



National Association *of* Insurance Commissioners

## **Summary of Findings and Determination**

### **United Kingdom (UK): Prudential Regulation Authority of the Bank of England (PRA)**

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 Prudential Regulation Authority of the Bank of England**

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 the United Kingdom: Prudential Regulation Authority of the Bank of England (PRA). It is the recommendation of the Working Group that the NAIC recognize the PRA as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015, after which the PRA will be re-evaluated every five years. Further, the Working Group recommends that New York be designated the Lead State for purposes of regulatory cooperation and information sharing with the PRA. 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 the PRA to participate in an expedited review under the Qualified Jurisdiction Process by letter dated August 29, 2013, and the PRA accepted this invitation in a letter dated October 3, 2013. Notice of the PRA’s agreement to participate in the expedited review procedure was sent to the Federal Insurance Office (FIO) and the United States Trade Representative (USTR) on October 9, 2013. The NAIC issued public notice on its website of the PRA’s participation in the evaluation process, and requested interested parties to submit public comments with respect to the PRA by the close of business November 6, 2013. The Working Group received one comment letter by the close of the comment period, which was supportive of designating the PRA as a Qualified Jurisdiction.

The NAIC designated the United Kingdom 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 the United Kingdom should be approved as a Qualified Jurisdiction for a 5-year period. The Working Group requested additional supplementary information from the PRA with respect to specific questions raised during this meeting, which the PRA provided to the Working

Group on October 13, 2014. The Working Group provided the PRA with the Preliminary Evaluation Report on October 21, 2014, and the PRA provided a response to the initial findings and determination on November 4, 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 the PRA'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 the PRA 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 the United Kingdom'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 the PRA:

1. *Financial Stability Board Peer Review of the UK: Response to Questionnaire (April 2013) (Confidential).*
2. *Financial Stability Board (FSB) Peer Review of the United Kingdom Review Report (September 10, 2013).*
3. *United Kingdom: Insurance Core Principles Detailed Assessment of Observance (IMF Country Report No. 11/234, July 2011) (includes ROSC).*
4. *The Prudential Regulation Authority's Approach to Insurance Supervision (June 2014).*
5. *The Prudential Regulation Authority's (PRA's) approach to schemes of arrangement proposed by PRA-authorized insurers under Part 26 of the Companies Act 2006, April 2014 (Supervisory Statement | SS3/14).*
6. *Transposition of Solvency II: Part 3 (PRA, August 2014).*
7. *PRA response in relation to the Expedited Review under the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions dated October 17, 2013. (Confidential).*
8. *EU-US Comparison of Branch Requirements (Prepared in connection with the EU/US Dialogue Project) (Confidential).*

9. *Enforcement of Foreign Judgments 2014: United Kingdom (Law Business Research Ltd, 2013).*
10. *Memorandum of Understanding between New York State Department of Financial Services and Bank of England Prudential Regulation Authority.*
11. *Comment letters from interested parties received pursuant to notice (Confidential).*
12. *NAIC Staff Workpapers on Initial Findings dated July 22, 2014 (Confidential).*
13. *NAIC Staff memorandum on Actuarial Filing for Certified Reinsurer Application dated July 16, 2014 (Confidential).*
14. *PRA's answers to NAIC's additional questions, October 13, 2014 (Confidential).*
15. *PRA's response to Preliminary Evaluation Report, November 4, 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 the PRA 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 the PRA's application and that no objections to granting the United Kingdom 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 the PRA and the review of the Evaluation Materials, the Working Group has determined that there is no indication that the United Kingdom fails to adequately and promptly enforce final U.S. judgments and arbitration awards.

The Working Group during its evaluation did note following items of interest:

- In the case of *Rubin v. Eurofinance—SA*, the UK Supreme Court ruled that English courts will not enforce a foreign insolvency judgment where the English creditor was neither present in nor had submitted to the foreign court, raising questions regarding the enforceability of final U.S.

judgments in English courts. However, the Form CR-1 *Certificate of Certified Reinsurer* specifically provides that a certified reinsurer submits to the jurisdiction of any court of competent jurisdiction in the ceding company's state of domicile, thereby eliminating the principle reason the *Rubin* court refused to recognize the foreign court judgment.

- The PRA's *Consultation Paper on Transposition of Solvency II: Part 3* (August 2014) provides a discussion of third country insurance branches, and indicates that these branches may need to increase capital allocated to these branches. The PRA advised the Working Group that it intends to issue guidance to the effect that where the PRA assesses the home country prudential regime to be broadly equivalent to the UK regime then compliance with the home regime may be relied upon as tending to establish compliance with the PRA's "world-wide financial resources" rule. The PRA further advised the Working Group that it does not expect these proposals to be of any real consequence for branches until the question of what qualifies as "available assets" and "branch liabilities" is clarified by EIOPA guidelines.
- The PRA reviews all proposed solvent schemes of arrangement with consideration given to the impact on policyholders. However, UK courts have the ultimate authority to sanction a scheme of arrangement and will allow a scheme of arrangement with the agreement of 75% of creditors. The PRA recently issued Supervisory Statement SS3/14 which "explains some of the factors which the PRA will take into account when judging whether, in promoting a scheme, an insurer is acting in a manner consistent with the PRA's statutory objectives. Specifically, the PRA seeks to ensure that insurers are able (with a high degree of likelihood) to meet claims from policyholders as they fall due and that where firms wish to exit the market they do so in a way which takes proper account of the need to provide an acceptable degree of continuity of cover for policyholders." The Working Group will continue to monitor the use of schemes of arrangements, and if a solvent scheme of arrangement is ever used to involuntarily commute the obligations of a U.S. ceding company, the Working Group will initiate a review of the PRA's designation as a Qualified Jurisdiction.

Finally, the Working Group notes that the New York State Department of Financial Services has entered into a Memorandum of Understanding (MOU) with the PRA, and has consented to act as the Lead State for purposes of regulatory cooperation and information sharing under the Qualified Jurisdiction Process. 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 PRA advised the Working Group that disclosure of confidential information to the Lead State would be governed by the provisions in the bilateral MOU, which requires that the Authority requesting confidential information may only pass such information on where, inter alia, it has prior consent from the Responding Authority, has given the Responding Authority the identities of proposed recipients, and confirms that each recipient has equivalent professional secrecy requirements. Further, the PRA advised the Working Group that it would only consent to the onward transmission of confidential information to those other U.S. state supervisors with which it has an existing bilateral MOU or who are current

signatories of the IAIS MMOU. The requirement that a state must have an existing bilateral MOU or be a current signatory to the IAIS MMOU is an additional requirement to the current Lead State process and may adversely affect the availability of the passporting process for UK-based certified reinsurers.

The Working Group has reached the conclusion that the PRA's reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is acceptable for purposes of reinsurance collateral reduction, that the PRA'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 the PRA 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 the PRA will be re-evaluated under the provisions of the Qualified Jurisdiction Process.