

With the signing of the [Bilateral Agreement on Prudential Insurance and Reinsurance Measures](#) (the [Covered Agreement](#)), the EU and US have embarked on a five-year road toward cooperation on insurance and reinsurance competition, supervision and regulation.

While the main purpose of the [Covered Agreement](#) was leveling the playing field for international reinsurers and agreeing on cooperation and information exchanges in supervising insurers and reinsurers, especially those active in both the US and the EU, there are aspects of the Covered Agreement that have a potential effect on reinsurance disputes.

Article 3 of the Covered Agreement provides for certain requirements for reinsurance agreements to allow reinsurers to be free of having to post collateral as a regulatory requirement. The major import of Article 3 is relieving EU reinsurers not admitted or accredited in the US from having to post collateral equal to their liabilities under reinsurance agreements with US domiciled ceding insurers to allow those ceding insurers to take statement credit for the reinsurance provided. The elimination of the collateral requirements only applies under the specific conditions set forth in Article 3. There are capital and solvency requirements that must be met (small reinsurers will still have to put up collateral), but more relevant to disputes are some additional requirements imposed on reinsurers.

Article 3 provides that for the elimination of the collateral requirements to apply, the reinsurer must consent to the jurisdiction of the courts where the cedent is domiciled or has its head office. The reinsurer also has to consent to the cedent's supervisory authority as agent for service of process (not that different from current service-of-suit clauses). The reinsurer additionally has to consent to pay all final judgments, wherever enforcement is sought, obtained by the cedent that are enforceable in the jurisdiction where the judgment was obtained. These requirements have a strategic effect on reinsurance disputes because it requires the disputes to be resolved in the cedent's jurisdiction by consent and eliminates forum shopping. This is not all that unusual in reinsurance agreements, but when effective, it requires all EU reinsurers that qualify for elimination of collateral to give up any jurisdictional advantage they may previously have had.

Should a reinsurer resist enforcement of a final judgment or a properly enforceable arbitration award, the reinsurer must agree in the reinsurance agreement to post collateral for 100% of its liabilities under the reinsurance agreement. Obviously, an EU reinsurer that does not like the outcome of a judgment or arbitration award will be forced to post collateral to secure that award, which gives cedents a potential argument that pre-answer or pre-judgment security should be posted from the inception of the proceeding.

Moreover, Article 3 requires the reinsurer to maintain a practice of prompt payment of claims under its reinsurance agreements, the failure of which will require the posting of collateral. The requirements set forth in Article 3 (4) (i) (i)-(iii) may prompt cedents in the placement process or when a dispute starts to request information to determine if the reinsurer has more than 15% of its obligations overdue and in dispute, or more than 15% of its cedents have overdue paid loss recoverables of 90 days or more, but are not in dispute with a monetary value of €90,400 or US\$100,000, or where the aggregate amount of paid loss reinsurance recoverables are overdue by 90 days or more and have a value exceeding €45.2 million or US\$50 million.

The Covered Agreement does not preclude parties from negotiating in their reinsurance agreements provisions requiring collateral. Parties are also free to negotiate alternative dispute resolution mechanisms in spite of the consent to jurisdiction requirements. Finally, all of this applies to reinsurance agreements entered into, amended or renewed on or after the date on which a measure that reduces collateral takes effect and only for losses after that effective date.

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