EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

REGULATION AND PRUDENTIAL SUPERVISION OF FINANCIAL INSTITUTIONS
The Director

Brussels, 16 October 2018
FISMA.D/MM

Superintendent Maria T. Vullo,
Chair of Reinsurance (E) Task Force
National association of Insurance Commissioner
c/o Mr. Jake Stultz (via email jstultz@naic.org)

Subject: Comments on the Proposed Revisions to the Credit for Reinsurance Model Law and Regulation

Dear Superintendent Vullo,

The Directorate General for Financial Stability, Financial Services and Capital Markets Union of the European Commission appreciates the possibility to comment on the Credit for reinsurance models 785 and 786.

The Bilateral Agreement between the European Union and United States of America on prudential measures regarding insurance and reinsurance ("the Agreement"[1]) provides legal certainty for insurers and reinsurers in the application of the EU and US prudential frameworks. In this respect, the Credit for reinsurance models represent an important step in the implementation of the Agreement as stipulated in Articles 9 and 10 of the Agreement.

Comments on the Credit for Reinsurance Model Law:

1. Section 2 of the Model Law defines reciprocal jurisdiction and in: Section 2(F)(1)(a)(i) states *"in the case of an international reinsurance agreement between the United States and European Union, is a member state of the European Union, and has been determined by the Commissioner to be in compliance with all material terms of the agreement"*.

   The above mentioned section provides the commissioner with power to determine if each individual EU member state complies or not with the terms of the agreement.

   We note that the Agreement provides the benefit of reciprocal jurisdiction to the EU, as party to the Agreement. The Agreement has been concluded between the European Union and the United States and it does not provide for the possibility to treat individual member states differently. The determination of EU member states compliance should not be at the discretion of the commissioner.

   This appears to be inconsistent with the provisions of the Agreement.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1539695686400&uri=CELEX:22017A1006(01)

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2. Section 2(F)(1)(d)(ii) relates to the consent to the appointment of the commissioner as agent for service of process. The latest draft of article 2(F)(1)(d)(ii)v removes the reference to the *"under commissioner's jurisdiction"*.

   Article 3(4)(e) of the Agreement stipulates that "*where applicable for "service of process" purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority may require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction*".

   The wording of Article 3(4)e of the Agreement provides for confirmation of consent to be submitted to the Host supervisory authority only. It would appear the new wording of section 2(F)(1)(d)(ii) would mean that confirmation of consent should be submitted to each state in which the assuming insurer intends to operate.

   This appears inconsistent with Article 3(4)e of the Agreement.

3. Section 2(F)(1)(d)(ii) includes an exception for the capacity to agree on alternative dispute mechanism as follows: *"(…), except with respect to insolvency or delinquency proceedings.*"

   Article 3(4) of the Agreement stipulates: *"Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms*".

   Could you please provide explanation about the need to add the above mentioned exclusion and its consequence ?

4. Section 2F(1)(h) reads as follows *"The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement"*.

   The above mentioned section expands the requirements that the commissioner can requests from the assuming insurer, beyond what is stipulated in the Agreement. The list of conditions and requirements has been clearly limited to those that feature in Article 3(4) of the Agreement.

   As such, the proposed drafting of Section 2F(1)(h) appears inconsistent with Article 3(4) of the Agreement.

5. The revised version of section 2(F)(7) states: "*This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to liabilities ceded before the subsection's application*".

   Article 3(8) of the Agreement reads as follows *"(…) 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"*.

The inclusion of "liabilities ceded before the subsection's application" changes significantly the scope of application of the Agreement as in effect would not allow for reduction of collateral for all the range of contracts falling within the scope of the Agreement.

The proposed wording of Section 2(F)(7) is inconsistent with article 3(8) of the Agreement.

Comments on the Credit for Reinsurance Model Regulation:

6. Section 8(B)7(h) states that *"Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor".*

   Article 3(4)h of the Agreement, which specifies that *"with respect to the* ***two years*** *preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the territory of its head office, including the external audit report*".

   Therefore, the proposed drafting of Section 8(B)7(h) appears inconsistent with Article 3(4)h of the Agreement.

7. Section 9(B)(1) stipulates: "(…) *in the case of an international reinsurance agreement between the United States and the European Union, is a member state of the European Union, and has been determined by the commissioner to be in compliance with all material terms of the agreement"*, and section 9(C)(1) stipulates "*(...) and have its head office or domicile in, a jurisdiction that has been recognized as a Reciprocal Jurisdiction by the commissioner"*.

   The above mentioned section provides the commissioner with power to determine if each individual EU member state complies or not with the terms of the agreement.

   We note that the Agreement provides the benefit of reciprocal jurisdiction to the EU, as party to the Agreement. The Agreement has been concluded between the European Union and the United States and it does not provide for the possibility to treat individual member states differently. The determination of EU member states compliance should not be at the discretion of the commissioner. This would be inconsistent with the provisions of the Agreement.

8. Section 9(C)2(c) and 9(C)6 read as *"In determining whether the amount of foreign denominated capital and surplus is equivalent, the commissioner may rely upon foreign currency exchange rates acceptable to the commissioner*". Therefore it provides some discretion to the commissioner in the currency exchange rate used when determining the amount of foreign denominated capital and surplus.

   The current drafting of the regulation does not reflect the fact that the conversion of foreign denominated capital and surplus are referenced in the Agreement. Article 3(4) of the Agreement provides the euro equivalent to dollars amounts.

Therefore the regulation should add in Sections 9(C)2(c) and 9(C)6: *"if the converted amount is not already specified in an international agreement"*.

9. Section 9(C)(4) (b*)* specifically excludes "*insolvency or delinquency proceedings"* to agree on alternative dispute mechanism.

   The above mentioned exclusion does not fully reflect Article 3(4) of the Agreement which provides that: *"Nothing in this Agreement shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms*".

   Could you please provide explanation about the need to add the above mentioned exclusion and its consequence ?

10. Section 9(C)(5)(c) indicates that *"the assuming insurer or its legal successor, must provide, on behalf of itself and any legal predecessors, the following documentation to the commissioner"*

    Article 3(4)h of the Agreement states that such documents should be provided "***if requested by that supervisory authority***".

    The regulation should use language that appears in the Agreement as its aim is to reduce administrative burden.

11. Section 9(C)8 specifies that "*the assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement referred in (…)".*

    The above section expands the requirements that the commissioner can requests from the assuming insurer, beyond what has been stipulated in the Agreement. The list of conditions and requirements has been clearly limited to those that feature in Article 3(4). As such, the proposed drafting of Section 2F(1)(h) appears inconsistent with Article 3(4) of the Agreement.

    As noted, I appreciate the opportunity to offer comments on the model law and regulation. It is important that the model law and regulation reflect the provisions of the Agreement faithfully. I stand ready to continue working with you in close cooperation.

    I remain available for any questions you may have on the above comments.

Yours sincerely,

Martin MERLIN