FACI INTERNATIONAL SUBCOMMITTEE 2020
Market Access / Level Playing Field: Key Challenges for International Insurers

Around the globe, U.S. insurers face market access restrictions and other discrimination that limits their ability to compete. Opening foreign markets would enable U.S. insurers to expand their businesses and support high-quality job growth in the U.S. in the areas of investment, risk management, product development and information technology. Allowing U.S. insurers to compete fairly would benefit host countries as well. U.S insurers bring best-in-class products and services to market, provide financial protection for individuals and families against the consequences of untimely loss of life and other catastrophic events, and make significant investments in both domestic and international capital markets.

The U.S. Government –including the Office of the U.S. Trade Representative and the Departments of Treasury, Commerce, Labor and State– has been a steadfast partner to the American insurance industry. By working through trade negotiations, international organizations, and bilateral dialogues, the U.S. Government has successfully addressed numerous foreign market barriers, including China's recent commitment to eliminate foreign equity caps in the life, health and pension insurance sectors.

The FACI International Subcommittee has endeavored to identify key market access and level playing field issues that impact insurers globally and develop recommended steps and actions the U.S. Government can take to the issues. Notably, these barriers affect both U.S. global insurers and reinsurers, as well as non-U.S. global firms by directly impacting the ability of insurers to enter/operate in a market and/or tilt the playing field toward local competitors.

1. **Restrictions on Foreign Direct Investment (FDI) and Forms of Establishment**
   - U.S. insurers are required to form a joint venture with a domestic equity partner. In some countries, the foreign investor is further restricted to maintaining a minority position. Leadership selection, day-to-day management, company culture, strategic direction and legal exposure for the U.S. partner – all are impacted by the joint venture mandates.
   - U.S. insurers are limited in the selection of the juridical form (*i.e.*, branch, subsidiary, joint venture) most appropriate for the business. Upstream restrictions include limits on multiple license holding, financial services holding structures, affiliate insurance asset management, claims processing, and other authorizations services auxiliary to insurance necessary for a level playing field.
   - Insurers face outright prohibition on entry and participation in certain lines of business. In these sectors (e.g., private pensions, industrial, energy, other products where there is a domestic champion), U.S. insurers are prohibited from providing insurance services. In addition, the insurance providers for these protected sectors may not be regulated by the same insurance regulator or same laws as other private market companies.
   - These restrictions impact multiple stakeholders beyond U.S. and other foreign insurers, including:
     - Consumers – through fewer options in insurance providers and product offerings, and reduced-price competition. These restrictions also limit innovation and access to insurance for emerging risks by the under- and un- insured.
     - Domestic market stability and prosperity – by protecting insolvent and uncompetitive domestic champions (both state-owned and affiliated), thus restricting competition, development of the market – e.g., delayed adoption of modern accounting, corporate governance and consumer protection best practices, and putting solvency at risk.

- The economy is harmed through inhibited growth of the insurance sector and its multiplier economic benefits: greater capital investment flows into the market, better capacity to absorb risks that might otherwise fall on the public sector, and stronger long-term capital market development.
- Taxpayers through the potential need for bailouts of insolvent state-owned and affiliated companies due to failures that result from differential regulations and supervision.

MARKET EXAMPLES		
AFRICA	Ethiopia	FDI Prohibited
	Ghana	Nationality-Based Capital Requirement
	Kenya	FDI Limit 66%
	South Africa	FDI Investments Prior Approval
	Tanzania	FDI Limit 66%
EAST ASIA/PACIFIC	China	FDI Limit 51% but implementing regulations to reflect removal of cap
EUROPE/CENTRAL ASIA	Russia	FDI Limit 50%
MIDDLE EAST/NORTH AFRICA	Saudi Arabia	FDI Limit 49%; Joint Stock Requirement; Cooperative or Mutual Requirement
	UAE	FDI Limit 49%
SOUTH ASIA	India	FDI Limit 49%
	Indonesia	FDI Limit 80%
	Malaysia	FDI Limit 70%

2. **Restrictions on Management Control / Key Foreign Personnel / Other Corporate Governance Requirements**

- U.S. insurers face barriers to hiring and appointments, including mandates to employ nationals and follow nationality quotas for senior management and board of director positions.
- Restrictions/requirements on management, personnel, corporate governance, the location of certain functions, and other elements impede the ability of insurers to implement company transparency, control and governance requirements; direct business operations; develop and deliver strategic objectives; and, protect the rights of minority shareholder and contractual freedom between joint venture partners.

MARKET EXAMPLES		
AFRICA	Ghana	The National Insurance Commission (NIC) imposes nationality requirements for board and senior management of insurance/reinsurance company.
	Tanzania	One-third of controlling interest must be held by Tanzania citizens, per Insurance Act.
MIDDLE EAST/NORTH AFRICA	Saudi Arabia	Foreign investment license from Saudi Arabia General Investment Authority (SAGIA) is required for insurance/reinsurance company ownership by non-Saudi Arabia national.
SOUTH ASIA	India	IRDAI requires the Indian partner of an insurance joint venture to appoint the CEO and the majority of non-independent directors.

3. **Data/IT Localization and Digital Protectionism**

- U.S. insurers are required to follow regulations to physically house customer and company data in country, adhere to severe restrictions on data flows, and establish data and call centers in country.
- Data and IT localization restrictions are a critical non-tariff barrier to trade in the insurance sector and confer an advantage to domestic competitors:
  - The mandate for data centers in country adds layers of cost for hardware and maintenance, increases the complexity of global information technology systems, and impairs overall resilience, cybersecurity and risk management practices.
  - Digital protectionism narrows the data pool – placing U.S. insurers at a competitive disadvantage in the use of data for predictive modeling, predictive analytics, claims processing, fraud detection, pricing and risk selection.

MARKET EXAMPLES		
AFRICA	Kenya	Kenya's Data Protection Act requires data controllers to provide "proof" that personal data will be secure as a condition for transferring data outside Kenya but does not describe what would constitute proof. The Act requires consent of data subject as a condition for cross-border transfer of any "sensitive personal data," a broad category of information.
	Nigeria	NITDA guidelines require all insurers to store data of Nigerian citizens in Nigeria.
AMERICAS	Brazil	Brazil is considering draft legislation that could regulate cross-border data flows and storage requirements. Currently, Brazil's Marco Civil, an Internet law that determines user rights and company responsibilities, is being imposed on insurers for data collected or processed in Brazil but subsequently stored outside the country.
EAST ASIA/PACIFIC	China	China's Cybersecurity Law and related draft and final implementing measures include mandates to purchase domestic ICT products and services, restrictions on cross-border data flows and requirements to store and process data locally.
	South Korea	Through KORUS, Korea undertook commitments to allow financial institutions to transfer data to foreign affiliates and allow certain data processing and other functions to be performed outside Korea. Implementation of this commitment has been slow. As of 2018, difficulties remain due to Korea's consent requirement. Korea imposes constraints on ability of banks and insurance cos to utilize cloud computing services.
EUROPE/CENTRAL ASIA	EU	General Data Protection Regime (GDPR) restricts imposes onerous restrictions on the movement of EU citizens' data, including where data was collected outside the EU.
	Russia	Federal Law No. 242-FZ requires local storage and processing of data.
	Switzerland	The Swiss-US Privacy Shield Framework provides a mechanism to comply with Swiss requirements when transferring personal data from Switzerland to US. Switzerland issued a partial adequacy decision for US, limited to companies in Privacy Shield Framework.
	Turkey	Data localization is required. Turkey also imposes restrictions on transfers of personal data out of Turkey. Information systems used by financial firms for keeping documents and records must be located within Turkey.
SOUTH ASIA	India	On July 27, 2018, India announced a proposed Data Privacy Bill. The draft is based on EU's General Data Protection Regulation (GDPR). However, it seems to extend beyond reach of GDPR as it looks to require data localization, limits

		processing, and allows government-wide access to data. It would apply to any company that handles data of Indian citizens in almost any manner.[1]
	Indonesia	OJK's Regulation 69/POJK.05/2016 mandates insurers/reinsurers to establish data centers and disaster recovery centers in Indonesia. Indonesia is considering national legislation and additional regulations on personal data protection, which could expand requirements for data localization.
	Malaysia	Bank Negara Malaysia has data localization elements in its Risk Management in Technology framework but noted it intends to remove them. It has amended its recent Outsourcing Guidelines to remove original data localization requirement.
	Thailand	Thai government in February 2019 passed new laws and regulations on cybersecurity and personal data protection that raise concerns over Thai authorities' broad power to demand confidential and sensitive information without sufficient legal protections or a company's ability to appeal or limit such access.

4. **Discriminatory Screening and Approval Mechanisms, and Other Regulatory Trade Barriers**

- Discriminatory screening and approval mechanisms are applied to U.S. but not domestic insurers. These mechanisms lead to denial of the ability to own 100% of an insurance entity, denials or delays of product approval or licensing decisions; application of needs tests; and, imposition of quantitative limits on product license requirements.
- Unequal application of regulatory standards to foreign companies --through formal and/or differential application of regulations-- results in advantageous treatment to domestic champions, including state-owned and affiliated insurers.
- These barriers serve as *de facto* restraints on the ability of foreign insurers to establish, conduct and expand their product offerings and business opportunities.

MARKET EXAMPLES		
EAST ASIA/PACIFIC	China	On several product licenses such as enterprise annuities, tax advantaged pension pilot programs and political risk insurance there has been a de facto freeze on new licenses that effectively has prevented US entry into those products.
	Japan	State affiliated cooperatives are not subject to insurance business law and/or supervision by an independent regulator. They also currently escape supervisory intensity or systemic risk review by IMF.
SOUTH ASIA	India	The former life and nonlife monopoly companies Life Insurance and General Insurance Corporations of India respectively remain dominant market players; however, these companies are not independently regulated and not currently subject to supervisory intensity or systemic risk review by IMF.
	Indonesia	Indonesia is currently considering how to recapitalize numerous insolvent state-owned and "crony" companies at expense of foreign companies.

5. **Non-Regulatory Barriers**

- U.S. insurers face industry and market practices that contribute to an unlevel playing field and impact the operations and growth of U.S. insurers. Marginalizing U.S. company participation in jurisdictional industry trade associations, for example, perpetuates disparate market and regulatory treatment in favor of domestic player interests.

- U.S. insurers are not provided the same opportunity as domestic insurers to review and provide comment on draft regulations. An unlevel playing field in regulatory development disadvantages the ability of U.S. firms to shape, understand, anticipate, and respond to changes in the regulatory landscape.

MARKET EXAMPLES		
EAST ASIA/PACIFIC	China	Regulatory practice is to deny national licensing to foreign insurers.
	Japan	Although a critical source in the formation of life insurance regulations, the Japan Life Insurance Association does not permit foreign insurer members to contribute to and advocate for insurance policy.

6. **State-Owned Enterprises (SOEs)**

- Government policies can play a critical role in providing access to (re)insurance, particularly in regions without a developed private market. State-owned (re)insurers, however, can impede development of a healthy, sustainable private market: the potential application of less stringent prudential supervision, regulatory favoritism, and implicit or explicit government guarantees can disincentivize competition and subject policyholders, consumers, and taxpayers to heightened risks without supporting the ability of an SOE to fulfill its public purpose.
- Policymakers should establish transparent, objective, and measurable benchmarks through trade agreements to facilitate fair competition for all market participants, promote growth of the sector, and protect policyholders, consumers, and taxpayers. In cases where state-owned (re)insurers no longer serve a legitimate social objective – such as addressing areas of market failure - governments should curtail the size and role of the SOE. Supervision and regulation of all market participants should be in accordance with regulatory and industry best practices and at a minimum, provide for nondiscriminatory and transparent treatment of all (re)insurers.

MARKET EXAMPLES		
AFRICA	Ethiopia	There is a state monopoly in the insurance sector.
	Sudan	Local insurers are required to cede 50% of their treaty business to state-owned National Re. Local cedants must also offer all non-life facultative reinsurance to National Re, which has option of accepting or declining on a case-by-case basis.
EUROPE/CENTRAL ASIA	Russia	It is mandatory to offer up to 10% of any cession to national reinsurer, NRC. NRC is not obliged to accept offer. They can also accept a lower share or decline offer.
MIDDLE EAST/NORTH AFRICA	UAE	State-owned enterprises are key components of UAE economic model and are perceived to be favored in legal disputes with foreign cos brought before local judiciary.
SOUTH ASIA	India	Insurance Regulatory and Development Agency of India (IRDAI) in 2017 introduced Regulation 28(9) to establish an Order of Preference for placement of reinsurance business with a four-tiered system: (i) first preference to state-owned reinsurer and any other domestic reinsurer that has three years of credit ratings (none exists); (ii) second preference to branches of foreign reinsurers and domestic reinsurers without three years of credit ratings; (iii) third preference to foreign reinsurers in special economic zones; and (iv) fourth preference to cross-border reinsurers. Also, 5% of each non-life policy must be ceded to Indian reinsurer, General Insurance Corporation.
	Indonesia	Since 2016, Indonesian insurers have been required to place all "simple risks" with domestic Indonesian reinsurers, generally a newly formed state-owned

		reinsurer. This includes all reinsurance of life, health, personal accident, motor, credit and suretyship business. For other insurance business ("non-simple risks"), a minimum of 25% of (re)insurance must be placed with domestic reinsurers. "Non-simple risks" and a narrow band of exempted "simple risks" must run through a tiered declinature procedure before they can be placed with foreign (re)insurers.

7. **Cross Border Reinsurance Restrictions**

- U.S. insurers are subject to local presence requirements; mandatory cessions/right of first refusal to domestic reinsurers (including state-owned reinsurers); intra-group cessions restrictions; and, mandates for insurer retention of specific risk levels.
- These barriers impede the ability of reinsurers, including affiliates, to operate efficiently, diversify risk globally, and promote economic recovery and growth. They lead to higher reinsurance costs when the local reinsurer cedes the risk internationally through retrocession or concentrates risk within a jurisdiction.
- Mandatory localization also harms both primary companies and their policyholders by forcing them to buy reinsurance from companies that may not adhere to best practices or be subject to adequate regulation.
- Reinsurance barriers also impede the development of local insurance and reinsurance markets and are counter to international best practices.

MARKET EXAMPLES		
AFRICA	African Union	In AU shareholder member states, a 5% mandatory offer of each risk must be made to reinsurer Africa Re, a government-supported entity.
AMERICAS	Argentina	Cross-border reinsurance restrictions are being eased but, but 25% local cessions will still be required as of 2019.
	Brazil	Local reinsurers receive preference in cession offers (in 2020, the threshold is 15%).
EAST ASIA/PACIFIC	China	With exception of aviation, aerospace, nuclear, oil and credit reinsurance contracts, amount of proportional business ceded to any one reinsurer in respect of any one risk may not exceed 80% of sum insured or liability limit of direct insurance policy. The amount of each facultative cession to an affiliated company of cedant may not exceed 20% of sum insured or limit of liability of direct insurance policy.
EUROPE/CENTRAL ASIA	Russia	Mandatory cession requirement: 10-percent of each contract must be offered to state-owned Russia National Reinsurance Company. NRC is not obliged to accept offer. They can also accept a lower share or decline offer.
MIDDLE EAST/NORTH AFRICA	UAE	The regulation requires that at least 51% of capital of a reinsurance company incorporated in UAE be owned by natural persons who are UAE or GCC nationals or by legal persons fully owned by UAE or GCC nationals. The UAE Insurance Authority must approve any employees that carry out controlled function activities
SOUTH ASIA	India	On January 16, 2017, Insurance Regulatory and Development Agency of India (IRDAI) introduced with immediate effect its Regulation 28(9) which establishes an Order of Preference for placement of reinsurance business. It stipulates a four-tiered system with (i) first preference going to state-owned reinsurer and any other domestic reinsurer that has three years of credit ratings (none currently exist); (ii) second preference going to branches of foreign reinsurers and any domestic reinsurer not having three years of credit ratings; (iii) third preference going to offices of foreign reinsurers in special economic zones; and

		(iv) fourth preference going to cross-border reinsurers. Furthermore, 5% of each non-life policy must be ceded to "Indian reinsurer," General Insurance Corporation.
	Indonesia	Since 2016, Indonesian insurers have been required to place all "simple risks" with domestic Indonesian reinsurers, generally a newly formed state-owned reinsurer. This includes all reinsurance of life, health, personal accident, motor, credit and suretyship business. For other insurance business ("non-simple risks"), a minimum of 25% of (re)insurance must be placed with domestic reinsurers. "Non-simple risks" and a narrow band of exempted "simple risks" must run through a tiered declinature procedure before they can be placed with foreign (re)insurers.
	Malaysia	There is a tiered system of reinsurance. Bank Negara requires all local direct insurers to cede business first to local reinsurers (first tier) and then to Labuan-based reinsurers (second tier). Only after these two options have been exhausted may business be offered to 'offshore' or third tier reinsurers. Furthermore, (a) Malaysian Re must be offered up to 15% for both proportional and non-proportional treaty reinsurance (excluding aviation, energy and D&O); (b) for facultative and engineering reinsurance Malaysian Re must be offered up to 15% of MYR 5mn on a total sum insured basis, PML monetary limit being MYR 1.5mn; (c) for retrocession, 20% must be offered by Malaysian Re to licensed direct insurers in Malaysia, for treaty and facultative business.

8. **Capital Outflow and Investment Restrictions**

- Beyond requirements to maintain adequate levels of regulatory capital, restrictions on capital outflows and currency conversions are a significant disincentive to investment in a market. Foreign insurers often need to provide additional capital to local operations to grow in a market but are disincentivized from doing so where that capital becomes effectively stranded, which can adversely impact the ability for insurers to manage capital and liquidity needs and efficiency at the group level.
- Capital outflow and investment restrictions impact risk diversification of insurers by concentrating investments in one currency. The restrictions can lead to instability in the insurance market and to changes in business strategy, product offerings and regulatory capital positions. Importantly, the restrictions inhibit the ability for insurers to achieve appropriate outcomes in the best interest and protection of policyholders.

MARKET EXAMPLES		
AMERICAS	Argentina	Restricts investment in foreign denominated assets
EAST ASIA/PACIFIC	China	China has a requirement for SAFE approval and separate Insurance Asset Management License.