

Client Update EU and U.S. Sign Covered Agreement

INTRODUCTION

On September 22, 2017 the European Union (the “EU”) and the United States signed the covered agreement on Prudential Measures Regarding Insurance and Reinsurance (the “Agreement”).

RECAP OF COVERED AGREEMENT

As described in our prior [client update](#), the Agreement covers three areas of prudential insurance supervision: reinsurance, group supervision, and information exchange.

With regard to reinsurance, the Agreement removes collateral and local presence requirements for EU and U.S. reinsurers operating in one another’s markets. For group supervision, insurers operating in one another’s markets will only be subject to worldwide prudential insurance group oversight by supervisors in their home jurisdiction. Finally, the Agreement’s information exchange provisions encourage EU and U.S. insurance supervisory authorities to exchange information on insurers and reinsurers that operate in the two markets.

However, significant conditions and capital requirements must be satisfied before reinsurers and cedants are eligible for equal treatment under the Agreement.

IMPLEMENTATION

The EU and the U.S. have agreed to meet within a Joint Committee to discuss the implementation of the Agreement, particularly where there are differences between EU and U.S. approaches. It will be fully applicable to both sides 60 months after signature.

Some parts of the Agreement, such as those concerning group supervision and the establishment of a Joint Committee, will be “provisionally applied” now that the Agreement has been signed.¹ Once notified that the U.S. internal requirements and procedures for provisional

¹ European Commission, EU-U.S. Agreement on Insurance and Reinsurance Fact Sheet, September 22, 2017, paragraph 1. http://europa.eu/rapid/press-release_MEMO-17-3426_en.htm

application have been completed, the EU must ensure that EU supervisory authorities apply the group supervision provisions. Furthermore, upon receipt of this notification, or within 24 months of the Agreement taking effect (whichever is sooner), the EU must begin applying the elimination of local presence requirements. The U.S., once notified that the EU's internal requirements and procedures for provisional application have been completed, must "encourage" U.S. state supervisory authorities to apply the group supervision provisions. Additionally, the U.S. must encourage individual states to phase-out their collateral requirements, some of which are already being reduced. Given the opposition of many states to these provisions, full implementation of the Agreement is likely to occur, if at all, only after a lengthy period.

FUTURE BENEFITS

A key goal of the Agreement is to "enhance regulatory certainty, while maintaining robust consumer protections".²

Prior to the start of negotiations, both U.S. and EU reinsurance groups faced various difficulties in carrying out insurance and reinsurance activities in one another's jurisdictions. The Agreement removes those barriers, affirming not only each jurisdiction's regulatory systems but also their commitments to non-discriminatory treatment and open, reciprocal, competitive insurance markets.³ This should increase the availability of insurance in both the EU and the U.S.

According to the European Commission, the volume of collateral posted by EU reinsurers amounts to \$40 billion today, which could be invested in more productive parts of the economy. This represents an opportunity cost of \$400 million a year.⁴ The EU and U.S. therefore also hope that the Agreement will reduce costs for insurers and policyholders, while preserving important consumer protection provisions.

IMPLICATIONS FOR BREXIT

The Agreement may set a precedent for future trade deals in financial services where barriers are not tariffs but licensing requirements, and for facilitating greater mutual recognition between regulatory regimes.

² Washington / Brussels, Joint Statement on the Signature of the Bilateral Agreement, September 22, 2017. https://ec.europa.eu/info/sites/info/files/170922-eu-us-joint-financial-regulatory-forum-joint-statement_en.pdf

³ Stef Zielezienski, American Insurance Association Press Release, September 22, 2017. <http://www.aiadc.org/media-center/all-news-releases/2017/september/covered-agreement-news-release%20>

⁴ European Commission, op. cit., paragraph 1.

The Agreement also highlights a possible arrangement that the UK could enter into with the EU following Brexit, whether or not the UK's insurance regime is deemed "equivalent" for the purpose of Solvency II. Furthermore, the contents of the Agreement could be incorporated into a wider bilateral trade Agreement between the UK and the U.S. post-Brexit.

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Please do not hesitate to contact us with any questions.

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