

## *Will North American Insurance Thrive Under the USMCA? Inter-American Dialogue Financial Services Advisor, January 17-20, 2019*

*The Inter-American Dialogue's biweekly  
FINANCIAL SERVICES ADVISOR - FEATURED Q&A  
For the period of January 17-30, 2019*

*Thomas Morante, member of the Financial Services Advisor board and chair of the Insurance Regulatory and Transactional Practice Group at Kaufman, Dolowich & Voluck, and Yani Contreras, a consultant at the firm, were published commentators in the featured Q&A for Financial Services Advisor.*

### ***Will North American Insurance Thrive Under the USMCA?***

**Q.** The new United States-Mexico-Canada Agreement, or USMCA, seeks to broaden the types of insurance products offered in the three countries by allowing the introduction of such products as long as they have not been disapproved, among other provisions. How significant are the insurance-industry clauses for the insurance sectors of the three signatories? If the successor to NAFTA wins legislative approval in the United States, Mexico and Canada, how will the provisions on insurance affect consumers? How well did the financial-sector provisions function in NAFTA, and to what extent is the USMCA an improvement? *(page 1)*

**A.** "The USMCA, designed as NAFTA's replacement, essentially preserves most of NAFTA's provisions on insurance and seeks to accommodate the modern economy by facilitating market access for new financial services without imposing limits on the number of financial institutions, cross-border financial service suppliers or the total value of financial services transactions. The treatment, most-favored nation, market access and senior management/board of directors' requirements. As with NAFTA, the application of these principles is subject to the nonconforming measures maintained by each party. A primary difference between NAFTA and the USMCA is that NAFTA's U.S. Annex on non-conforming measures did not incorporate restrictions imposed by U.S. state insurance laws. By contrast, the USMCA adopts U.S. state insurance law restrictions, which may inhibit the ability of Canadian or Mexican companies to engage in insurance business in the United States. The use of illustrative nonbinding examples as set forth in Appendix III-A of the USMCA explains what would not be permitted in the United States. For example, the appendix reflects that several U.S. states require members of boards to be U.S. citizens, and that some states don't allow non-U.S. residents to become licensed insurance intermediaries unless licensed in another U.S. state. These U.S. state restrictions suggest that Mexican and Canadian companies may need to enter the U.S. insurance market through a state whose law allows establishing an insurance business and then obtaining additional licenses in other states. By contrast, because insurance is regulated at the federal level and there are no current restrictions on incorporation and licensing of subsidiaries of foreign insurance companies, Mexico's more flexible legal environment might prove to be advantageous." *(page 3)*