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

INDIA

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.

The new Reinsurance Regulations

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 for 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 on the same basis as 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 favours 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 create a level playing field between national and foreign reinsurers

Situation of foreign branches offices in India

Insurance Europe welcomes the fact that the number of branch offices of foreign European reinsurers in India increased between 2016 and 2018.

In January 2021, the Insurance Regulatory and Development Authority of India (IRDAI) launched a consultation on draft Registration and Operations of Branch Offices of Foreign Reinsurers Regulations, which contain some concerning provisions. Specifically, the Regulations:

- Introduce the right of first preference and cap on intragroup retrocessions
- Require branches to localise all core and non-core activities in India
- Limit the integration of global infrastructure that the foreign reinsurance branches enjoy due to the global master service agreements/service agreements that their parent companies have with IT companies
- Mandate dedicated underwriters for each line of business
- Require data to be held in centres located and maintained in India

The proposals seem 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.

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.

Insurance Europe continues to believe 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.

Since then, the IRDAI released guidelines to implement the Insurance Act that unexpectedly interpret 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%.

This development is unfortunate, as it seems 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.

On 1 Februrary 2021, 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.**

Unfortunately, on 13 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 there to be resident Indian citizens in the corporate governance structure of foreign-controlled insurers).

Insurance Europe is therefore supportive of the increase in the equity cap. However, 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's expressed vision of a risk-based supervisory approach, as opposed to the compliance-centric approach that is currently being pursued. This is also in line with the International Association of Insurance Supervisors' recommended approach. Insurance Europe would encourage the Indian (re)insurance sector to expedite its move to risk-based prudential supervision.

Increasing pension penetration

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 decision to relaunch trade negotiations during the EU-India Leaders' Meeting in May 2021, Insurance Europe believes that there is momentum to address market access barriers and discriminatory requirements applied to foreign (re)insurers. Any form of order of preference and FDI cap should be abolished and concerning developments in relation to the situation of foreign branches offices should be addressed.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.

 www.insuranceeurope.eu