+: 20%
- to companies with ratings higher than BBB+ and up to and including A+: 15%
- to companies with ratings of BBB and BBB+: 10%

For tax purposes, foreign reinsurance branches are treated as "non-residents", requiring them to pay a corporate tax of 40% plus surcharge/education cess. This high tax rate has to be reflected in the reinsurance premiums charged, making FRBs less competitive than local players, who enjoy an effective 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.

Foreign direct investment

The Finance Minister of India presented the Union Budget for the Financial Year 2021-22 on 1 February 2021. As part of the Budget, the Finance Minister proposed an increase in foreign investment limits for Indian insurance companies from 49% to 74%, and indicated that foreign control may be permitted subject to certain safeguards, including the following:

- Majority of directors and key management personnel of the insurance company to be resident Indians
- At least 50% of directors on the board of the insurance company to be independent
- Not less than 50% of profits to be retained as general reserves

This is a positive development towards a further liberalisation of the Indian insurance market, increasing its attractiveness for foreign investors. On 13 April 2021, the government released draft rules amending the Indian Insurance Companies (Foreign Investment) Rules, 2015 for consultation.

It would be in the interest of the further development of the Indian insurance market to keep the above-mentioned safeguards as light as possible, relaxing certain restrictions, such as the Indian owned and controlled requirement.

Corporate reorganisation of branches of foreign reinsurers
Indian regulations currently prevent foreign reinsurers that are doing business in India through licensed branches from reorganising their corporate structure. Specifically, it is currently not possible to transfer the portfolio of an existing entity to a new branch of another wholly-owned affiliate in the same group. This is not in line with international best practices and imposes additional challenges for FRBs.

Registration and operations of FRBs
A Committee consisting of representative from reinsurers, FRBs and Lloyd's India was set up in October 2019 to clarify the applicability of certain provisions of the regulations, guidelines or circulars issued by the IRDAI. A report was prepared by the Committee and reviewed and circulated by the IRDAI.

In January 2021, the IRDAI issued a consultation on the draft Regulations on Registration and Operations of FRBs. These draft Regulations include provisions that would:

- require all activities to be localised in India;
- prohibit the provision of support services by group companies;
- require the recruitment of local underwriters to handle each class of business; and,
- require data to be stored in centres located and maintained in India.

Since early 2020, most regulatory initiatives have been stalled due to the COVID-19 pandemic and no updated regulations have been announced relating to market access barriers or improving the ease of doing business for foreign (re)insurers.

Impact on foreign reinsurers

Order of preference/offer of participation
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 on the same basis as Indian reinsurers while offering their best terms. However, the approach does not create equal treatment of GIC Re and FRBs, as there is still an order of preference that favours locals.

Compulsory cessions and similar restrictions on cross-border reinsurance
All the restrictions described above discriminate against foreign reinsurers — cross-border reinsurers or FRBs.

Foreign direct investment
The limiting of foreign direct investment prevents foreign reinsurers and other international players from fully supporting the local market, which can slow the overall growth of the economy.

Corporate reorganisation of branches of foreign reinsurers
The lack of a regulatory framework allowing for corporate reorganisationof FRBs restricts the ability of foreign reinsurers to make changes to their licensed entity in India and operate efficiently in a way that adapts as their corporate needs change.

Regulations on registration and operation of FRBs
The RAB has emphasised strongly that the changes proposed by the IRDAI would significantly affect the business model of FRBs in India and undermine the provision of reinsurance in India.

Recommendations and preferred outcomes

Remove the order of preference/offer of participation

The RAB calls on the Indian authorities to remove any form of order of preference completely and to strive for a level playing field between national and foreign reinsurers.

Abolish restrictions on cross-border reinsurers and create a level playing field for FRBs and local reinsurers

The RAB urges India to reconsider its current regime of restrictive practices in respect of the cross-border supply of insurance and reinsurance services, not least in light of its commitments under the World Trade Organization's General Agreement on Trade in Services (GATS).

Create parity on direct tax rate with local players

The RAB urges India to bring the direct tax rate applicable to foreign reinsurance branches (circa 43%) into line with that applicable to local reinsurers (25%). Such a disparity stands out among countries that allow foreign reinsurers and it seriously affects the pricing and competitiveness of their offerings.

Lift foreign direct investment cap

The need to retain foreign investment limits in the insurance sector should be reviewed, as has been done in other sectors, and the RAB welcomes the signalling by the current Indian government that it intends to do so.

Implement regulations allowing transfer of portfolios between branches within same company

An approval process for allowing the transfer of portfolios through statutory novation should be implemented, in line with common practice in other jurisdictions. This would allow for the simultaneous licensing of a new branch, the transfer of all treaties from the old to the new branch and the cancelling of the old branch's licence. Additionally, the Indian authorities should consider allowing companies to maintain multiple licensed entities in the country so that (re)insurers can manage their corporate structures in the most efficient way.

Regulations on registration and operations of FRBs.

The RAB's key recommendations to the IRDAI are:

- Prohibited outsourcing activities should be limited to the core functions as defined in the 2015 Regulations.
- The regulations should be amended to allow underwriters in FRBs to underwrite multiple lines of business with support from global experts.
- The requirement to hold data in centres located and maintained in India should be removed.

Insurance Europe's Reinsurance Advisory Board (RAB) is a specialist representative body for the European reinsurance industry. It is represented at chief executive officer (CEO) level by the seven largest European reinsurance firms: Gen Re, Hannover Re, Lloyd's, Munich Re, PartnerRe, SCOR and Swiss Re, with Insurance Europe providing the secretariat. Through its member bodies, the RAB represents around 60% of total worldwide reinsurance premium income. The RAB promotes a stable, innovative and competitive market environment. It further promotes a regulatory and trading framework that facilitates global risk transfer through reinsurance and other insurance-linked capital solutions.

