

Locke Lord QuickStudy: The End of Collateral for Non-US Reinsurers Is Here

Locke Lord LLP

WRITTEN BY

[John N. Emmanuel](#) | [Robert A. Romano](#)

After years of international negotiations and NAIC deliberations, state legislatures and regulators have started the process to eliminate reinsurance collateral requirements for qualifying non-United States (U.S.) reinsurers assuming business from U.S. cedents. As we have previously reported, in January of 2017 the U.S. Department of the Treasury and the Office of the U.S. Trade Representative (U.S.T.R.) announced they had negotiated a “covered agreement” with the European Union (E.U.) to eliminate local presence and collateral requirements for qualifying reinsurers. The benefits of this arrangement extend to all E.U. countries and, under a separate covered agreement, to the United Kingdom (U.K.). In addition to these “reciprocal” jurisdictions, other “qualified” jurisdictions, such as Bermuda, Japan and Switzerland will benefit from these provisions.

U.S. state laws and regulations that do not conform to the requirements of the covered agreements by September of 2022 will be preempted by the covered agreements and become effective despite contrary state law.

In 2019, the National Association of Insurance Commissioners (NAIC) adopted amendments to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) to implement the covered agreements. These Models create a new category of non-U.S. reinsurers, so-called “reciprocal” reinsurers, which may qualify to provide reinsurance to U.S. cedents without posting collateral for reinsurance credit.

The provisions of the Model Law and Model Regulation are now being adopted by states throughout the U.S.

Once a state adopts the reciprocal reinsurance provisions, non-U.S. reinsurers licensed to transact reinsurance by, and having its head office or being domiciled in, a so-called “reciprocal” or “qualified” jurisdiction can apply in that state to dispense with the requirement to post collateral to their cedents domiciled in the state.

The principal requirements to apply for reciprocal reinsurer status under the NAIC Model Regulation include the following:

- (1) the assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, of no less than \$250,000,000;
- (2) the assuming insurer must have and maintain a minimum solvency or capital ratio, as required by the reinsurer’s reciprocal jurisdiction;
- (3) the assuming insurer must agree to provide an explanation to the insurance commissioner where approved for

reciprocal status if it falls below the minimum capital and surplus, solvency or capital ratio or if any regulatory action is taken against it for serious noncompliance with applicable law;

(4) the assuming insurer must consent to the jurisdiction of the courts of the ceding insurer's state and to the appointment of the insurance commissioner of that state as agent for service of process;

(5) the assuming insurer must consent 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 obtained;

(6) each reinsurance agreement must require the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award; and

(7) the assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement.

The ability to take advantage of the collateral elimination applies prospectively to reinsurance agreements entered into, amended, or renewed on or after the effective date of the applicable reciprocal reinsurer provisions being adopted by the state, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

To date, more than thirty jurisdictions have enacted reciprocal reinsurer legislation and close to ten of those jurisdictions have also adopted the underlying regulations. Four jurisdictions now have started to accept applications for reciprocal reinsurer status.

These changes will soon be adopted throughout the country with the result that major reinsurers from abroad will now have easier access to the U.S. reinsurance market at lesser cost.

RELATED INDUSTRIES + PRACTICES

- [Insurance + Reinsurance](#)