

FROM THE CHIEF EXECUTIVE

2 February 2018

Via Email

National Association of Insurance Commissioners
Reinsurance Task Force

Attn: Jake Stultz

Dear Commissioners,

The International Underwriting Association of London (the "IUA") is pleased to provide these comments concerning implementation of the collateral reform provisions (Article 3 and Article 9) of the Bilateral Agreement between the European Union and the United States of America on Prudential Matters Regarding Insurance and Reinsurance (the "Covered Agreement"). These comments do not address any other provisions of the Covered Agreement.

We believe that the Covered Agreement is a significant event in the evolution of EU and US regulatory cooperation. It demonstrates a remarkable level of understanding and recognition of two different regulatory systems. With it, these two important and largest of the global insurance markets demonstrate how regulators can responsibly rely on each other in certain critical areas, thus avoiding unnecessary duplication of regulation and more efficient regulatory operations. Of course, the Covered Agreement makes important strides in ensuring the smooth functioning of two key reinsurance markets, and that is the focus of these comments. The Covered Agreement recognizes the strength of the US state-based system of regulation. But, it also places some immediate demands on US regulators to take prompt action to reform state laws and regulations. This public hearing is an important step in that reform process, and we strongly support your efforts to hold this meeting and are pleased to be a participant in it.

In a further effort to help you advance your work, we have attached to these comments discussion drafts of proposed amendments to the NAIC Credit For Reinsurance Model Law and Credit For Reinsurance Model Regulation. We have prepared these proposals after consultation with a number of market participants, but we will allow individual companies express support or provide other comments on them, as they wish.

By way of brief explanation of the drafts we would note:

1. We have proposed a new stand-alone section of the Model Law and the Model Regulation to apply to reinsurers who are domiciled in countries covered by the Covered Agreement – or by a future Covered Agreement. It would also apply to those reinsurers which are domiciled in a Qualified Jurisdiction to whom you wish to grant similar credit for reinsurance treatment.



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2. This structure will allow you to maintain the current Qualified Jurisdiction/Certified Reinsurer approach for other countries/reinsurers.
3. Accordingly, with this structure there will be 3 categories of non-US reinsurers trading with US ceding insurers: reinsurers with no qualification or certification who post 100% collateral; reinsurers who are domiciled in Qualified Jurisdictions and are certified reinsurers and post variable collateral; and reinsurers who are domiciled in a Covered Agreement jurisdiction or in a jurisdiction to which regulators grant similar rights.
4. The most basic components are provided in the proposed new section of the Model Law. Most of the detailed qualification and other requirements have been placed in the Model Regulation. We believe this will make it easier to explain the changes in the state legislative process and will allow greater flexibility for future changes, as they can be made by regulation, rather than legislation. It would be easy to move provisions from the regulation to the law, if you wished.

Finally, we believe it is important to define specific rules for the transition period from being a NAIC certified reinsurer (and complying with this system) to being a EU-reinsurer under the Covered Agreement and complying with the new rules established by it. The same will be needed for other reinsurers to whom regulators grant similar status. In this regard, it will be important to ensure that today's certified reinsurers do not end up in complying with both systems at the same time. To this end, we recommend that State regulators start to allow a 20% reduction of current collateral amounts (per Article 9(3)(a) of the Covered Agreement) for reinsurers maintaining a NAIC certified reinsurer status and that those reinsurers should immediately be allowed to follow the qualification requirements under the Covered Agreement and no longer be subject to the NAIC Checklist and no certified reinsurer renewal process would be required.

As part of this process we recommend that regulators use the resources of the Financial Analysis(E) Working Group [or other designated NAIC entity] to make required decisions and take appropriate action. We also suggest that the concept of a lead state regulator for reinsurers qualifying under the proposed new section of the Model Law be considered. This will help ensure a unified and efficient process of transition and implementation.

We hope that these proposals assist you in developing your new policy. We are pleased to address any questions or comments you have regarding them and to working with you to finalize and adopt these important revisions.

Yours sincerely,



David Matcham
Chief Executive

New Section 4, Credit For Reinsurance Model Law

Section 4. Credit Allowed for Cessions Governed by International Regulatory Agreements

- A. Notwithstanding any other provisions of this law, credit for reinsurance shall be allowed a domestic ceding insurer as either an asset of reduction from liability when the reinsurer is:
1. Domiciled in a country which has a binding bilateral agreement in place with the United States or any State thereof, which provides preemptive credit for reinsurance rules for such reinsurers (a "Covered Agreement"), or
 2. Domiciled in a jurisdiction approved by the NAIC or [this state] as qualifying under this Section, and which reinsurer meets the requirements for a certified reinsurer under section 2(E)1&2 of this law.*
- [*drafting note: the jurisdictional approval process will follow the process for Qualified Jurisdictions under Section 2(E)3 of this law, but with the additional decision to be made on granting qualification under this Section.]
- B. Credit shall be allowed provided the Covered Agreement remains fully enforceable and the reinsurer meets all applicable reporting and performance requirements.
- C. To the extent that any Covered Agreement provides for the phasing out of current reinsurance collateral requirements, credit for reinsurance will be subject to those collateral requirements.
- D. The provisions of this Section 4 shall apply only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. Nothing in this law shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate such reinsurance agreement or to limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for collateral or other terms in that agreement.
- E. The Commissioner shall have the authority to adopt regulations to implement the provisions of any Covered Agreement or to implement the requirements of this Section 4.

Credit for Reinsurance Model Regulation

[New] Section 9. Credit Allowed for Cessions Governed by International Regulatory Agreements

- A. Notwithstanding any other provisions of this law, credit for reinsurance shall be allowed a domestic ceding insurer as either an asset of reduction from liability when the reinsurer is:
1. Domiciled in a country which has a binding bilateral agreement in place with the United States or any State thereof, which provides preemptive credit for reinsurance rules for such reinsurers (a "Covered Agreement"), or
 2. Domiciled in a jurisdiction approved by the NAIC or [this state] as qualifying under this Section, and which reinsurer meets the requirements for a certified reinsurer under section 2(E)1&2 of the Credit For Reinsurance Model Law.*
- [*drafting note: the jurisdictional approval process will follow the process for Qualified Jurisdictions under Section 2(E)3 of the Credit For Reinsurance Model Law, but with the additional decision to be made on granting qualification under this Section.]
- B. Credit shall be allowed provided the Covered Agreement remains fully enforceable and the reinsurer meets all applicable reporting and performance requirements.
- C. For reinsurers who qualify under Section A(1) and (2) of this Section and who are currently required to post collateral in order for U.S. ceding insurers to take annual statement credit for that reinsurance, the collateral required will be reduced as required by any relevant Covered Agreement.
- D. To qualify for credit under this the reinsurer must:
1. Have own funds or capital and surplus of at least €226m, if domiciled in the EU or \$250m if domiciled in the United States (or an equivalent amount calculated according to the methodology applicable in and in the currency of the country in which the reinsurer is domiciled).
 2. Have a solvency ratio of 100% SCR under solvency II of RBC of 300% of Action Control Level (or the equivalent solvency margin under its domestic solvency regime).
 3. Agree to provide written notice to the domiciliary regulator of each of its ceding insurers in the event it falls below the required solvency margin.

4. Consent to the jurisdiction of U.S. courts for the resolution of disputes.
However, nothing in this regulation shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanism.
5. Agree to designate an agent for service of process, including designating the insurance supervisor of the domiciliary regulator of its U.S. ceding insurer as agent for service of process.
6. Consent in writing to pay all final non-appealable judgements, wherever sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
7. Agree in each reinsurance agreement subject to this regulation that it will provide collateral for 100% of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the territory in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its resolution estate, if applicable.
8. If requested, agree to provide to the NAIC Reinsurance Financial Analysis(E) Working Group [or other designated Committee, Task Force or Working Group]:
 - a. Audited annual statements, including external audit report
 - b. Financial condition and actuarial reports provided to domestic regulator
 - c. List of disputed/ overdue reinsurance claims
 - d. Details on assumed ceded business.
9. Maintain a practice of prompt payment of claims. The lack of prompt payment will be evidenced if any of the following criteria is met:
 - (i) More than 15 percent of the reinsurance recoverables are overdue and in dispute as reported to the supervisor;
 - (ii) More than 15 percent of the reinsurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer 90,400 Euro, where the assuming reinsurer has its head office in the EU, or 100,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States; or
 - (iii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute, but are overdue by 90 days

or more, exceeds 45,200,000 Euro, where the assuming reinsurer has its head office in the EU, or 50,000,000 U.S. dollars, where the assuming reinsurer is domiciled in the United States or an equivalent amount in the currency of the country in which the reinsurer is domiciled.

10. Confirm that it is not presently participating in any solvent scheme of arrangement, which involves U.S. domiciled insurers, and agrees to notify the ceding insurer and its supervisory authority and to provide 100 percent collateral to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement.
 11. Commit that in the event it becomes subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the resolution, receivership, or winding-up proceedings is pending, may obtain an order requiring that the assuming reinsurer post collateral for all outstanding ceded liabilities.
 12. Have its domestic regulator confirm on an annual basis that the reinsurer meets the solvency margins noted in Section (D) 2 above.
 13. Subject to applicable law and the terms of this Agreement, nothing in this Article shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for collateral or other terms in that reinsurance agreement.
- E. The provisions of this regulation shall apply only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect, and only with respect to losses incurred and reserves reported from and after the later of (i) the date of the measure, or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. Nothing in this Agreement shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate such reinsurance agreement.