

Item No. 14

Merger of AXA Vie France and XL Catlin and its impact on FRBs in India

1. XL Insurance Company SE is based in UK and its ultimately holding company is XL Group Ltd (Bermuda). XL SE India Branch was granted Certificate of Registration (CoR) to operate as a Foreign Reinsurance Branch (FRB) on 1st February, 2017 to carry on the business of reinsurance-general in India.
2. AXA France India Branch was granted CoR on 28th July, 2017 to carry on the business of reinsurance-general, life and health in India as an FRB. Its ultimate holding company was based in France.
3. XL SE Branch vide its letter dated 30th April, 2018 has informed that AXA SA proposed to acquire the XL Group and its subsidiaries which will lead to the indirect change of control of both XL SE and the FRB operating in India and sought approval for the proposed transaction and continuation of XL SE and AXA France branch. However, it was informed that XL SE Branch and AXA Branch will ultimately come under the same group i.e., AXA SA France.
4. While, the IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 is silent on whether one group entity can hold more than one CoR, Section 2(9) (d) of Insurance Laws (Amendment) Act, 2015 provides that a "foreign company" engaged in reinsurance business can transact the business of reinsurance through a branch in India. Accordingly, a branch represents its applicant company and not the group to which it belongs. However, there is no clarity on whether the same group through its companies can have presence through more than one FRB.
5. However, allowing more than one FRB in a group may lead to the following
 - (i) It may set precedence for other reinsurers situated outside India to make similar requests for setting up more than one FRB in India under a single group;
 - (ii) The entities may conduct overlapping business;

- (iii) The Regulation on FRBs provides for net owned fund requirements of Rs. 5,000 crore for a foreign company. Most of the foreign reinsurers have multiple layers of entities (subsidiary and subsidiary of subsidiary and so on). Hence, in case a group is allowed to have more than 1 FRB, there may be a likelihood of double gearing of capital for the purpose of computation of net owned funds while considering applications for grant of CoR for FRBs within the same group. Thus, verifying the compliance with the Net Owned Fund requirements as per the Regulations may be difficult.
- (iv) The structure may become complex and there may be governance issues with difficulty to assess capital adequacy, financial ability and detection of concentration of risk.
- (v) There may be difficulty in regulatory supervision, control and monitoring at the 'group' level as the complexity involved in group structure.

Further, the FRB Regulations do not place any restriction on number of branches which a FRB can have. Thus, the purpose of having more than one FRBs can be achieved by providing for a regulatory structure permitting for opening of more than one place of business by an FRB.

6. This is the first case where two foreign reinsurers having FRBs in India have merged at the holding company level. In order to understand the issue, a meeting was organized with the officials of AXA SE on 14.06.2018. Further, in order to have a policy framework, an interdepartmental meeting was conducted on 17th July, 2018, however, no unanimous view emerged in this meeting.
7. The matter was also consulted with legal Department. The Department is of the view (16th August, 2018) as the intention of the regulator is to grant only one CoR for FRB to one group and not to its subsidiaries, therefore after the acquisition becomes effective, XL Insurance Company SE, UK may be advised to surrender their registration of FRB, as they will become wholly owned indirect subsidiary of AXA France Vie.

8. While the matter was still under discussion, a request for issue of NoC for the proposed merger was received. Based the request of the FRBs, NoC for the proposed merger of XL Catlin with AXA was issued vide letter no. 229 / FNA / M&A / Non-Life / 01 / 2018-19 / 73 dated 4th September, 2018. However, NoC was subject to the condition that issue on the continuation of both Certificate of Registration of the FRBs in India involved i.e. XL SE India Branch and AXA France India Branch, will be taken up separately.
9. The business of both the FRBs remains intact, as on date, i.e. neither transferred or amalgamated. In fact, AXA France has acquired XL Catlin outside India, at least three to four levels above the parent company of XL Catlin
10. However, the following may be noted:
 - a) Regulation 2(b) of the FRB Regulation defines 'Applicant' as "*a foreign company engaged in reinsurance business other than Lloyd's*". Accordingly, a foreign company engaged in reinsurance business can only apply for grant of certificate of registration and not a group.
 - b) Further, Chapter VI onwards, the Regulations describe 'Branch' as "*A branch office of a foreign reinsurer*", according to which a branch can only be of a foreign reinsurer and not of a foreign group.
11. With reference to the definition of 'Applicant' both foreign reinsurers continued to meet the definition of 'Applicant' and were eligible to continue with their respective CoRs of the branches in India.
12. In view of the same, it was recommended that both the FRBs may be allowed to continue with their operation. However, in order to avoid conflict of interest and to ensure that two FRBs act as separate and independent entities, the following conditions may be imposed:
 - (i) Applicant company of both the FRBs will remain 2 different entities;
 - (ii) There should not be common KMPs;

- (iii) Solvency of the branches should be complied with independently;
- (iv) No sharing of services among the branches;
- (v) All transactions with FRBs and cross parent should be on arms' length basis'
- (vi) The requirement of minimum retention of 50% of the Indian reinsurance business shall be complied with by both the FRBs independently;
- (vii) All other requirements of FRB regulations shall be complied with independently.

13. However, unanimity in the matter did not emerge. Accordingly, the decision was not communicated to the FRBs.

14. In light of the same and to provide more clarity on such issue, there is need to have policy and clarity on having more than 1 FRB under one 'group'. More so, when IRDAI (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 are silent on the subject.

15. In order to provide clarity on the matter on whether one group entity can hold more than one CoR, the following is proposed:

- (i) At present, foreign reinsurer group have been granted one CoR to transact the business of reinsurance in India. Accordingly, in order to have consistency and uniformity, one group one CoR policy may be followed.

This will also be in line with the Authority's policy on allowing one group to act as a promoter of not more than one life, one non-life, one health and one reinsurance company.

- (ii) Where two or more groups have merged or amalgamated, the FRBs of such group may be allowed six months of time, within which the foreign reinsurance group has to indicate the name of FRBs which will continue to represent it and the CoR/s of other FRB shall be surrendered.
- (iii) The business of the FRB/s whose CoR has been surrendered will be taken over by the surviving FRB. Alternatively, it may be allowed to run-off.

- (iv) The FRB Regulations are already under review. As per FRBs' Regulation 2(b), *'Applicant' means a foreign company engaged in reinsurance business other than Lloyds*. Going forward, for this purpose, an explanation to Regulation 2 (b) stating that *"where the applicant falls within a group, no other entity in a group shall be eligible to apply for CoR to act as FRB in India"* may be added.

It is further proposed that a clarificatory circular may be issued till such time as the amendments are incorporated. Accordingly, AXA Group will be advised as under:

- to have either of the FRBs (AXA or XL) to continue operations in India in the name of AXA;
- the other FRB shall surrender their CoR within a period of three months. The business of FRB whose CoR has been surrendered should either be taken over by the surviving FRB or allowed under "Run off".

Placed for the consideration of the Authority.