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

INDONESIA

Indonesia is moving gradually towards the liberalisation of market access for foreign (re)insurers. However, new market access regulations risk creating an uneven playing field between foreign reinsurers. Insurance Europe considers that the ongoing EU-Indonesia trade negotiations is an opportunity to address concerns related to current trade barriers and to support the business potential of European (re)insurers in Indonesia, in the spirit of trade and investment liberalisation.

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% for (re)insurance 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, therefore maintaining market access barriers.

(Re)insurance retention limits

Significant restrictions on placing reinsurance business offshore remain in Indonesia, with local compulsory cessions diminishing the possibility to diversify risk. This creates high local exposure in the event of, for example, a natural disaster.

- As of 1 January 2016, Indonesian insurers are required to place all reinsurance of motor, health, personal accident, credit, life and surety business ("simple risks") with Indonesian reinsurers. The Indonesian regulator, the Otoritas Jasa Keuangan (OJK), specifies only a few limited exceptions to this restriction.
- For other insurance business - "non-simple risks", a minimum of 25% of the (re)insurance must be placed with domestic (re) insurers.
- "Non-simple risks" and exempted "simple risks" must run through a tiered declinature procedure before they can be placed with foreign (re)insurers.

Regulation POJK No. 39/2020 gradually removed market access barriers for foreign reinsurers since the end of 2022, but on the condition that an agreement between Indonesia and the market of the reinsurer's domicile is in place. This threatens to create an unlevel playing field between foreign reinsurers. As eligible trade agreements are already in place for the US, Australia, Japan and the European Free Trade Association (EFTA), this condition would likely disadvantage EU reinsurers at the expense of healthy market competition in Indonesia.

Data

- Offshore data centre

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

- Use of personal data

POJK No.38/2020 does not clarify whether the personal data of the insurance company's customers and policyholders regulated under Clause 50 of POJK No.69/2016 (citizenship information) can be stored in an offshore data centre and a disaster data centre. This topic requires further guidance from the OJK, as it creates legal uncertainty.

The European (re)insurance industry therefore calls on the OJK to eliminate the threat that the approval to operate offshore data and disaster recovery centres may be revoked and to clearly state that personal data can be stored in such centres.

Tax treatment of paid claims for life insurance companies

Over the past few years, there have been significant concerns regarding recent developments in the area of taxation. In 2018, the Indonesian tax authority reinterpreted the 2009 Ministry of Finance regulation1 with the intention of denying the tax deduction of paid claims for all domestic and foreign life insurers. This is contrary to commonly accepted practices and has had a significant negative impact on European insurers in Indonesia.

Under the new interpretation, those insurers not accepting the Indonesian tax assessment would have been allowed to file an objection and, if rejected, could appeal to the Tax Court. However, insurers would be subject to potentially 50% penalties at the objection level and 100% penalties in the event of losing their case at the Tax Court.

Subsequently, the Indonesian life insurance industry, with the support of various trade associations including Insurance Europe, challenged this interpretation and as a result the Tax Office issued Circular Letter SE-08/2019. SE-08 which enables life insurers to claim tax deductions for the paid claims provided they follow the prescribed treatment set out in the Circular Letter. Insurance Europe welcomes this positive development.

Investments

Insurance companies are mandated by regulations to place a minimum 30% of total investment for Indonesian state securities. This requirement may conflict with the internal risk and investment policies of international insurance groups.

Customs duties on imports of intangible goods

The Ministry of Finance introduced Regulation No. 190/PMK.04/2022 ("PMK 190"), which imposes new customs obligations on the imports of intangible goods, including digital tools, knowledge and content that is transmitted electronically. These customs formalities for electronic transmissions would be unprecedented – it creates uncertainties and potential costs, as well as hinders the development of Indonesia's economy. This is even more worrisome as clarity on the coverage of intangible goods, the timeline, and procedure of its implementation. Such customs formalities are not in line with global practices and norm, adding additional burdens on users of all kinds of digital services and is also the first step to potentially charge customs duties on electronic transmissions.

Recommendations and preferred outcome

In addition to encouraging progress in the ongoing EU-Indonesia trade negotiations, Insurance Europe supports the removal of all market access barriers for foreign (re)insurers. In particular, the new regulation removing retention limits should be applied to all foreign (re)insurers to allow domestic insurers to choose from a diverse range of competitive, globally diversified reinsurers for risk mitigations.

Insurance Europe is the European insurance and reinsurance federation. Through its 36 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 over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.