

## Market access challenges: Indonesia

June 2022



*A regulation issued by the Indonesian financial regulator, Otoritas Jasa Keuangan (OJK), introduced a condition requiring the existence of a bilateral agreement between Indonesia and the country of the reinsurer's domicile in order to remove market access barriers for foreign reinsurers. This would create an uneven playing field between foreign reinsurers, at the expense of healthy market competition in Indonesia. The RAB continues to advocate the full removal of all market access barriers.*

### Existing legislation and recent developments

#### Cross-border business

Currently, foreign reinsurers are allowed to conduct business on a cross-border basis. There are, however, significant restrictions on placing certain reinsurance business offshore.

#### Foreign ownership

On 17 April 2018, the Indonesian government issued Regulation GR14/2018 on Foreign Ownership of Insurance Companies. This confirmed the caps on foreign ownership of 80%, including for reinsurance 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.

#### Prohibition of branches

Only an incorporated company in Indonesia can apply for a licence to operate as an insurer, since branches are not permitted.

#### Placement of risks

The OJK issued a new regulation, POJK No.39/2020, in June 2020, relaxing some restrictions, but on condition that a trade agreement is in place. Specifically, the regulation states that:

- Foreign reinsurers must have a minimum BBB or equivalent rating.
- The existing requirement for Indonesian insurers to place all "simple risks" with domestic reinsurers is completely removed from 31 December 2020. The RAB also has concerns with the definition of "simple risk" and what type of insurance it can include (eg, travel insurance with domestic travel cover, travel insurance with COVID-19 cover, personal cyberinsurance, etc.)
- The existing provisions for a minimum amount of "non-simple risks" to be placed with domestic reinsurers will be completely removed from 31 December 2022.

However, the liberalisation of market access described above is only applicable to reinsurance support obtained from a reinsurer domiciled in a country with a bilateral agreement with Indonesia that regulates Indonesia's commitment to allow reinsurance support from reinsurers domiciled in the partner country.

#### Offshore data centre

Under Regulation POJK No.38/2020, insurance companies in Indonesia are now allowed to operate offshore data centres and disaster recovery centres, but only after confirmation 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 to require an insurance company to move the offshore data centre and disaster recovery centre back to Indonesia.

Regarding the 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. Further guidance from the OJK is required on this.

### **Investments**

Currently, insurance companies are mandated by regulations to place a minimum 30% of total investments in Indonesian state bonds. This requirement might conflict with reinsurers' internal risk and investment policies.

### **Impact on foreign reinsurers**

The RAB welcomes the move to gradually liberalise market access for foreign reinsurers, as the limitations on using foreign reinsurance have had the following impacts:

- Primary insurers have only been able to place a limited share of business in the overseas reinsurance market (and the health, motor, life, personal accident, credit and suretyship business lines have been excluded), which means that risks are less diversified, making the market more prone to financial instability.
- The market share of foreign reinsurance has shrunk, while local reinsurance has grown by ~40% in the past three years.

However, an unlevel playing field is being created between foreign reinsurers if Indonesia narrowly applies the new market access regulation only to foreign reinsurers domiciled in countries with which it has specific bilateral agreements. European reinsurance firms are likely to be disadvantaged, as the USA, Japan, Australia, EFTA and ASEAN currently have bilateral agreements with Indonesia that meet the requirement set out by the new regulation, whereas there is no existing bilateral agreement between the EU and Indonesia. It is understood that US reinsurers are now able to do business directly with insurers in Indonesia, without having to use a domestic Indonesian reinsurer as a retrocessionaire.

Additional clarifications are also needed when it comes to EU-based reinsurance companies with a branch in a country with such an agreement with Indonesia. It is unclear whether a branch in a country with a bilateral agreement (eg, the USA) can rely on this agreement to provide reinsurance directly to Indonesia.

### **Recommendations and preferred outcomes**

The RAB continues to advocate the full removal of all market access barriers for foreign reinsurers and caps on foreign ownership in Indonesia within a reasonable timeframe. Specifically, the RAB believes that:

- The equity cap for new foreign investors should be removed.
- Regulation POJK No.39/2020 should be applied to all Indonesia's trade agreements, including plurilateral arrangements, to allow domestic insurers to choose from a diverse range of competitive, globally diversified reinsurers for their risk mitigation.

The RAB would also like to see progress made in the trade negotiations between the EU and Indonesia in the spirit of the liberalisation of bilateral trade and investment.

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