LOCKE LORD® QUICK Study
Insurance Practice

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UPDATE: US and EU Negotiate Covered Agreement on Insurance and Reinsurance Regulation

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As discussed in our prior QuickStudy issued on January 18, 2017, the US Federal Government and the European Union have come to an agreement on wide-ranging changes to reinsurance and establishment standards for the operation of insurance enterprises operating from one to another of these markets. This agreement takes the form of a "covered agreement" and contemplates eventual elimination of collateral requirements for qualifying EU reinsurers assuming business from U.S. cedents and of local presence requirements for US insurance enterprises operating or assuming business in the EU.

On January 13, 2017, the US Department of the Treasury and the Office of the US Trade Representative (USTR) announced they had negotiated that "covered agreement" on behalf of the United States (US) with the European Union (EU) and, on September 22, 2017, they announced their signatures on that covered agreement. The covered agreement (1) eliminates local presence and collateral requirements on reinsurers imposed by either the EU or the US supervisory authorities; (2) outlines the supervisory authorities' role with respect to prudential group supervision; and (3) provides for mutual support between US and EU supervisory authorities for the exchange of information.

As more fully described in our prior QuickStudy, the covered agreement will take full effect in sixty (60) months from the date of signing and requires U.S. state regulators and legislators to amend their laws and regulations to implement the provisions of the agreement. US state insurance regulatory and legislative associations have expressed a range of reactions to these announcements.

National Conference of Insurance Legislators (NCOIL) CEO Thomas B. Considine issued a statement providing, "The NCOIL has been saying for eight months that this agreement is a win for Wall Street at the expense of Main Street because companies that do not have the market presence to demand collateral contractually will lose its statutory protections and the companies large enough to demand it will continue to do so. Additionally, of course this agreement is an intrusion by both the federal government and international regulatory authorities into the U.S. state based regulation of insurance regulation that has effectively protected consumers and helped create the largest, most competitive and innovative insurance market in the world. By signing the agreement today puts that at significant risk. NCOIL and its members are profoundly disappointed."

The National Association of Insurance Commissioners (NAIC) President and Wisconsin Insurance Commissioner Ted Nickel also commented on the signing stating, "We are pleased to see Treasury and USTR clarify their interpretation of the covered agreement, as we have asked, in key areas like capital, group supervision, reinsurance and the Joint Committee. We've worked closely with Treasury and USTR on these clarifications and appreciate their affirmation of the primacy of state regulation. In the months ahead, NAIC members will assess the impact of the covered agreement on state regulation consistent with our open and transparent process, and consider any changes to insurance regulation that may be necessary."

There remains uncertainty of the impact of the covered agreement, how long it will take to implement and what form possible implementation will take. Insurance departments are assessing their options, both in the short term, in respect of how to implement current Model NAIC Law and Regulations and how to apply existing laws to reinsurer applicants. In the longer term, these regulators and the NAIC face years of serious policy issues to re-structure the very basis of reinsurance regulation in the United States.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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