



National Association *of* Insurance Commissioners

Summary of Findings and Determination

Germany: Federal Financial Supervisory Authority (BaFin)

Approved By:

Qualified Jurisdiction (E) Working Group	November 12, 2014
Reinsurance (E) Task Force	December 11, 2014
Executive (EX) Committee and Plenary	December 16, 2014

I. Evaluation of the German Federal Financial Supervisory Authority

The Qualified Jurisdiction (E) Working Group of the National Association of Insurance Commissioners (NAIC) has completed this Summary of Findings and Determination with respect to Germany: Federal Financial Supervisory Authority (BaFin). It is the recommendation of the Working Group that the NAIC recognize BaFin as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015, after which BaFin will be re-evaluated every five years. Finally, the Working Group recommends that California be designated the Lead State for purposes of regulatory cooperation and information sharing with BaFin. These recommendations are based on the following analysis:

II. Procedural History

The NAIC adopted the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* (Qualified Jurisdiction Process) on August 27, 2013 (which was further amended on August 19, 2014). The revised *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) (collectively, the “Credit for Reinsurance Models”) require an assuming insurer to be licensed and domiciled in a “Qualified Jurisdiction” in order to be eligible for certification by a state as a certified reinsurer for reinsurance collateral reduction purposes. The purpose of the Qualified Jurisdiction Process is to provide a documented evaluation process for creating and maintaining an NAIC list of jurisdictions recommended for recognition by the states as Qualified Jurisdictions. Toward this end, the Qualified Jurisdiction Process designates key elements believed to be basic building blocks for sound (re)insurance regulation. Each jurisdiction under consideration to be included on the *NAIC List of Qualified Jurisdictions* is requested to submit detailed information in support of these criteria. In addition, the NAIC review will also rely on publicly available reports evaluating the reinsurance regulatory practices of each jurisdiction.

The NAIC invited BaFin to participate in an expedited review under the Qualified Jurisdiction Process by letter dated August 29, 2013, and BaFin accepted this invitation in a letter dated October 15, 2013. BaFin subsequently consented for the NAIC to rely upon the information provided by a German domestic reinsurer in connection with its application for certified reinsurer status in California, with additional comments provided by BaFin. Notice of BaFin’s agreement to participate in the expedited review was sent to the FIO and the USTR on October 16, 2013. The NAIC issued public notice on its website of BaFin’s participation in the evaluation process, and requested interested parties to submit public comments with respect to BaFin by the close of business November 15, 2013. The Working Group received one comment letter by the close of the comment period, which was supportive of designating BaFin a Conditional Qualified Jurisdiction. The NAIC designated Germany as a Conditional Qualified Jurisdiction effective January 1, 2014, with the designation to continue for one year, unless: (1) an extension is granted by the Working Group; or (2) a determination is made that the jurisdiction is not a Qualified Jurisdiction.

The Working Group met in regulator-to-regulator session on September 8, 2014, to review initial findings prepared by NAIC staff to determine whether Germany should be approved as a Qualified

Jurisdiction for a 5-year period. The Working Group requested additional supplementary information from BaFin with respect to specific questions raised during this meeting, which BaFin provided to the Working Group on September 24, 2014. The Working Group provided BaFin with the Preliminary Evaluation Report on October 10, 2014, and BaFin provided a response to the initial findings and determination on November 5, 2014. This response was considered by the Working Group in the preparation of the Final Evaluation Report, which the Working Group approved on November 7, 2014.

III. Review of Evaluation Materials

Under the requirements of the Qualified Jurisdiction Process, the Working Group performed an initial evaluation of BaFin's regulatory system by using the information identified in Section A through Section G of the Evaluation Methodology (Evaluation Materials). The Working Group began by undertaking a review of the most recent Detailed Assessment of Observance on Insurance Core Principles under the International Monetary Fund (IMF)/World Bank Financial Sector Assessment Program (FSAP Report), Report on Observance for Standards and Codes (ROSC), and any other publicly available information regarding the laws, regulations, practices and procedures applicable to the reinsurance supervisory system. The Working Group also invited BaFin to provide information relative to Section A through Section G of the Evaluation Methodology in order to update, complete or supplement publicly available information. The Working Group's review was focused on how Germany's laws, regulations, administrative practices and procedures, and regulatory authorities regulate the financial solvency of its domestic reinsurers in comparison to key principles underlying the U.S. financial solvency framework and other factors set forth in the Evaluation Methodology.

The Working Group considered the following information with respect to evaluation of BaFin:

1. *International Monetary Fund (IMF) Germany: Financial Sector Assessment Program—Detailed Assessment of Observance on Insurance Core Principles (IMF Country Report No. 11/272, September 2011).*
2. *International Monetary Fund (IMF) Germany: Report on the Observance of Standards and Codes (ROSC) (IMF Country Report No. 11/170, July 2011).*
3. *Enforcement of Foreign Judgments 2014: Germany (3rd Ed., Law Business Research Ltd, 2013).*
4. *BaFin update dated December 5, 2013, regarding information provided in connection with an application for certified reinsurer status submitted to California (Confidential).*
5. *BaFin letter dated May 27, 2004, regarding Recognition and Enforcement of U.S. Civil Judgments in the Federal Republic of Germany.*
6. *Comment letters received from interested parties pursuant to notice (Confidential).*
7. *California Department of Insurance Memorandum dated December 13, 2013 (Confidential).*
8. *BaFin letter to Connecticut Insurance Department dated March 19, 2014 (Confidential).*
9. *NAIC Staff Workpapers on Initial Findings dated July 23, 2014 (Confidential).*
10. *BaFin's answers to NAIC's additional questions, September 24, 2014 (Confidential).*

IV. Standard of Review

The evaluation is intended as an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program, adherence to international supervisory standards and relevant international guidance for recognition of reinsurance supervision. The standard for qualification of a jurisdiction is that the NAIC must reasonably conclude that the jurisdiction's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is deemed acceptable for purposes of reinsurance collateral reduction, that the jurisdiction's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that the jurisdiction's laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models.

V. Summary of Findings and Recommendation

The Working Group finds that it has performed the required review of the Evaluation Materials, including review of the publicly available information, and that BaFin (through its designee) provided the Working Group with information relative to Section A through Section G of the Evaluation Methodology to update and supplement the identified public information. The Working Group further finds that interested parties were given an opportunity to comment on BaFin's application and that no objections to granting Germany Qualified Jurisdiction status were received from interested parties. Further, appropriate notice was provided to the FIO and the USTR. Based on the information provided by BaFin and the review of the Evaluation Materials, the Working Group has determined that there is no indication that Germany fails to adequately and promptly enforce final U.S. judgments and arbitration awards. The Working Group during its evaluation did note that reinsurers are not required to conduct stress tests under the current regulatory scheme, although some reinsurers do intend to conduct stress testing in preparation for Solvency II. This information will be relayed by the Working Group to the Reinsurance Financial Analysis (E) Working Group for analysis of individual certified reinsurers.

Finally, the Working Group notes that both BaFin and the California Department of Insurance are signatories to the IAIS Multilateral Memorandum of Understanding (MMoU), and that California has consented to act as the Lead State for purposes of regulatory cooperation and information sharing under the Qualified Jurisdiction Process, and further that BaFin has consented to the designation of California as the Lead State. This Lead State designation for purposes of regulatory cooperation and information sharing should not be confused with the Lead State designation by the Reinsurance Financial Analysis (E) Working Group for individual certified reinsurers for passporting purposes.

The Working Group has reached the conclusion that BaFin's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that BaFin's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that its laws and practices satisfy

the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. Therefore, it is the recommendation of the Working Group that the NAIC recognize BaFin as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction shall be valid for five years (absent a material change in circumstances), after which BaFin will be re-evaluated under the provisions of the Qualified Jurisdiction Process.