

## Communication

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### US Reinsurers

#### Scope

*Insurance and reinsurance companies under Belgian law.*

#### Summary/Objectives

*Communication regarding Bilateral Agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance.*

Dear Madam,  
Dear Sir,

The EU and the USA have signed a bilateral agreement on prudential measures regarding insurance and reinsurance (hereafter, the Agreement). The Agreement has been provisionally applicable since 7 November 2017 and entered into force on 8 April 2018. The Agreement makes it possible for reinsurance contracts to be concluded between a reinsurer from the USA and a primary insurance company or reinsurance company in the EU without the reinsurer from the USA being required to set up a branch in the respective EU member state, and without collateral requirements being imposed on the US reinsurer. This is only possible, however, if the US reinsurer meets the conditions set out in the Agreement.

Pursuant to Article 601 of the Law of 13 March 2016 on the legal status and supervision of insurance and reinsurance companies, reinsurance companies from non-equivalent third countries are subject to authorisation and local presence requirements in order to conduct reinsurance business in Belgium. The Bank recognises that, under the Agreement, provided that company-specific criteria have been met in accordance with the Agreement, authorisation and a local presence in Belgium are not required for a reinsurer from the USA to conduct reinsurance business in Belgium. In addition, pursuant to Article 198 of the said Law of 13 March 2016, the Bank can require collateral with regard to reinsurance contracts concluded with reinsurance companies from non-equivalent third countries. The Bank further recognises that, under the terms of the Agreement, provided the reinsurer from the USA meets the conditions set out in the Agreement, the Bank is no longer entitled to require collateral.

# Requirements

The relevant requirements can be found in Article 3(4) of the Agreement. The reinsurer from the USA must meet certain capital requirements ("capital and surplus") equal to at least USD 250 million (Article 3(4)(a)) as well as local risk-based capital requirements ("Authorized Control Level") equal to at least 300% (Article 3(4)(b)). Furthermore, these reinsurers have an obligation to submit certain declarations to the insurance supervisory authority responsible for the ceding insurer.

The Bank would appreciate it if reinsurers from the USA would familiarise themselves with the conditions specified in the Agreement and submit documentation to the Bank in order to demonstrate the compliance of these conditions, as detailed below.

## Documentation to be submitted

As part of the reinsurer's submission, the following documentation is to be submitted:

1. declaration from the assuming reinsurer that the assuming reinsurer will provide prompt written notice and explanation to the Bank if:
  - a. it falls below the minimum capital and surplus or own funds, as applicable, specified in Article 3(4)(a) of the Agreement, or the capital ratio specified in Article 3(4)(b) of the Agreement; or
  - b. any regulatory action is taken against it for serious noncompliance with applicable law (Article 3(4)(c));
2. a written confirmation from the assuming reinsurer regarding its consent to the jurisdiction of the courts of the territory in which the ceding insurer has its head office or is domiciled (Article 3(4)(d));
3. a written declaration that the assuming reinsurer will pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained (Article 3(4)(f));
4. submission of the following documents and information:
  - a. annual audited financial statements, in accordance with the applicable law of the territory of the head office of the assuming reinsurer, including the external audit report, with respect to the preceding two years;
  - b. solvency and financial condition report or actuarial opinion, if filed with the assuming reinsurer's supervisor, with respect to the preceding two years;
  - c. list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance contracts from ceding insurers from Belgium;
  - d. information regarding the assuming reinsurer's assumed reinsurance by ceding company, ceded reinsurance by the assuming reinsurer, and reinsurance recoverables on paid and unpaid losses by the assuming reinsurer, to allow for the evaluation of the criteria set forth in Article 3(4)(i) (Article 3(4)(h));
5. a written confirmation from the assuming reinsurer that it is not presently participating in any solvent scheme of arrangement which involves European Union ceding insurers, and a declaration that it will notify the ceding insurer and the Bank and provide 100 percent collateral to the ceding insurer consistent with the terms of the scheme should the reinsurer enter into such an arrangement (Article 3(4)(j));
6. a confirmation from the competent supervisory authority that the reinsurer complies with the risk-based capital ratio within the meaning of Article 3(4)(b) (Article 3(4)(l)). Evidence is to be provided of compliance with the capital requirements within the meaning of Article 3(4)(a).

Documentation should be sent to [Insurance.Supervision@nbb.be](mailto:Insurance.Supervision@nbb.be) or  
Insurance Supervision  
Boulevard de Berlaimont 14  
1000 Brussels

## Conditions

Furthermore, the reinsurer must satisfy the following conditions:

1. the assuming reinsurer agrees in each reinsurance agreement subject to the Agreement that it will provide collateral for 100 percent of the assuming reinsurer's liabilities attributable to reinsurance ceded pursuant to this 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 (Article 3(4)(g));
2. the assuming reinsurer maintains a practice of prompt payment of claims under reinsurance agreements; the lack of prompt payment will be confirmed if any of the criteria specified in Article 3(4)(i)(i-iii) is met (Article 3(4)(i));
3. if 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 (Article 3(4)(k)).

## Filing and enquiries

The documentation can be filed in English. If no translation of the submitted documents into French or Dutch is filed, a declaration in which the reinsurer commits to filing a translation of the documents upon the Bank's request is to be signed by the authorised representative body and submitted as an original copy.

After the reinsurer begins operating in Belgium, it must observe the information obligations in the Agreement in the future.

## List of reinsurers from the USA

The Bank will draw up a list of the reinsurers from the USA which have demonstrated to the Bank that they comply with the conditions specified in the Agreement. This list and any changes made to it will be published on the website of the Bank.

A copy of this Circular will be forwarded to the accredited auditors of your company.

Yours faithfully,

Jan Smets  
Governor