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UPDATE: EU AND US TO SIGN EU-US BILATERAL AGREEMENT ON INSURANCE AND REINSURANCE PRUDENTIAL MEASURES

On Friday, 14 July 2017, the US Department of the Treasury and the Office of the US Trade Representative ("**USTR**") announced their intention to sign the Bilateral Agreement between the US and the EU on Prudential Measures Regarding Insurance and Reinsurance (the "**Agreement**"). In addition to signing the Agreement in the coming weeks, the US Administration plans to issue a policy statement on implementation.

The Agreement, which had been negotiated between the European Commission (the "**Commission**"), the US Treasury and the USTR until 12 January 2017, had been welcomed by many trade associations and reinsurers since it calls for an end to collateral and local presence requirements for EU and US reinsurers, which have long been an issue for reinsurers operating internationally. The Agreement will also facilitate the exchange of information between supervisors.

Our briefing paper 'Impact of EU-US bilateral agreement on insurance and reinsurance prudential measures' – January 2017 highlights the key areas of the Agreement and considers its potential effect on third country (re)insurers, including those in Solvency II equivalent jurisdictions and, following the Brexit referendum result, looks at the potential impact for (re)insurers based in the UK.

BACKGROUND

The Agreement has been hailed by the US Treasury as "an important step in making US companies more competitive in domestic and foreign markets and making regulations efficient, effective and appropriately tailored", with an identical statement posted on the USTR website.

This positive announcement will seek to reassure concerns on US ratification by those in the (re)insurance sector. The concerns follow the stance taken by US officials appointed by President Trump, including Treasury Secretary Steve Mnuchin and US trade representative, Robert Lighthizer, who have until now remained noncommittal about the deal. Under terms of the Dodd-Frank Act (which provides the legal basis for a 'covered agreement' and for which

Application

- Full application of the Agreement is expected to be on the later of the Agreement coming into force and the expiration of five years from signing.
- However, the Agreement sets out, on a provision-by-provision basis, specific timelines for implementation with some obligations provisionally applying as soon as all requirements for a provisional application have been fulfilled by both parties.
- In particular, the group supervision provisions which allow US and EU insurers operating in the other market to be subject only to worldwide prudential insurance group oversight by the supervisors in their home jurisdiction will come into effect in the US on signing by the US representatives and in the EU upon signing on behalf of the EU based on the decision of the European Council of 29 May 2017.
- In addition, the parties will establish a Joint Committee in which both the US and the EU will be represented as of the beginning of the provisional application of the Agreement. This Joint Committee is meant to provide the parties with a forum for consultation and exchange of information on the administration of the Agreement and its proper implementation.

the Agreement takes the form of in the US), Mnuchin and Lighthizer must sign the Agreement to put it into effect.

On the European side, moves to ratify the Agreement have been swifter. On 29 May 2017 the European Council approved the signing of the Agreement and asked the European Parliament (the "**Parliament**") for its consent to the conclusion of the Agreement. We would expect such consent to be given in the next few months.

US REACTION

The Agreement has been met favourably by the US reinsurance and insurance industries, as well as trade bodies in the US. Tracey Laws, senior vice president and general counsel of the Reinsurance Association of America, praised the Agreement, stating: "the reinsurance industry applauds this Agreement as it provides regulatory certainty for U.S. and EU companies conducting business in both jurisdictions." Dave Snyder, vice president for international policy of the Property Casualty Insurance Association of America (the "**PCIAA**"), indicated that PCIAA "looks forward to being an active participant in the dialogue on clarification and implementation" of the Agreement and further, that the PCIAA would be "a resource to regulators and policymakers".

However, the National Association of Insurance Commissioners (the "**NAIC**"), which represents regulators overseeing the reinsurance and insurance industries in each of the fifty states, has lodged complaints against the Agreement. In the past, the NAIC criticized the agreement as being opaque and suggested that it be indicated that the Agreement should be clarified and revised to clearly preserve the rights of the fifty states to regulate the insurers within their boundaries. In a statement on July 14, Ted Nickel, NAIC President and Wisconsin Insurance Commissioner, explained: "States will have significant implementation responsibilities related to the agreement and a confirmation of interpretation will allow state regulators and legislators to undertake an informed evaluation of any necessary changes to state laws and regulations. State regulators appreciate Treasury's and USTR's willingness to work constructively with regulators on their concerns." It is anticipated that Treasury will clarify key aspects of the Agreement prior to signing to address the NAIC's concerns.

OUTLOOK

Whereas the announcement of the responsible US bodies to sign the Agreement has raised the hopes of the reinsurers active in both markets as well as the cedents that they will have legal certainty prior to this autumn's renewal season, this will only be the case, if both parties adhere to the Agreement and will not attempt to change its content in the implementation phase.

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