

PROJECT HISTORY 2019

CREDIT FOR REINSURANCE MODEL LAW (#785)

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

(Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance)

1. Description of the Project, Issues Addressed, etc.

On Sept. 22, 2017, the U.S. Department of the Treasury (Treasury Department) and the Office of the U.S. Trade Representative (USTR) signed the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (EU Covered Agreement). The EU Covered Agreement includes requirements on group capital, group supervision and reinsurance collateral. The EU Covered Agreement would eliminate reinsurance collateral requirements for European Union (EU) reinsurers

agreement, with provisions regarding group supervision, group capital, information and enforcement.

On May 15, 2019, the Task Force adopted revisions to Model #785 and Model #786 consistent with these charges during a public conference call, which were then approved by the Financial Condition (E) Committee on May 28, 2019. The revisions would eliminate reinsurance collateral requirements for "reciprocal" reinsurers that





- Adopt a Request for NAIC Model Law Development with respect to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786). Specifically, these models should be revised to (a) conform to the requirements in the Covered Agreement with respect to EU reinsurers, and (b) provide reinsurers domiciled in NAIC qualified jurisdictions other than within the EU (currently, Bermuda, Japan, Switzerland and, after Brexit, the United Kingdom) with similar reinsurance collateral reduction rules as (i) 2.7 (i) 3 (S)-3 36).

- Additional Requirements for Qualified Jurisdictions Whether any additional revisions are necessary and appropriate with respect to requirements that are applicable to the following jurisdictions: ( ) Taplb8w 1.3l.62 0 Td ( ) Tj -

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited) ~~NAIC (03482602)~~

0 Feb.20, 2018, Public Hearing On Feb.20, 2018, the NAIC held a public hearing in New York City ~~NAIC (03482602)~~





- Recognition of Qualified Jurisdictions On April 17, 2018, the Executive (EX) Committee adopted a charge to the Qualified Jurisdiction (E) Working Group to consider changes to the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions to require that qualified jurisdictions recognize

kecxe()6-6.tlc

- Commissioner Discretion: EU Jurisdiction The European Commission's comment letters argued that the draft revisions to Model #785 and Model #786 contained additional requirements on EU reinsurers that were not provided in the Covered Agreement. For example, the European Commission argued that a state insurance commissioner does not have the discretion to determine whether an individual EU



added a drafting note encouraging the states to utilize the “passporting” process under which the commissioner has the discretion to defer to another state’s determination with respect to compliance. In order to facilitate the passporting process, the states will uniformly require assuming insurers to provide the documentation described in Section 9C(5) so that other states may rely on the lead state’s determination.

275, 86.72 Tw-D Section 9C(5) - 7a4NT (t) 0.339060872185 (M) 36(283760.7(w) 24) 0239256 CTW 1.7599 J 8780v2

companies, and discussed various options in addressing this issue, but ultimately it was unable to agree upon specific language satisfactory to everyone. In addition, there were some concerns expressed with providing the commissioner additional discretion in this area. Therefore, the Task Force does not take a position on whether material adverse development coverage agreements are or should be subject to reduced collateral authorized by the changes to the model law.

- Kroll Bond Rating Agency. On Dec. 3, 2017, the Reinsurance (E) Task Force adopted the recommendation that the states may consider Kroll Bond Rating Agency as an acceptable rating agency for certified reinsurer purposes, and the Task Force adopted the Uniform Application Checklist for Certified Reinsurers with the additional language, stating that it be “recognized by the SEC to provide financial strength ratings on insurance companies” and included the proposed matrix of ratings and collateral levels for use with Kroll Bond Rating Agency. However, the Task Force could not agree on language to amend the ratings matrix found in Section 8B of Model #786 to include Kroll Bond Rating Agency.

#### 7. Any Other Important Information (e.g., amending an accreditation standard)

The Reinsurance (E) Task Force has not had formal discussions with respect to whether the current Reinsurance Ceded accreditation standard under the NAIC Financial Regulation Standards and Accreditation Program should be amended to include the current revisions to Model #785 and/or Model #786. However, these revisions would have the effect of eliminating reinsurance collateral with respect to reinsurers domiciled in reciprocal jurisdictions, so, at a minimum, it will be necessary to amend the accreditation standards to reflect these revisions with respect to Reinsurance Ceded to Certified Reinsurers, which reduce but do not completely eliminate reinsurance collateral. In addition, it is further the recommendation of the Task Force that it is necessary to expeditiously modify these standards in accordance with the Procedure for the Adoption of Additional Model Laws, Regulations or Standards for Accreditation. This waiver in procedure is necessary because the states are expected to immediately begin considering these revisions for enactment into state law and regulation due to the 60-month (five-year) period in which the states are required to enact the revisions in order to be consistent with the Covered Agreement or face potential federal preemption.

The Task Force has not determined whether these revisions should result in an “optional” accreditation standard or a “uniform” accreditation standard. The NAIC originally adopted the significant elements of the 2011 revisions to Model #785 and Model #786 as an “optional” accreditation standard. Specifically, under this optional standard, a state was not required to enact the certified reinsurer revisions to the models, but if it chose to reduce its reinsurance collateral requirements, the state’s laws and regulations must be substantially similar to the key elements

with this Section. Passporting is based upon individual state regulatory authority, and states are encouraged to act in a uniform manner in order to facilitate the passporting process. States are also encouraged to utilize the passporting process to reduce the amount of documentation filed with the states and reduce duplicate filings. It is anticipated that “lead” states will uniformly require assuming insurers to provide the documentation described in Section 9C(5) of this regulation, so that other states may rely upon the lead state’s determination.

The Task Force should consider whether the passporting process should become part of Part B accreditation requirements and require states to participate in passporting consistent with the guidance provided in the drafting note.

PROJECT HISTORY 2011

CREDIT FOR REINSURANCE MODEL LAW (#785)

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

1. Description of the Project, Issues Addressed, etc.

Under the current NAIC Credit for Reinsurance Model Law & Regulation, in order for U.S. ceding companies to receive reinsurance credit, the reinsurance must either be ceded to U.S. licensed reinsurers or secured by collateral representing 100% of U.S. liabilities for which the credit is recorded. The collateral requirements for non-U.S. licensed reinsurers have been a frequent subject of a freeze for the last several years.







•



- Prospective Application of Revisions During the course of drafting the Framework and model revisions, the Task Force has consistently taken the position that any potential collateral reductions would be phased in as any future reductions would be done on a prospective basis and any prior liabilities would remain secured at 100% collateral. Property and Casualty ceding insurers were strongly opposed to permitting reinsurance collateral under existing reinsurance agreements to be reduced or eliminated. Reinsurers and some ceding insurers would like to be able to amend existing agreements to reduce collateral requirements. At the September 19, 2011 meetings the Task Force adopted an amendment intended for clarification to address a perceived loophole with respect to the effective date of the revised reinsurance collateral requirements.

7. Any Other Important Information (e.g., amending an accreditation 4163 0 Td [

## PROJECT HISTORY 2006

### CREDITOR REINSURANCE MODEL REGULATION (#786)

#### 1. Project Description

Prior to changes made to the U.S. Bankruptcy Code §304, there existed a tension between the Reinsurance Model Regulation and the Bankruptcy Code, and which would prevail in the event of a direct challenge on point.

The Task Force adopted certain revisions to the model regulation, which was considered unnecessary and potentially inconsistent with Section 304 of the U.S. Bankruptcy Code. The revision relates to Section 10(b)(14), which governs the procedure for administering the assets of a single beneficiary trust.

In the 1990's, amendments were made to the Creditor Reinsurance Model Act and Regulation aimed at addressing concerns adopting parallel language for single beneficiary trusts (SBTs) versus multiple beneficiary trusts (MBTs). However, with the following amendment to the Bankruptcy code, that language is no longer required.

#### Bankruptcy Code Amendments

Congress recently adopted amendments to the Bankruptcy Code, including the following which can be found in a new Chapter 15 to U.S.C. Title II, §1501(d):

The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

This language is broad enough to apply to all security devices, whether MBTs or SBTs. This section makes clear and summarizes the treatment of trusts, the requirement that they be maintained in the U.S. and that assets be distributed in accordance with the laws of the state in which the trust is domiciled.

The Task Force also referred the issue to the Financial Regulation Standards and Accreditation (F) Committee so that for accreditation purposes, both the current model law and regulation as well as any amended version(s) arising from changes relating to this issue, be considered acceptable.

#### 2. Group Responsible for the Report

The project was assigned to the Reinsurance (G) Task Force. The members of the task force at the time were: Julie Bowler (MA), Chair; John Oxendine (GA), Vice Chair; Walter Bell (AL); John Garamendi (CA); Susan Cogswell (CT); Matthew Denn (DE); Thomas Hampton (DC); Kevin McCarty (FL); Michael McRaith (IL); Martin Koetters (KY); Alessandro Iuppa (ME); Glenn Wilson (MN); Alice M. Austin (NV); Roger Sevigny (NH); Steven Goldman (NJ); Howard Mills (NY); Jim Poolman (ND); Diane Koken (PA); Dorelisse Juarbe J TD [((7 (r)3.(s)-4

#### 4. General Description of the Drafting Process and Discussion of Key Issues

The issue was proposed while changes to the U.S. bankruptcy code were in the process of being amended. After the changes were reviewed, it was determined that Section 10(b)(14) was unnecessary. The proposed amendment to the Model Regulation was exposed for a 60-day comment period where no opposition came from either interested parties or regulators. Receiving no additional comments

PROJECT HISTORY 2001

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

1. Project Description

The Reinsurance (G) Task Force was charged with reviewing the Credit for Reinsurance Model Regulation to allow multi-beneficiary trust funds to be funded, in whole or in part, with certain irrevocable trust-owned