Navigating the regulatory turbulence in India and China

Changes in the legal and operating environments in India and China will have significant implications for international re/insurance groups, according to two senior lawyers based in the region

How would you characterise the environment in India and China for international carriers at present?

Sakate Khaitan, senior partner, Khaitan Legal Associates: "India was exposed to international insurance firms and practices during British rule and, as a result, has close historic ties with European markets. After a long period of stagnation, the first reforms were introduced in 2000, with privatisation and the opening of the market to foreign investors.

"In 2015, there were further reforms, increasing foreign participation and a second wave of insurance reforms is now on the cards, as the Indian government has relaxed the foreign direct investment [FDI] limits for insurance intermediaries to 100% and statutory notifications have been released effecting this change. New limits for insurance companies will also be announced after consultation with stakeholders. It is likely the FDI ceiling will be revised up from the present level of 49%.

"Several initiatives are in the pipeline to develop the International Financial Services Centre – Gujarat International Finance Tec-City. Relaxation in applicable taxes, eligibility conditions are under way. Formation of a new dedicated financial services regulator is also proposed to facilitate single-window clearances."

Jan Holthuis, partner, Shanghai office, BUREN Legal: "Since the 1980s, with the reform and opening up of the insurance industry, China has become the second-largest insurance market in the world, with an integrated system of legislation, supervisory authorities and associations. It is also impossible to ignore the fact China has two of the world's five largest insurers. Ping An has a market capitalisation of $243.57bn, while China Life Insurance is the biggest public life insurance company in terms of market capitalisation in the world with a market cap of $118.95bn."

Regulation is a major preoccupation for the Indian and Chinese re/insurance markets. What are the key regulatory trends shaping these markets?

Holthuis: "The China Insurance Regulatory Commission and China Banking Regulatory Commission have merged to form the China Banking and Insurance Regulatory Commission [CBIRC], so new licences for insurance companies are now issued by the CBIRC's property insurance supervision and personal insurance supervision departments. Following this, regulatory change is everywhere and I can show how big the changes are by listing just a few of the key regulations which are completely reshaping the landscape for insurers in China.

"The Measures for the Administration of the Equities of Insurance Companies was issued in February 2018, which set the qualifications and required capital for existing and potential insurance company shareholders. The Measures for the Administration of Independent Directors of Insurance Institutions was issued in July 2018, to help them perform better and function more effectively. Detailed Rules for the Implementation of the Regulation on the Administration of Foreign-Funded Insurance Companies was issued in February 2018 and Measures for the Administration of the Utilization of Insurance Funds was issued in January 2018."

Khaitan: "In India, the regulators are making big changes in three areas: the Indian insurance regulator, the IRDAI, has recently notified a regulatory sandbox framework to facilitate technological

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innovation in insurance. The objective is to balance the twin objectives of orderly growth and innovation in the insurance industry and the protection of policyholders.

“Alternative risk transfer [ART] has also been given express regulatory recognition/sanction for the first time, allaying apprehensions as to its legality, validity and enforceability and the IRDAI is keen to allow proposals on ART to help troubled direct insurers.

“Finally, the Reserve Bank of India, which is the exchange control regulator of India, recently liberalised the existing external commercial borrowings framework. Indian insurers are now eligible to raise debt by issuing redeemable preference shares and debentures from their foreign equity shareholders.”

What are the fastest-growing specialty lines classes in India and China and what are the key exposures for re/insurers?

Khaitan: “Cyber insurance is developing as a result of the growth in digitisation and increase in exposure. The global market for cyber insurance is expected to increase rapidly, with a compound annual growth rate of 27% between 2017 and 2024. The market in India is still in its nascent stage, with the number of policies sold in 2018 totalling around 350, with IT businesses and financial services as early adopters.

“Merger and acquisition insurance is also gaining traction as investments – inward, outward and within the domestic market – are increasing but also the associated risks, as economic conditions become more volatile and financial risk exposure increases.

“On the claims front, with a diversified topography and vast land mass, India can be geographically divided into several agro-climatic zones. Natural catastrophes/disasters in the form of floods and cyclones are very common, so insurers are always prepared to face related claims arising from cyclones and flood events every year.
“Meanwhile, liability-related claims, especially in the area of regulatory/statutory breaches by senior management – directors’ and officers’, professional indemnity and others – have been on the rise, particularly in the light of the failure of several leading financial services companies and the high level of non-performing assets of public sector banks and news reports of financial frauds.”

Holthuis: “The Tianjin Port explosion on August 12, 2015 was the third-largest man-made insured loss in history, estimated at around $3bn. Insurance claims were made on a wide range of different policies: property damage, business disruption, personal accident, life, commercial medical, group accidental injury, car insurance, accident and health insurance, liability insurance, cargo insurance, warehousing, fire and safety production liability. This event has led insurers to completely reassess supply chain risks in China.”

How do you see the prospects for international re/insurance groups in the Chinese and Indian markets and what are the main developments shaping those prospects?

Holthuis: “In China, with no new no insurance licences being issued at present, the only path into the industry for foreign investors is to purchase shares. Since the start of 2019, the CBIRC has approved seven such transactions, including two involving foreign capital.

“Although the insurance market is booming in China, foreign-funded insurance companies still face some obstacles, primarily the rule the foreign stake in a life insurance company cannot exceed 51% until 2021.

"However, in April 2018 China's president, Xi Jinping, pledged foreign capital would be allowed further access into the financial markets. All caps on foreign investment will be removed by 2020. The date was originally 2021 but the premier, Li Keqiang, announced on July 2 this would happen one year ahead of schedule.

"This means China could have wholly foreign-owned life insurance companies as early as next year. The requirement to foreign companies to establish a representative office for at least two years before the incorporation of a local insurance company has also been cancelled.

"For joint venture insurance companies, China is different from other markets with respect to the incorporation of a branch office, the rectification of the senior managers and the proportion of each stake held, so that the strategic decisions of a joint venture company are always affected by shareholders, which will impact their efficiency and execution.
"There is a cultural difference in that foreign-funded insurance companies tend to pay more attention to the quality of service, while China's insurance companies and customers attach more importance to price.

"Finally, the consequence of global climate change and the frequency of different natural disasters is becoming an increasing concern for international insurers/reinsurers and you can expect to see much more on this topic in the future."

Khaitan: "In India, the regulator is currently weighing the option of shifting the calculation for the capital that insurance companies need to hold from a solvency-dominated regime to one that is risk-based and this is something we are watching closely.

"Apart from this, much of the current development in the market is focused on mechanisms such as intelligent virtual assistants/chatbots, artificial intelligence and wearable devices. This means that insurers are often partnering with specialists in other sectors to create new channels to market.

"For example, relationships are being developed with a range of non-traditional parties in the insurance distribution space – these include retail aggregators (
Amazon, Flipkart), telecommunication providers (Airtel, Vodafone, Jio), smart home devices manufacturers (Amazon, Xiaomi), AR/VR device providers, telematics device manufacturers, sharing economy providers (Uber, Ola, OYO), transportation providers (IRCTC, bus providers) and messaging apps (WhatsApp, Facebook messenger)."

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https://insuranceday.maritimeintelligence.informa.com/ID1129401/Focus-Navigating-the-regulatory-turbulence-in-India-and-China