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

BRAZIL

Insurance Europe welcomes the progress made with regard to the recent modifications to the reinsurance and retrocession limits applicable to cessions to occasional reinsurers in Brazil. However, more ambition is needed to support the ability of European (re) insurers to develop business in Brazil on a competitive, non-discriminatory basis.

Draft Insurance Law (PLC n°29/2017)

While there have been positive developments towards opening competition in Brazil's (re)insurance market, a recent legislative initiative reopens an Insurance Law project (PLC n°29/2017) that could compromise the benefits of the market liberalisation. The initiative had been launched in 2004 and subsequently archived in 2019.

Reopened in March 2023, elements of the draft proposed rules that differ from global insurance practices include:

- the need for prior regulatory registration and approval of contract terms and conditions irrespective of the nature of the risk (past practice that had been eliminated);
- tacit acceptance of reinsurance contracts if an offer is not rejected within 20 days;
- the obligation to provide a reasoned justification in case of non-acceptance of a certain risk;
- the potential life-long exposure to claims beyond the cover period of the policy and several provisions that create operational and regulatory bureaucracies for (re)insurers, in contradiction to the national law of economic freedom and the lack of differentiation between retail and commercial (re)insurance risks.

This is likely to lead to unintended consequences, such as a further reduction in available reinsurance capacity, especially for large or highly volatile risks such as natural catastrophes, further exacerbating existing severe capacity shortages including in the agricultural sector. It would also likely reduce reinsurance contract innovation and customer choices, as well as reducing investment in digital innovation. The benefits of the proposed law for customers are unclear while the damage inflicted on Brazil's large risks and reinsurance markets are obvious. The current legal framework formed by the Brazilian Civil Code and Consumer Code is adequate for the continuity of the insurance operations in the country. Insurance Europe therefore opposes the adoption of such rules.

Restrictions on the reinsurance and retrocession limits applicable to cessions to occasional reinsurers

Positive measures have been taken with 2019 legislation[1] significantly reducing restrictions on the reinsurance and retrocession limits applicable to cessions to occasional reinsurers:

- Local insurance companies can now cede to occasional reinsurers up to 95% of the premiums transferred to reinsurers, calculated on the basis of all transactions carried out in a given calendar year (the previous limit was 10%).
- Local reinsurers can also now cede in retrocession to occasional reinsurers up to 95% of the retroceded premium volume in relation to the risks they have underwritten, calculated based on all transactions carried out in a given calendar year (the previous limit was 50%).

In addition, local (re)insurance regulators are allowed to issue specific regulations authorising insurance companies to cede to occasional reinsurers more than the above-mentioned limit, in relation to certain lines of business or type of insurance.

1 Law 13.874/2019 National Law of Economic Freedom

In November 2021, the National Council of Private Insurance (CNSP) adopted a resolution on the operation of supervised and foreign reinsurers and brokers, which entered into force on 3 January 2022. It simplifies the rules and procedures related to the registration and licensing of Brazilian insurers, capitalisation entities, local and foreign reinsurers, as well as reinsurance brokers, which is a welcome development

Minimum (re)insurance retentions by local cedants

CNSP Resolution 451/2022, effective from 1 January 2023, amended the maximum reinsurance cessions (i.e. minimum retentions) for local insurers. The new requirement provides that local insurers must submit a technical justification for a reinsurance cession percentage higher than 90%, to the regulator (SUSEP), considering the totality of their operations, per calendar year.

The requirements outlined in the Resolution also provide that local reinsurers are not allowed to cede more than 70% of the premium volume in relation to the risks they have underwritten, calculated based on all transactions they have carried out in a given calendar year. The previous limit was 50%.

Several classes of business are explicitly exempt from this requirement and are not considered when the minimum retention of 70% is calculated per calendar year. These are:

- financial risks (ie surety bonds, export credit insurance and domestic credit insurance);
- rural risks (eg agricultural risks);
- nuclear risks.

Right of first refusal

Cedants are required to offer preferentially at least 40% of their reinsurance cessions to local reinsurers[2]. To satisfy the preferential offer requirement, cedants must engage in a formally regulated consultation process with the local market, offering at least 40% of each reinsurance risk on the same terms and conditions as to admitted or occasional reinsurers. The CNSP issued a 2017 Resolution further clarifying that employing unfair practices to fulfil the preferential offer requirement may be punished and, in such circumstances, the reinsurance contract may be considered void. Insurance Europe opposes such a requirement.

In March 2021, the government discussed the possible merger of admitted and occasional reinsurer categories with entities becoming automatically licensed under the new category of "registered reinsurer". This development, if implemented, is positive.

Recommendations and preferred outcomes

Insurance Europe supports close regulatory exchange between the EU and Brazil and takes the view that all discriminatory requirements applied to foreign (re)insurers should be removed, in the spirit of trade liberalisation.

2 Article 11 of Complementary Law No.126, January 2007