Position Paper

Summary of market access issues for European insurers and reinsurers

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Summary

Insurance Europe, the European insurance and reinsurance federation, wishes to highlight the key regulatory and market access issues that (re)insurance companies encounter in the following jurisdictions: the United States (page 2), Brazil (page 4), Ecuador (page 5), India (page 6), Indonesia (page 7), China (page 8), Argentina (page 9) and Russia (page 10).

These countries represent very important markets for the European insurance industry. Existing trading relationships could be further enhanced by both the removal of trading barriers and increased regulatory convergence. In order to achieve these goals, effective regulatory dialogue between stakeholders at all levels is essential.

While the focus of this paper is on market access issues, EU (re)insurers' competitiveness in other jurisdictions remains dependent on the progress made in determining third countries' equivalence under Solvency II. Without timely action, EU (re)insurers will not be able to appropriately take into account their operations in third countries for internal model application when calculating their regulatory solvency capital requirement. This would place EU firms at a competitive disadvantage vis-à-vis domestic companies operating in those jurisdictions.

This note provides a high-level summary of the key issues faced by the European (re)insurance industry when conducting business in the aforementioned countries.

More detailed input and comments can be provided by Insurance Europe on request.

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United States

Substantial regulatory dialogues have been taking place between the EU and US in recent years. Insurance Europe is very supportive of the considerable time and effort that policymakers and supervisors on both sides of the Atlantic have committed to better understanding each other's regulatory systems and supervisory procedures.

Particularly noteworthy was the establishment of the EU-US "Insurance Dialogue Project" in 2012, the subsequent publication of a technical report in December 2012 and the publication in July 2014 of an updated "way forward" document, setting out high-level objectives due to be pursued through 2017 for each of the seven work streams.

Since the beginning, the European (re)insurance industry welcomed the project and supported the work conducted as part of the dialogue. The European (re)insurance industry appreciates the openness and transparency that the project has so far provided to stakeholders.

Insurance Europe also welcomes the ongoing negotiations over a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US. Insurance Europe strongly believes that financial services — and, in particular, insurance — should be included as a key component of the TTIP. Insurance is a fundamental ingredient for creating a robust economy that can sustain growth and job creation on both sides of the Atlantic.

The greatest benefit for the European insurance industry would result from the inclusion in the TTIP of regulatory cooperation, and not just market access issues. In Insurance Europe's view, the inclusion of regulatory cooperation in the TTIP would complement the current EU-US dialogue by providing both political support and a framework to ensure milestones are met in a timely manner and the current level of momentum is maintained.

Here are a number of areas of concern for European (re)insurers:

- **US reinsurance collateral**

Insurance Europe welcomed the National Association of Insurance Commissioners' adoption of a revised credit for reinsurance model law and regulation in 2011, as a first step in the right direction. This was followed by the publication of a process for developing and maintaining a list of qualified third-country jurisdictions. However, important additional work is needed.

Insurance Europe strongly supports that the EU and US have now launched negotiations on a covered agreement. Insurance Europe believes that the ultimate goal of the agreement should be equal treatment for both non-US and US reinsurers, with uniform implementation and no collateral requirements.
It also strongly supports stakeholder engagement in the process, which would help ensure appropriate support so that the covered agreement can be concluded in a timely manner.

- **US affiliated tax proposal**

The US Congress continues to debate a proposal to limit the deductibility of reinsurance premiums retroceded to non US-affiliates. The proposal has been included in draft Congressional legislation and working papers, as well as President Obama's 2015 draft budget. As US lawmakers continue to review options for international tax reform, it is highly likely this proposal will be included.

These proposals would result in unequal treatment of European insurers, whose affiliate transactions would effectively become subject to double taxation. They would also potentially place the US in violation of its General Agreement on Trade in Services (GATS) under the World Trade Organisation (WTO).

- **Difficulties arising from dealing with multiple regulatory jurisdictions**

The differences between state-based regulatory requirements significantly add to the cost of doing business in more than one US state. For example, in California companies must get a prior authorisation from the state to be able to sell a new product or to change the price of standard products.

For this reason, Insurance Europe would like to see greater uniformity in state insurance regulation, in particular with respect to group supervision, US reinsurance collateral requirements and also the regulation and taxation of placements with surplus line insurers.

Brazil

In July 2015 Brazil published a new resolution (322) which establishes important modifications to the 2011 restrictions on affiliates' transactions and the compulsory reinsurance business with local participants.

- **Restrictions on affiliates' transactions**

The new resolution raises the limits on cessions to foreign affiliates by local (re)insurers. The limits will be as follows:

- 20% until 31 December 2016
- 30% from 1 January 2017 until 31 December 2017
- 45% from 1 January 2018 until 31 December 2018
- 60% from 1 January 2019 until 31 December 2019
- 75% from 1 January 2020

Insurance Europe would like to see this restriction eliminated. This would be in line with the conclusions of the IMF 2012 FSAP assessment of Brazil[1]. The report recommended the removal of this restriction as it adds cost and hinders market development.

- **Compulsory reinsurance business with local participants**

The resolution also amends the level of reinsurance that must be placed with local reinsurers as follows:

- 40% until 31 December 2016
- 30% from 1 January 2017 until 31 December 2017
- 25% from 1 January 2018 until 31 December 2018
- 20% from 1 January 2019 until 31 December 2019
- 15% from 1 January 2020

While this is a step in the right direction, Insurance Europe regrets that the implementation timeframes are too long and that, at the end of the process, no level playing field is guaranteed.

[1] IMF (2012) Financial Sector Assessment Program Brazil. Detailed assessment of observance of IAIS ICPs.

Ecuador

The National Congress of Ecuador approved in September 2014 reforms to the Monetary and Financial Code ("the Code" - Codigo Organico Monetario y Financiero), setting up a new regulatory and supervisory regime in the financial sector.

The Code creates and grants extensive powers on public policy to a new political body called the Monetary and Financial Regulation Board ("the Board"). Among other duties, the Code states that the Board should "enact regulations and will define maximum cessions by kinds of reinsurance" (Article 27 of the Code).

The Board was established in September 2014. In March 2015 it enforced a compulsory retention of 95% for individual life, group life, personal, health and motor reinsurance. Insurance Europe believes that these restrictions go against the spirit of the recently concluded EU-Ecuador agreement and set a very negative precedent for the region.

India

- **Foreign Direct Investment (FDI) cap and establishment of foreign reinsurance branches**

After several years of attempts, the Indian Parliament approved the Insurance Bill on 12 March 2015. This Bill allows increases in the foreign direct investment equity cap in joint ventures from 26% to 49% and allows foreign reinsurers to open branches in India.

While the Bill's approval was welcomed as a positive development by the European (re)insurance industry, Insurance Europe regrets that the Indian regulator (Insurance Regulatory and Development Authority of India – IRDAI) has recently proposed a first order of preference/right of first refusal for Indian reinsurers — namely the General Reinsurance Corporation of India (GIC) — over foreign reinsurers' branches, which was approved by the IRDAI Board on 4 January 2016.

Insurance Europe believes that the introduction of a right of refusal system favouring domestic reinsurers is both anti-competitive and detrimental to existing cross-border market access for many foreign reinsurers, whilst resulting in a concentration of risk in India.

- **Excessive and anti-competitive requirements for reinsurers**

Insurance Europe is concerned by the IRDAI's desire for increased information from cross-border reinsurers and the restrictions on reinsurance placements.

Over recent years, the IRDAI has introduced additional reporting and cession requirements for cross-border reinsurers:

- In January 2012 the IRDAI introduced registration requirements for cross-border reinsurers, insurers and reinsurers' intermediaries. These requirements have been renewed in an IRDAI circular released in January 2016.
- In February 2013 the IRDAI released its final "Life Insurance-Reinsurance Regulation, 2013", which mandates insurers and reinsurers to draft a "reinsurance programme" to, among other goals, maximise retention within the country. In addition, it sets a level of 30% minimum mandatory cession to the single domestic Indian reinsurer.

Insurance Europe hopes that the IRDAI will, in the future, focus on requirements and restrictions that are truly necessary to build up and maintain the Indian reinsurance market. Should the IRDAI continue on its path of intrusive regulation, 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 playing field, as well as legal and regulatory certainty are of the utmost importance to achieving the objective of both the regulator and the Indian government of establishing India as a reinsurance hub for the future.

- **Special Economic Zone (SEZ) regulations promote India as a reinsurance hub**

Insurance Europe welcomes the introduction of SEZ regulations, as well as the institution of IRDAI as the common regulator for SEZ.

Indonesia

- **Reinsurance retention limits**

In November 2015, the Indonesian regulator (Otoritas Jasa Keuangan - OJK) issued its "own retention and domestic reinsurance support regulation", to be enforced from 1 January 2016.

Among other restrictions, this regulation implements own retention limits and states that "insurance companies and Sharia insurance companies must obtain 100% (one hundred percent) reinsurance support from domestic reinsurers for coverage of simple risks". In this respect, the OJK only specifies a few exceptions to this restriction.
Insurance Europe regrets this negative development, which changes dramatically the (re)insurance regulatory environment in Indonesia and risks creating a negative precedent for the region. On top of that, it could put Indonesia in breach of its WTO GATS commitments on market access and national treatment commitments for reinsurance in Mode 1 (cross-border).

- **Potential decrease of the foreign ownership limits**

The OJK has recently mentioned publicly that it intends to lower the foreign ownership cap to 49 percent from the current 80 percent.

This move would have a serious negative impact on foreign-owned companies and would send the wrong signal to other countries in the region that could consider similar restrictions (eg Thailand).

China

- **Foreign direct investment (FDI) cap for foreign companies**

Currently, foreign life insurers have to establish their operations through a joint venture with a 50% cap on equity. In the case of domestic insurers, the cap for single foreign investors in domestic insurers is set at 20%, and foreign ownership is restricted to 25%. Insurance Europe believes that ownership decisions should be left to investors and shareholders.

- **Minimum capital requirements for specialised insurers**

At present, there is no legal distinction between general insurers and speciality insurers, such as health insurers. This results in speciality insurers being subject to excessive minimum capital requirements, even if they only write one or two niche products.

Insurance Europe believes that the requirements for specialised insurers should be reduced, as they are hindering the development of speciality business in China.

- **Restrictions on related party transactions**

Transactions conducted by foreign insurers' are governed by a different regulation than transactions of domestic insurers. Foreign insurers face, in effect, very complicated procedures, which include having to obtain approval of every transaction (e.g. reinsurance, asset transaction) from the China Insurance Regulatory Commission (CIRC).

- **Constraints on bank insurance business**

China prohibits insurers' personnel from selling insurance via bank branches. In addition, bank branches cannot sell insurance from more than three different insurers. Insurance Europe would like to see these constraints relaxed.

Argentina

In 2011 Argentina dramatically changed the legal environment for local and cross-border reinsurers. For example, Argentina mandated the repatriation of insurers' investments. These restrictions are a serious drawback for foreign (re)insurers conducting business in Argentina and also risk having a negative influence on other countries in the region, such as Ecuador. Insurance Europe hopes that the new Argentinean government will reevaluate these restrictions.

- **Restrictions for cross-border reinsurers**

Cross-border foreign reinsurers are only allowed to provide coverage for the portion of a risk above USD 50 million and retrocession services, apart from exceptions allowed by the SSN on a case-by-case basis.

This contrasts with the previous situation whereby foreign reinsurers were free to underwrite risks on a cross-border basis if they registered with the Argentine Superintendent of Insurance (SSN) or wrote business via reinsurance brokers registered with the SSN.

- **High requirements to become a local reinsurer**

To become a local reinsurer, foreign reinsurers must set up an Argentinean subsidiary or branch with capital equalling the greater of a) 20 million Argentinean Pesos (approx. USD 5 million) b) 16% of premium retained or c) 40% of gross written premium.

Local reinsurers must retain at least 15% of reinsurance premiums ceded to them, calculated annually on the basis of their total portfolio. In addition, local reinsurers cannot transfer abroad more than 40% of premiums to subsidiaries or companies belonging to the same financial conglomerate.

- **Restrictions on cross-border retrocession**

If a local insurer's reinsurance business constitutes up to 10% of annual premiums, then the insurer can only place retrocessions with local reinsurers.

- **Compulsory investments**

The 2012-2020 Argentinean Insurance Plan establishes certain levels of insurers' investment portfolios that need to be directed to medium and long-term infrastructure projects.

An Eligibility Committee (formed by the Ministries of Economy and Industry and the Argentinean Insurance Superintendency, SSN) has been established to identify the sectors and/or products where these investments would be placed.

Insurance Europe believes that insurers should not be subject to arbitrary investment constraints, which would prevent them from making appropriate investment decisions.

Russia

- **Foreign branches**

As part of its accession to the WTO, Russia committed that, by 2021, it would allow the set-up of branches of foreign, life and non-life (re)insurance companies (subject to licensing, financial soundness and guarantee deposit requirements). These branches will, however, not be allowed to write state procurement and mandatory insurance, other than civil liability for car owners.

Insurance Europe believes that the timeframe is excessive and would like to see this commitment implemented more quickly.

- **Discrimination against foreign insurers in public procurement**

The Federal Law sets up onerous requirements for the participation of foreign companies in the supply of insurance services to governments, municipalities and state-owned corporations. Insurance Europe advocates a level playing field for foreign insurers wishing to write public procurement business.

- **Limit on investment charter capital quota for foreign insurers**

Following the new Russian Insurance Law adopted in July 2013, Russian insurance companies with more than 51% of foreign investment cannot participate in state-funded insurance, life insurance and compulsory motor liability insurance. This ban came into force on 1 July 2014 and will be lifted on 22 August 2017, in accordance with the WTO transition rules.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. 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 generate premium income of almost €1 170bn, employ over one million people and invest nearly €9 900bn in the economy.