reinsurance advisory board

Market access challenges: India

November 2019

The recent review of the Indian Reinsurance Regulations has produced some positive changes towards the further opening of the insurance sector for international reinsurers, who have long recognised the potential of the 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 new approach gives more business opportunities to international reinsurers, it still limits their ability to compete on equal terms with national reinsurers. The Regulations now envisage a two-step procedure for reinsurance placements, from which life (re)insurers, however, 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 (General Insurance Corporation of India, GIC Re) and then to foreign ones.

Compulsory cessions and similar restrictions targeting foreign reinsurers

The recently reviewed Reinsurance Regulations maintained the compulsory non-life reinsurance cession at 5% to GIC Re for the financial years 2017 to 2019. Terrorism and nuclear risks are, however, exempt from 1 April 2019 to 31 March 2020. 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", subjecting them to withholding tax on premiums. This puts them at a significant disadvantage compared to local reinsurers.

Foreign direct investment

The Insurance Laws (Amendment) Act 2015, passed in March 2015, increased the permitted percentage of foreign direct investment in locally licensed insurance companies from 26% to 49%. The guidelines that have since been released by the Insurance Regulatory and Development Authority of India (IRDAI) to implement the Insurance Act 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 26%.

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 foreign reinsurance branches, 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 foreign reinsurance branches — vis-à-vis local players.

Foreign direct investment

The limitation 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.

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 foreign reinsurance branches 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).

Lift the 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.