National Association of Insurance Commissioners

Summary of Findings and Determination

Germany: Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)

Re-Evaluation of Qualified Jurisdiction

Approved By:

Qualified Jurisdiction (E) Working Group	August 22, 2019
Reinsurance (E) Task Force	October 22, 2019
Executive (EX) Committee and Plenary	December 10, 2019

I. Re-Evaluation of Germany as a Qualified Jurisdiction

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 its re-evaluation of the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), the lead insurance regulatory supervisor for Germany. It is the recommendation of the Working Group that the NAIC re-approve BaFin as a Qualified Jurisdiction and continue its designation on the *NAIC List of Qualified Jurisdictions,* to be effective as of January 1, 2020. Further, the Working Group recommends that California be 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 2011 revisions to the *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.[1]

On December 16, 2014, the NAIC Executive (EX) Committee and Plenary approved BaFin as a Qualified Jurisdiction and placed it on the *NAIC List of Qualified Jurisdictions*, to be effective as of January 1, 2015. This designation as a Qualified Jurisdiction was to be valid for five years (absent a material change in circumstances) ending on December 31, 2019, after which BaFin would be re-evaluated under the provisions of the Qualified Jurisdiction Process. Specifically, paragraph III(12)(c) of the Qualified Jurisdiction Process currently provides, as follows:

> Once approved, a Qualified Jurisdiction is subject to a re-evaluation every five years. The Periodic Evaluation may follow a similar process as that set forth above, **or such abbreviated process as the Qualified Jurisdiction Working Group may deem appropriate**. [Emphasis added].

The Working Group has determined that it would follow such an abbreviated process in its re-evaluations of the jurisdictions currently on the *NAIC List of Qualified Jurisdictions*. The Working Group met in regulator-to-regulator session on August 22, 2019, and heard a presentation by NAIC staff

[1] The Credit for Reinsurance Models were further revised on June 25, 2019, to recognize a new designation of "Reciprocal Jurisdiction" under which certain reinsurers licensed and domiciled in Reciprocal Jurisdictions are not required to post reinsurance collateral. Because BaFin's status as a Reciprocal Jurisdiction arises under a covered agreement under the Dodd-Frank Wall Street Reform and Consumer Protection Act, it is not affected by this re-evaluation of BaFin as a Qualified Jurisdiction.

on whether BaFin should be re-approved as a Qualified Jurisdiction. The Working Group considered the following information with respect to the re-evaluation of BaFin:

1. *International Monetary Fund (IMF), Germany: Financial Sector Assessment Program—Insurance Sector Supervision—Technical Note, June, 2016 (IMF Country Report No. 16/192).*
2. *Germany: Enforcement of Foreign Judgments 2019 (International Comparative Legal Guide, Global Legal Group, 2019).*
3. *Summary of Findings and Determination Germany: Federal Financial Supervisory Authority (BaFin) approved by NAIC Executive (EX) Committee and Plenary on December 16, 2014.*
4. *NAIC Staff Workpapers on Initial Review and Findings dated July 23, 2014 (Confidential).*
5. *BaFin Comment Letter (Sept. 30, 2019): "The planned amendment of § 67 (1) VAG with respect to the exemption from the license requirement in cases where the EU has concluded an agreement is now part of another legislative procedure (implementation of the Money Laundering Directive)…the leaflet describes the situation for US reinsurers with the sufficient legal clarity"*: https://www.bafin.de/dok/13008940

III. Standard of Review

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. In addition, the jurisdiction's demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system and the jurisdiction's laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models.

This same standard was deemed appropriate by the Working Group with respect to the re-evaluation of a Qualified Jurisdiction under the abbreviated process. Specifically, the Working Group determined that it would be appropriate to review a jurisdiction's most recent IMF report prepared under its Financial Sector Assessment Program (FSAP), and any other documentation that the Working Group would consider to be relevant to this determination. In addition, the Working Group would consider its past experience in working with the Qualified Jurisdiction and any certified reinsurers domiciled in the Qualified Jurisdiction.

IV. Summary of Findings and Recommendation

Upon review of the available information, the Working Group has reached the conclusion that BaFin's reinsurance supervisory system continues to achieve 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 continue to be 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 continue to recognize BaFin as a Qualified Jurisdiction and place it on the *NAIC List of Qualified Jurisdictions*, with such re-evaluation to be effective as of January 1, 2020.