



October 16, 2018

VIA EMAIL to jstultz@naic.org and dschelp@naic.org

Reinsurance Task Force at the National Association of Insurance Commissioners
1100 Walnut Street
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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 July 23, 2018. We note however there were certain BILTIR comments that were not addressed in the revised September 25, 2018 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 as those revisions are finalized.

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 that for the goal of a level and consistent playing field to be fulfilled, the requirements placed upon EU jurisdictions under the the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* (the “**Covered Agreement**”) and the requirements placed upon non-EU Qualified Jurisdictions need to be identical. Likewise, 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 September 25, 2018 (“**Model Law**”) and Credit for Reinsurance Model Regulation (#786) amended September 25, 2018 (“**Model Regulation**”) remain uncertain in this area. For example, as noted in our original comment, section F(1)(h) of the Model Law proposal requires the assuming insurer to “satisfy any other requirement deemed relevant by the commissioner” for its cedant to receive the benefit of the credit for reinsurance provisions. Furthermore, the definition of “Reciprocal Jurisdiction” in section 9(B)(2)(e) of the Model Regulation includes “[s]uch additional factors as



may be considered in the discretion of the commissioner”. Since the regulation would be expected to provide additional details, the framework still appears to leave the open-ended potential for additional requirements to be imposed on non-EU jurisdictions. We recommend that further clarity be provided on what these additional requirements are.

We note that sections F(1)(b), (c), and (h) of the proposed amendments to the Model Law, and sections 9(B)(2)(e), 9(C)(3)(d) and 9(C)(8) of the Model Regulation all 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. Likewise, disparate treatment threatens the core goal of resolving credit for reinsurance and mutual recognition issues through the NAIC model process, rather than other routes of achieving treatment equivalent to the Covered Agreement.

In the same vein, we continue to seek clarity on whether the process for determining whether jurisdictions qualify as “Reciprocal Jurisdictions” will be the same as or different from the current process of determining whether jurisdictions qualify as “Qualified Jurisdictions”.

2. Cedant’s Insolvency

Subsection F(5) of the Model Law was amended, however we still believe the subsection F(5) amendments are inconsistent with the language of the Covered Agreement. Article 2, paragraph (k) of the Covered Agreement states: “if subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the resolution, receivership, or winding-up proceedings is pending, may obtain an order requiring that the assuming insurer post collateral for all outstanding liabilities (...)”. The model revisions have gone out of their way to produce inconsistent results for EU and non-EU jurisdictions.

We have additional concerns around 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 believe there is a more onerous obligation contemplated to ‘post 100% security’ rather than to ‘post collateral for all outstanding liabilities’. Therefore, we support the draft language of subsection F(5) of the Model Law be revised with the following language:

“The commissioner or the commissioner’s representative may seek from the court supervising a ceding insurer’s rehabilitation or liquidation, an order requiring that the designated reinsurer post collateral for all the designated reinsurer’s outstanding liabilities to the ceding insurer”.



3. New Changes

Lastly, we note there has been additional language added to some sections of the Revised Proposals, for example section 9(B)(2(c) of the Model Regulation, where the implication of the amendment is for qualified jurisdictions to be required explicitly to recognize the U.S. state regulatory system, including its approach to group supervision and group capital, in order to seek to become a Reciprocal Jurisdiction. We suggest the Revised Proposals be designed so that the U.S. state regulatory system also has an obligation to mutually recognize the Reciprocal Jurisdiction's regulatory system including its approach to group supervision and group capital.

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.

Sincerely,

A handwritten signature in black ink that reads "BILTIR".

CC BILTIR Board of Directors