Debevoise Insurance Asia Update—Summer 2025

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Hong Kong: Redomiciliation Regime for Insurers Becomes Effective

Introduction

On 23 May 2025 the new Hong Kong redomiciliation regime for insurers became effective through amendments to the Companies Ordinance, Insurance Ordinance and other laws and guidelines.

Before an overseas-based insurer with a Hong Kong branch approaches the Insurance Authority (the "IA") with a redomiciliation proposal, it should consider the legal and regulatory position in its jurisdiction of incorporation and the jurisdictions where any other branch offices are located. For a redomiciliation to be feasible, the jurisdiction of incorporation must have an outwards redomiciliation regime. Such a regime is available in Bermuda and a number of U.S. jurisdictions but not in certain other jurisdictions.

Overseas insurers that do not currently have an authorised Hong Kong branch need to undergo a full authorisation process with the IA and a redomiciliation will only be feasible once full authorisation—or at least an authorisation in principle—has been achieved.

Initial Analysis

In relation to other existing branches of insurers considering redomiciliation, it is important to carry out a full analysis of whether the law and regulations of the jurisdiction where the branch is located will recognise the redomiciliation in the sense that the branch will simply be treated as a branch of the redomiciled entity after completion of the redomiciliation.

While a number of jurisdictions recognise redomiciliations, mergers and other corporate transactions and will likely facilitate the re-registration of the branch in this way, others may require a regulatory approval or even a new authorisation process for the redomiciled entity.

If the insurer has written insurance business from its jurisdiction of incorporation, the conversion into a regulated branch upon redomiciliation would also need to be discussed with the local regulator.

The insurer should carry out an assessment of whether the redomiciliation would have any adverse effects on policyholders, such as in relation to the tax treatment of policies, and discuss any material adverse implications with relevant regulators.

An assessment will need to be carried out on whether the insurer will be able to comply with all relevant Hong Kong laws and guidelines immediately after the redomiciliation. In most cases, this should not be a major concern since many insurers contemplating redomiciliation are already required to comply with such rules and regulations as "designated insurers". The IA has provided additional guidance on the application of certain guidelines to redomiciled insurers, and new provisions in the Insurance Ordinance ensure that key persons approved by the IA in relation to the insurer before the redomiciliation will be deemed approved by it after redomiciliation.

However, for insurers who do not currently write most of their business in Hong Kong, a gap assessment should be carried out, and any changes that are required should be factored into the timetable.

Given the implications of the above processes for the overall timing of the redomiciliation, seeking legal advice in the relevant jurisdictions and discussing the proposal with local regulators at an early stage are key to a successful redomiciliation.

From a contractual perspective, it should be assessed whether the redomiciliation would result in any termination rights or other adverse consequences under material contracts, including reinsurance treaties.

Redomiciliation Process

Once the preliminary analysis has been completed, the proposal and timelines should be discussed with the IA at an initial meeting. Following guidance from the IA, the insurer can then apply to the IA for a letter of non-objection to the redomiciliation. The IA has made available an application form for this purpose on its website. Key elements of the application are the steps to be undertaken in relevant jurisdictions, as supported by legal opinions where applicable; any material adverse effects on policyholders; and the communication plan in relation to policyholders.

Based on the timetable devised for the transaction, the insurer will also need to make relevant applications and submissions to the other regulators involved in the process. The IA expects insurers to provide a reasonable time for policyholders to raise enquiries, to deal with such enquiries promptly and to keep the IA informed of material concerns. Communications with policyholders of the head office and branch offices will have to be carefully coordinated, taking into account any local requirements.

Once the IA issues its letter of non-objection, the insurer can apply to the Companies Registry in order to be issued a certificate of redomiciliation. This final step should be a formality if all required steps have been completed in the relevant jurisdictions.

Once the certificate of redomiciliation is issued, the insurer will be expected to comply will all relevant Hong Kong laws and regulations and will need to update relevant websites, terms and conditions and policy materials as appropriate. The insurer will then need to complete the deregistration in its jurisdiction of incorporation in accordance with the requirements of the Companies Ordinance.

Hong Kong law does not regard the redomiciled insurer as incorporated in Hong Kong following the redomiciliation; rather, it treats the insurer as having changed its domicile to Hong Kong, while its jurisdiction of incorporation remains unchanged. Given the insurer's deregistration in its jurisdiction of incorporation, this distinction should have little practical effect since the insurer will no longer be subject to the company law of such jurisdiction of incorporation.

Overall, the redomiciliation process may be fairly straightforward for insurers that are currently based in Bermuda and have no other overseas branches or operations outside Hong Kong, while those with multiple overseas branches will likely require more detailed analysis and coordination in order to ensure that the regulatory process can be completed smoothly in all relevant jurisdictions.

China Relaxes Asset Requirement for Hong Kong and Macau Financial Institutions Investing in Mainland Insurers

On 26 February 2025, the National Financial Regulatory Administration of China (the "NFRA") issued a notice on matters relating to investment in insurance companies by Hong Kong and Macau financial institutions (the "NFRA Notice"), according to which, starting from 1 March 2025, a Hong Kong or Macau financial institution would no longer be required to have total assets of US$2 billion or more at the end of the most recent year to invest in mainland insurance companies. This requirement remains applicable to other overseas financial institutions investing in Chinese insurance companies.

The removal of such total assets requirement for Hong Kong and Macau financial institutions, which marks part of China's efforts to deepen opening up in its financial services sector and expand the pool of investors eligible to invest in Chinese insurance companies, follows agreements signed in October 2024 between Mainland China and Hong Kong, as well as between Mainland China and Macau, to revise the Agreement on Trade in Services under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") and CEPA between Mainland China and Macau. The following qualification requirements on Hong Kong and Macau financial institutions investing in mainland insurance companies remain unchanged under CEPA:

- a good and stable financial condition with continuous profit-making record for the recent three consecutive accounting years;
- a long term credit rating of A or above from international credit agencies in the last three years;
- no records of significant violation of laws and regulations for the last three years; and
- having fulfilled the requirements of prudential supervision standards of the financial regulators where they are domiciled.

While the NFRA Notice and CEPA provide a window of opportunity for Hong Kong and Macau financial institutions to gain greater access to the Chinese insurance market, there are some other qualification requirements under NFRA rules that generally apply to investors in Chinese insurance companies, including the various requirements under the Administrative Measures for Equity Interests in Insurance Companies for financial shareholders, strategic shareholders or controlling shareholders of Chinese insurance companies.

Increase in Foreign Ownership Limit to 100%—an Important Milestone for the Indian Insurance Industry

In February 2025, the Indian government announced that the foreign ownership limit for the insurance sector would be increased from 74% to 100% (the "New FDI Limit"). This is a highly anticipated milestone for the liberalisation of the Indian insurance industry and is expected to result in increased M&A activity in the sector. However, the new limit will not take effect until revised legislation and regulations reflecting the change have been put in place.

Implementation

In order for the New FDI Limit to come into effect, the Insurance Act, 1938 (the "Indian Insurance Act") will need to be amended, which requires the approval of both houses of the Indian Parliament and presidential assent followed by publication in the official government gazette. It is expected that the amendment bill will be tabled in the current monsoon session of Parliament, which ends in late August 2025. The passage of the bill is expected to be smooth given the parliamentary majority commanded by the incumbent government.

The operating rules on foreign investment in the insurance sector and Indian exchange control rules applicable to this sector will also require amendment. New draft rules have not been published so far, but it is hoped that these will be finalised soon.

Key Questions

There are a few points of detail on which the draft regulations are expected to shed light, for instance, whether the Insurance Regulatory and Development Authority of India ("IRDAI") will relax the requirement regarding the majority of directors, key management personnel and at least one amongst the board chairperson, managing director and chief executive officer being resident Indian citizens, in the context of insurers with foreign investment.

The government's announcement also refers to the New FDI Limit applying to insurers that invest the entire premium in India. Currently, premiums collected by Indian insurers are classified as "policyholder funds" and the law already restricts the investment of such funds outside India, either directly or indirectly. Therefore, a key question is whether the regulations will impose any further requirements in this regard.

Also, realised profits are transferred to "shareholder funds", from which dividends are declared. Although there are currently no specific investment restrictions on shareholder funds, it is uncertain whether incremental conditions or clarifications will be introduced to align with the Indian government's announcement.

The government also announced simplification of conditionalities associated with foreign investment without providing details on the specific changes envisaged. However, any simplification will be welcomed by international investors and this "investor friendly" messaging is also consistent with the current approach adopted by the IRDAI.

The public consultation process leading up to the announcement of the New FDI Limit also contemplated a new composite licence for life and non-life insurance business under a single licence (as opposed to standalone licences for each of life, general and health insurance). The government has not indicated whether such a change will be introduced together with the New FDI Limit, or at all, and it is expected that the government's position on this issue will become clearer once legislation on the New FDI Limit is tabled. Allowing for a composite licence would likely add to the attractiveness of the Indian insurance market for foreign investors, although much will depend on the requirements and implications of such a composite licence.

Implications for Foreign Investment

Since the foreign investment limit was increased from 49% to 74% in 2021, there was significant interest from foreign investors in the Indian insurance market, and a number of foreign insurers with existing joint ventures in India increased their ownership stake. However, for many foreign insurers and investors, the need to pair up with a local partner has not been an attractive proposition, and hence new market entries of international insurers and other investors have been limited.

The ability of foreign investors to purchase 100% of an Indian insurer or set up a wholly owned greenfield operation with an experienced management team is likely to result in a significant increase in foreign investment in the Indian insurance sector. For instance, foreign private equity investors have historically required a local partner with a 26% stake to support a local management team, and the IRDAI has been hesitant in allowing professional management teams without substantial independent financial backing to satisfy this requirement. With the New FDI Limit, the hope is that such investors can now enter the sector more easily without relying on a domestic partner.

The new limit will also result in existing foreign investors strategically considering whether to buy out their Indian partners. The terms of existing shareholders' agreements and the commercial importance of the joint venture partner will be key considerations in this regard.

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Please do not hesitate to contact us with any questions.

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