



# BILTIR

BERMUDA INTERNATIONAL LONG TERM  
INSURERS AND REINSURERS

April 1, 2019

**VIA EMAIL to [jstultz@naic.org](mailto:jstultz@naic.org) and [dschelp@naic.org](mailto:dschelp@naic.org)**

Reinsurance Task Force at the National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

**RE: Proposed Revisions to the Credit for Reinsurance Model Law and Regulation**

The Bermuda International Long Term Insurers and Reinsurers (“**BILTIR**”) thanks the National Association of Insurance Commissioners (“**NAIC**”) for accepting several of the comments submitted in our letter dated October 16, 2018. We note however there were certain BILTIR comments that were not addressed in the revised March 7, 2019 version of the “*Proposed Revisions to the Credit for Reinsurance Model Law and Regulation*” (the “**Revised Proposals**”). We believe those areas are fundamental to establishing a workable framework for achieving the goals of the model revisions, and therefore merit the attention of the Task Force.

BILTIR represents 45 insurers and reinsurers and 16 associate companies servicing the long-term (life and annuity) industry. Our members account for over half of the more than \$300 billion of assets held by all long-term companies on the island, and the sector continues to grow. Approximately 73% of reserves held by the Bermuda long-term insurers and reinsurers are attributed to business with US ceding companies.

We thank you for the opportunity for BILTIR members to share our thoughts and comments on the Revised Proposals, which we outline below.

1. Treatment of Non-EU Qualified Jurisdictions

We reiterate the importance of a level and consistent playing field for EU jurisdictions under the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* and the UK under the *Bilateral Agreement Between the United Kingdom and the United States of America on Prudential Measures Regarding Insurance and Reinsurance* (collectively referred to as the “**Covered Agreements**”), and the requirements placed upon non-EU and non-UK Qualified Jurisdictions. As such, the framework in the NAIC models needs to provide certainty regarding those requirements in order for the industry and its regulators to evaluate whether the requirements are the same.

Several sections in both the Credit for Reinsurance Model Law (#785) amended March 7, 2019 (“**Model Law**”) and Credit for Reinsurance Model Regulation (#786) amended March 7, 2019 (“**Model Regulation**”) remain uncertain in this area. For example, the definition of “Reciprocal Jurisdiction” in section 9(B)(3)(e) of the Model Regulation includes “[s]uch additional factors as may be considered in the discretion of the commissioner”. Since the Model Regulation would be expected to provide additional details, this still appears to be open-ended for additional requirements to be imposed on non-EU jurisdictions.



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With respect to the proposed edits in section 9(C)(3)(c) of the Model Regulation, the implications are for an insurer domiciled in a reciprocal jurisdiction to maintain, on an ongoing basis, a minimum solvency or capital ratio as “the commissioner finds appropriate”. We suggest that this amendment adds further uncertainty and produces inconsistent requirements for EU and non-EU jurisdictions. We recommend that the Commissioner should recognize and utilize the applicable statutory minimum solvency requirement for the relevant Reciprocal Jurisdiction which would provide greater clarity around the regulations.

We note that sections F(1)(b), and (c) of the proposed amendments to the Model Law, and sections 9(B)(3)(e), 9(C)(3)(c) of the Model Regulation continue to provide for potential disparate treatment of non-EU insurers. It is imperative to our BILTIR members that the NAIC work toward a framework that treats EU and non-EU jurisdictions equivalently and provide additional clarity regarding the standards imposed on non-EU jurisdictions.

## 2. Cedant’s Insolvency

Subsection F(5) of the Model Law was amended, however we still have concerns surrounding the term ‘*conservation*,’ which requires a lower standard to secure a court order and is designed to be a lighter approach than rehabilitation or liquidation. Additionally, we suggest adding the word ‘ceded’ to describe the outstanding liabilities that the receivership court may require to be secured. Adding this word conforms to Article 3, paragraph 4(h) of the Covered Agreements. Therefore, we support the draft language of subsection F(5) of the Model Law be revised with the following language:

*“If subject to a legal process of rehabilitation, or liquidation as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities”.*

## 3. Mutual Recognition

Lastly, we note there have been amendments made in the Revised Proposals, for example section 9(B)(3)(c) of the Model Regulation, where qualified jurisdictions are explicitly required to recognize the U.S. state regulatory approach, including its approach to group supervision and group capital, in order to seek to become a reciprocal jurisdiction. We suggest these amendments be designed so that the U.S. state regulatory approach also has an obligation to mutually recognize the Reciprocal Jurisdiction’s regulatory approach including its approach to group supervision and group capital. We also recommend that explicit language be added to allow for flexibility on how mutual recognition could be achieved, including the potential for a regulatory process to meet this requirement.

We thank the NAIC for the opportunity to provide our feedback on the Revised Proposals and we are happy to address any questions you may have.



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Sincerely,

*BILTIR*

CC BILTIR Board of Directors