Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions (March 2019)

INDIA

The recent changes in Indian reinsurance regulations have introduced some positive developments. Nevertheless, the European (re)insurance industry remains concerned about discriminatory measures applied to foreign reinsurance players. Insurance Europe encourages the EU authorities to raise the industry's concerns in their future engagements with their Indian counterparts, in the spirit of free trade and market access.

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 gives more business opportunities to 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:

- 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 shall 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.

On the positive side, life (re)insurers are exempt from these rules.

To conclude: the European (re)insurance industry is calling on the Indian authorities to completely remove any form of order of preference and to achieve a level playing field between national and foreign reinsurers.

Insurance Europe welcomes the fact that the number of branch offices of foreign European reinsurers in India increased between 2016 and 2018 and it continues to urge the Insurance Regulatory and Development Authority of India (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 end up 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 insurance market. Insurance Europe continues to believe that a level regulatory 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 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.

The guidelines that have since been released by the 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 the 26%.

Many of the existing joint-venture partnerships were subsequently modified to comply with the new requirements. The retroactive application of guidelines to well-established arrangements runs counter to the Indian Government's broad commitment to refrain from retroactive legislation and rules, as well as the other steps it has taken to build a transparent and clear regulatory framework to encourage growth and long-term investment in Indian insurance.

Insurance Europe will continue to advocate for the dilution of the minority protection rights of foreign investors in India and therefore would welcome a suitable regulatory framework.

Lifting foreign equity limits

As insurance penetration in India is still very low (less than 4%), there is scope for the Indian Government to further open up the sector to foreign equity investment. The need to retain foreign investment limits in the insurance sector (Insuance Act) should also be reviewed, as has been done in other sectors.

IRDAI's risk-based supervisory approach

The European (re)insurance industry welcomes the IRDAI expressing its vision of a risk-based supervisory approach as opposed to a compliance-centric approach, as is currently being pursued. This is also in line with the recommended approach by the International Association of Insurance Supervisors (IAIS). Insurance Europe would encourage the Indian (re)insurance sector to expedite its migration towards Solvency II or a more granular risk-based solvency standard.

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.

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Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.