

Supervisory laws and European cross-border
issues after the implementation of the
reinsurance directive: the case of France

Presentation to
AIDA Working Group on State Supervision

Zürich, October 22, 2009

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Status before the Reinsurance Directive

- Pure reinsurers not subject to direct supervision
- Collaterals required regardless of whether reinsurer established in or outside the EEA
- No obligation to post collaterals for reinsurers: cedants could only take credit for reinsurance if they obtained collateral from their reinsurer
- France strongly resisted the removal of compulsory collaterals during the discussions on the reinsurance directive

Supervision of pure reinsurers

- Pure reinsurers established in France must obtain license from the French regulator (*Comité des entreprises d'assurances - CEA*) [Article L. 321-1-1 of the Insurance Code]
- Supervision by the French supervisor (*Autorité de contrôle des assurances et des mutuelles – ACAM*) [article L. 310-1-1 of the Insurance Code]
- Reinsurers may either be limited companies (*Société Anonyme*) or mutuals
- Collaterals:
 - Collateral obligation removed when reinsurer is established in the EEA
 - Collateral obligation remains when reinsurer is located outside of the EEA, only for reinsurance (i.e. not for retrocession)
 - Collaterals still typically required by French cedants regardless of whether reinsurer is established in the EEA
 - French Insurance Code limits the categories assets which may be pledged by non-EEA reinsurers
 - Cash deposits fairly common in France

Treatment of non-EEA reinsurers

- Only restriction: collateral requirement [Article R. 332-3-3 of the Insurance Code]
- Limitations as to which assets can be pledged as collateral [Articles R. 332-17 and R. 332-2 of the Insurance Code]
- Article L. 310-1-1 of the Insurance Code authorises “*undertakings having their head office in a state which is not a member of the European Economic Area...*” to conduct their business in France
- Business can be conducted either cross border or via a branch
- If a branch is set up, non-EEA reinsurers are required to appoint a general agent (*mandataire général*) with authority to bind the company and represent it towards authorities and in front of French courts [Article R. 321-25 of the Insurance Code]

Direct insurers conducting reinsurance business

- Direct insurers may conduct reinsurance business [Article L. 310-1-1 of the Insurance Code]
- The Insurance Code provides little guidance as to the level of reinsurance business that can be accepted by direct insurers:
 - Article L. 310-1 establishes the principle of specialisation – insurers may only conduct non-insurance business (including reinsurance) as long as it remains “*of limited importance*” compared to their insurance business
 - The article refers to a decree for the implementation of the principle which was never adopted
 - A ministerial answer of September 1993 indicates that no general rule can be provided, leaving the assessment of “limited importance” to the supervisor
- Option provided by the Reinsurance Directive to authorise insurers accepting reinsurance business to use the prudent person principle for management of assets covering reinsurance technical reserves has not been used by France

Some legal issues concerning reinsurance business

- Counterparty risk relating to the treatment of cash deposits in case of insolvency of the cedant
- Tax treatment of reinsurance portfolio transfers
- Enforceability of reinsurance portfolio transfers
- Incomplete transposition for mutual reinsurers giving rise to some uncertainties

Reinsurance mediation

- Definition of (re)insurance mediation extremely wide
- Intermediaries established in the EEA may conduct business in France, subject to prior notification to their home Member State authorities
- Ambiguous drafting may create a discrimination against intermediaries established in another EEA Member State intending to appoint an agent (*mandataire d'intermédiaire d'assurances*) in France [Article R. 511-2 of the Insurance Code]
- In the absence of any provision authorising intermediaries established outside of the EEA to conduct business in France, no cross-border business possibility

Questions?

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