

boulevard de Berlaimont 14 – BE-1000 Brussels
Phone +32 2 221 37 40 – fax + 32 2 221 31 04
Company number: 0203.201.340
RPM (Trade Register) Brussels
www.nbb.be

Circular

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Contact person:

Bertrand Leton

Phone +32 2 221 23 65 – fax +32 2 221 31 04

bertrand.leton@nbb.be

Reinsurers governed by the law of a U.S. State

Scope

*Reinsurance companies governed by the law of a U.S. State
Insurance and reinsurance companies governed by Belgian law*

Summary/Objectives

This communication relates to the bilateral agreement between the European Union and the United States of America on prudential measures regarding insurance and reinsurance¹. It aims to specify which documents should be submitted to the National Bank of Belgium by a reinsurer governed by the law of a U.S. State, that intends to accept risks ceded by an insurer or another reinsurer that is subject to the prudential supervision of the National Bank of Belgium.

This communication replaces Communication NBB_2018_18.

Dear Sir,
Dear Madam,

The European Union and the United States of America have signed a bilateral agreement on prudential measures regarding insurance and reinsurance (hereinafter referred to as “the Agreement”). This Agreement was applied provisionally from 7 November 2017 and entered into force on 8 April 2018. It enables reinsurance companies governed by the law of a U.S. State to enter into reinsurance agreements with ceding insurers established in the European Union without having to establish a branch in the Member State concerned or pledge collateral.

¹ Official Journal of the European Union, L 258 of 6.10.2017, pp. 4 et seq. The text of the agreement is also available on the website of the Bank (https://www.nbb.be/doc/cp/eng/2017/20171006_bilaterale_overeenkomst_eu_vs.pdf)



1. Definitions

For the purposes of this communication, the following definitions shall apply:

- a) "U.S. State": any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands;
- b) "insurer": an undertaking which is authorised or licensed to take up or engage in the business of direct or primary insurance;
- c) "reinsurance activity": the activity consisting of accepting risks ceded by an insurer or by another reinsurer;
- d) "reinsurance agreement": a contract whereby an assuming reinsurer has accepted risk ceded by an insurer or reinsurer;
- e) "reinsurer": an undertaking which is authorised or licensed to take up or engage in the business of reinsurance activities;
- f) "ceding insurer": an insurer or reinsurer that is counterparty to an assuming reinsurer under a reinsurance agreement;
- g) "collateral": assets, such as cash and letters of credit, pledged by the reinsurer for the benefit of the ceding insurer to guarantee or secure the assuming reinsurer's liabilities to the ceding insurer arising from a reinsurance agreement;
- h) "supervisory authority": any insurance and reinsurance supervisor in the European Union or in the United States;
- i) "Bank": the National Bank of Belgium.

2. Conditions

2.1. Reinsurance activities in Belgium

In accordance with Article 600 of the Law of 13 March 2016² as modified by Article 92 of the Law of 2 May 2019, reinsurers of non-European Union countries may pursue reinsurance activities in Belgium, via the establishment of a branch or under the free provision of services, for which they have received an authorisation in their country of origin.

The Belgian Law is therefore in compliance with the Agreement, in that it does not require a reinsurer from a U.S. State to obtain prior authorisation or open a branch in Belgium in order for it to be able to pursue reinsurance activities in Belgium.

² Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.



2.2. Additional collateral

In principle, pursuant to Article 198 of the aforementioned Law of 13 March 2016 as replaced by Article 70 of the Law of 2 May 2019, the Bank may, on an individual basis, require collateral for reinsurance agreements entered into with reinsurers from non-European Union countries of which the supervisory regime, according to Article 172(3) or (6) of the Solvency II Directive, is not equivalent to that laid down in the same Directive³.

However, this is without prejudice to the international treaties to which Belgium is a party. In view of the Agreement, the Bank therefore does not require such collateral, provided that the U.S. reinsurer meets the conditions set out in the Agreement.

2.3. Conditions set out in the Agreement.

A U.S. reinsurer must meet certain conditions to be eligible for the favourable regime provided for in the Agreement. For the specifics of these conditions, please refer to Article 3(4) of the Agreement.

Additionally, U.S. reinsurers should provide the Bank with documents demonstrating their ongoing compliance with the conditions of the Agreement.

3. Documents to be submitted to the Bank

3.1. Documents

In order to allow the Bank to verify the conditions enabling it to benefit from the regime provided for in the Agreement, a reinsurer governed by the law of a U.S. State should provide the Bank with the documents listed below.

A) Before entering into a first reinsurance agreement with a ceding insurer:

- a) a confirmation from its competent supervisory authority that it complies with the risk-based capital ratio within the meaning of Article 3(4)(b) of the Agreement⁴;
- b) a statement that it will provide prompt written notice and explanation to the Bank⁵:
 - i) if it falls below the minimum capital and surplus or own funds specified in Article 3(4)(a) of the Agreement, or the capital ratio specified in Article 3(4)(b); or
 - ii) if any regulatory action is taken against it for serious non-compliance with applicable law;
- c) a confirmation:
 - i) that it consents to the jurisdiction of the Belgian courts⁶;

³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast).

⁴ Article 3(4)(l) of the Agreement.

⁵ Article 3(4)(c) of the Agreement.

⁶ Article 3(4)(d) of the Agreement.



- ii) that it consents to 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 obtained⁷;
- iii) that it will agree in each reinsurance agreement subject to the Agreement that it will provide collateral for 100 % of its liabilities attributable to reinsurance ceded pursuant to that agreement if it 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 applicable⁸;
- e) a written confirmation that it is not presently participating in any solvent scheme of arrangement, which involves ceding insurers that are subject to the supervision of the Bank, and a statement that it will notify the ceding insurer and the Bank and that it will provide 100 % collateral to the ceding insurer consistent with the terms of the scheme should it enter into such an arrangement⁹;

B) On an annual basis:

- a confirmation from its competent supervisory authority that it complies with the risk-based capital ratio within the meaning of Article 3(4)(b) of the Agreement¹⁰;

C) As soon as the relevant event occurs:

- a) an explanation of the fact¹¹:
 - i) that it fell below the minimum capital and surplus or own funds specified in Article 3(4)(a) of the Agreement, or the capital ratio specified in Article 3(4)(b); or
 - ii) that regulatory action was taken against it for serious non-compliance with applicable law;
- b) the fact that it is participating in a solvent scheme of arrangement, that it has notified the ceding insurer and that it has provided 100 % collateral to the ceding insurer consistent with the terms of the scheme¹².

D) Within fifteen days of receiving a request from the Bank:

- a) its annual financial statements with respect to the two years preceding entry into the agreement, audited in accordance with the applicable law of the territory of its head office, including the external audit report¹³;
- b) the Solvency and Financial Condition Report or the actuarial opinion, if filed with its supervisory authority¹⁴;
- c) an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers subject to the supervision of the Bank¹⁵;

⁷ Article 3(4)(f) of the Agreement.

⁸ Article 3(4)(g) of the Agreement.

⁹ Article 3(4)(j) of the Agreement.

¹⁰ Article 3(4)(l) of the Agreement.

¹¹ Article 3(4)(c) of the Agreement.

¹² Article 3(4)(j) of the Agreement.

¹³ Article 3(4)(h)(i) of the Agreement.

¹⁴ Article 3(4)(h)(ii) of the Agreement.

¹⁵ Article 3(4)(h)(iii) of the Agreement.



- d) the amounts of paid and unpaid losses, broken down according to ceding insurer and whether they relate to assumed reinsurance, ceded reinsurance or recoverable reinsurance¹⁶.

3.2. Recipient

The documents should be sent to

Insurance.Supervision@nbb.be or
Insurance Supervision
Boulevard de Berlaimont 14
1000 Brussels

3.3. Information provided on a voluntary basis

Nothing in the Agreement precludes a reinsurer from providing information to the Bank on a voluntary basis.

4. List of U.S. reinsurers

The Bank draws up a list of U.S. reinsurers which have demonstrated that they meet the conditions specified in the Agreement. This list and any changes made to it are published on the Bank's website.

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

Yours faithfully,

Pierre WUNSCH
Governor

¹⁶ Article 3(4)(h)(iv) of the Agreement.