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## New York Insurance Department Again Drafts New Reinsurance Regulation

The New York Insurance Department has again issued a **draft of amendments** to its credit for reinsurance regulation. The proposal remains in draft form; it is not a formal proposed regulation.

Among other proposed changes, one part of the new regulation would allow New York licensed property/casualty insurers to take credit for cessions to unlicensed reinsurers who do not post security for all of their reinsurance liabilities, provided that the reinsurer has (a) at least \$250 million in surplus and (b) high ratings from two of the four recognized rating agencies (S&P, Moody's, Fitch, A.M. Best), and (c) meets other requirements. One of those requirements is that the reinsurance contract contain a clause vesting jurisdiction in U.S. courts to resolve disputes, and also a clause requiring that New York law, or the law of the cedent's domiciliary state, or the law of a state chosen by the cedent apply. Note that only the choice-of-law clause expressly allows for arbitration.

The proposed regulation states:

“Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be subject to the jurisdiction, and resolved in the courts, of the United States or any state thereof, and that the assuming insurer submits to the personal jurisdiction of such court, complies with the requirements necessary to give that court jurisdiction, abides by the final decision of that court or of an appellate court in the event of an appeal, and consents to any effort to enforce the final decision of the court in the home jurisdiction of the alien assuming insurer, including the granting of full faith and credit or comity in the home jurisdiction of the assuming insurer or any other jurisdiction where the assuming insurer is subject to jurisdiction.”

“Any dispute, suit, action or proceeding under the contract, or any dispute, suit, action or proceeding arising out of, directly, indirectly, or incidentally, or related to the contract or of the transactions and actions arising from performance of the contract are to be governed by and construed in accordance with [choose one option] the laws of the State of New York or the laws of the state in which the ceding insurer is domiciled or the laws of any state chosen by ceding

insurer. The provision does not override an agreement between the ceding insurer and the unauthorized alien assuming reinsurer to arbitrate.”

(emphasis added)

The draft amendments also would require an unlicensed reinsurer not domiciled in the U.S. to pay to the ceding company's receiver the entire amount of reinsurance for which the ceding company has claimed credit within 30 days of a liquidation, rehabilitation or conservation order involving the cedent. If the reinsurer does not pay within that time, licensed ceding companies will not be allowed to claim credit on their contracts with that reinsurer, unless the New York Superintendent of Insurance waives the payment requirement.

The public has until August 4 to file comments on the draft of the proposed regulation.

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