



National Association of Insurance Commissioners

**Summary of Findings and Determination**

**BERMUDA MONETARY AUTHORITY**

*Evaluation of Reciprocal Jurisdiction*

Approved By:

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| Qualified Jurisdiction (E) Working Group | November 5, 2019  |
| Reinsurance (E) Task Force               | December 8, 2019  |
| Executive (EX) Committee and Plenary     | December 10, 2019 |

## **I. Evaluation of Bermuda Monetary Authority as Reciprocal 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 the evaluation of the Bermuda Monetary Authority (BMA), the lead insurance regulatory supervisor for Bermuda, as a Reciprocal Jurisdiction. It is the recommendation of the Working Group that the NAIC approve the BMA as a Reciprocal Jurisdiction and place it on the *NAIC List of Reciprocal Jurisdictions*, to be effective as of January 1, 2020. Further, the Working Group recommends that the BMA's status as a Reciprocal Jurisdiction only be applicable to (re)insurers of Class 3A, Class 3B and Class 4, and long-term (re)insurers of Class C, Class D and Class E, which is consistent with the approval of the BMA as a Qualified Jurisdiction. Finally, the Working Group recommends that Florida be the Lead State for purposes of regulatory cooperation and information sharing with the BMA. These recommendations are based on the following analysis:

## **II. Procedural History**

On September 22, 2017, the United States and the European Union (EU) entered into the "*Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance*." A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements (collectively referred to as the "Covered Agreements") will require the states to eliminate reinsurance collateral requirements for reinsurers licensed and domiciled in these jurisdictions within 60 months (five years) after signing or face potential federal preemption by the Federal Insurance Office (FIO) under the Dodd-Frank Act.

The NAIC adopted revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) (collectively, the "Credit for Reinsurance Models") 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. A Qualified Jurisdiction which meets certain additional requirements described in the Credit for Reinsurance Models may be determined to be a Reciprocal Jurisdiction under the revised Credit for Reinsurance Models.

A list of Reciprocal Jurisdictions will be published through the NAIC committee process. Jurisdictions subject to an in-force Covered Agreement and states that meet the requirements of the NAIC Financial Standards and Accreditation Program are automatically included on the List of Reciprocal Jurisdictions. A state must consider this list in its determination of Reciprocal Jurisdiction status, and if the state approves a jurisdiction not on this list, the state must thoroughly document the justification for approving this jurisdiction in accordance with the standards for approving Reciprocal Jurisdictions contained in the Credit for Reinsurance Models

On October 22, 2019, the Reinsurance (E) Task Force updated and revised the *Process for Evaluating Qualified and Reciprocal Jurisdictions* to specify how Qualified Jurisdictions that recognize key NAIC solvency initiatives, including group supervision and group capital standards, and also meet the other

requirements under the revised Credit for Reinsurance Models, will be recognized as Reciprocal Jurisdictions and receive similar treatment as that provided under the EU and UK Covered Agreements, including the elimination of reinsurance collateral and local presence requirements by the states.

### **III. BMA's Status of a Qualified Jurisdiction**

A Qualified Jurisdiction may not be reviewed for inclusion on the *NAIC List of Reciprocal Jurisdictions* unless it remains in good standing with the NAIC as a Qualified Jurisdiction. The NAIC originally designated the BMA as a Conditional Qualified Jurisdiction effective January 1, 2014, with the designation to continue for one year. On December 16, 2014, the NAIC approved the BMA 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 the BMA would be re-evaluated.

The Working Group met in regulator-to-regulator session on October 7, 2019 and re-approved the BMA as a Qualified Jurisdiction. The Reinsurance (E) Task Force is expected to approve the re-evaluation of the BMA as a Qualified Jurisdiction, which is expected to be confirmed by the NAIC Executive (EX) Committee and Plenary at its 2019 Fall National Meeting. This *Summary of Findings and Determination* with respect to the BMA as a Reciprocal Jurisdiction is expressly made contingent upon the NAIC's re-approval of the BMA as a Qualified Jurisdiction.

### **IV. Written Confirmation**

In making its recommendation with respect to whether a Qualified Jurisdiction that is not automatically designated as a Reciprocal Jurisdiction should be added to the *NAIC List of Reciprocal Jurisdictions*, the Qualified Jurisdiction Working Group shall undertake the following analysis in making its evaluation:

1. The Qualified Jurisdiction must confirm that an insurer which has its head office or is domiciled in that jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance assumed by insurers domiciled in that jurisdiction is received by United States ceding insurers;
2. The Qualified Jurisdiction must confirm that it does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by that jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;
3. The Qualified Jurisdiction must recognize the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by its competent regulatory authority that insurance groups that are domiciled or maintain their worldwide headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to their U.S. home jurisdiction's worldwide prudential insurance group supervision, including worldwide group

governance, solvency and capital, and reporting, as applicable, and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the Qualified Jurisdiction;

4. The Qualified Jurisdiction must provide written confirmation by its competent regulatory authority that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the states in accordance with a memorandum of understanding or similar document between a state and the Qualified Jurisdiction, including but not limited to the IAIS MMoU or other multilateral memoranda of understanding coordinated by the NAIC. This requirement may be satisfied by an MOU with a Lead State, which shall provide for appropriate confidentiality safeguards with respect to the information shared between the jurisdictions, similar to the MOU requirement outlined in paragraph 11 of this section III; and
5. The Qualified Jurisdiction must confirm that it will provide to the states on an annual basis confirmation that each eligible assuming insurer that is domiciled in the Qualified Jurisdiction continues to comply with the requirements set forth in in Section 9C(2) and (3) of Model #786; i.e., must maintain minimum capital and surplus of no less than \$250,000,000, and maintains on an ongoing basis the required minimum solvency or capital ratio, as applicable.

The BMA provided the NAIC and the chief insurance regulators of the 50 states, the District of Columbia and five U.S. territories with this written confirmation by letter dated October 30, 2019. The Qualified Jurisdiction Working Group performed a due diligence review of available public and confidential documents to confirm that to the best of its determination, the representations in the letter are true and accurate on November 5, 2019.

## **V. Minimum Solvency or Capital Ratio**

The Qualified Jurisdiction Working Group, working in coordination with the Qualified Jurisdiction and the Reinsurance Financial Analysis (E) Working Group, must make a determination on a minimum solvency or capital ratio under which reinsurers licensed and domiciled in the Qualified Jurisdiction may assume insurance from U.S. ceding companies without posting reinsurance collateral. The applicable minimum solvency or capital ratio must be an effective measure of solvency, comparable to either an NAIC risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, or one hundred percent (100%) of the solvency capital requirement (SCR) as calculated under the Solvency II Directive issued by the European Union, giving due consideration to any applicability decision made by the European Commission (EC) based on assessments conducted by the European Insurance and Occupational Pensions Authority (EIOPA) on the Qualified Jurisdiction with respect to Solvency II.

In a Note dated September 27, 2019, the BMA advised the NAIC that Bermuda's risk-based solvency regime for commercial (re)insurers (Bermuda Enhanced Regime) reached full Solvency II equivalence on 24th March 2016. The regulatory capital requirement for the Bermuda Enhanced Regime is designated Enhanced Capital Requirement (ECR). Full Solvency II equivalence means that the EC and

EIOPA recognize the Bermuda Enhanced Regime as producing equivalent outcomes to Solvency II, namely that a 100% Enhanced Capital Requirement (ECR) ratio is equivalent on an outcome basis to a 100% Solvency II SCR ratio. The BMA also advised the NAIC that it considers a 100% ECR ratio produces results equivalent to a 300% RBC ratio on an outcomes basis. Furthermore, the BMA advised that it had made some enhancements to certain aspects of its Bermuda Enhanced Regime in 2018, which became effective on January 1, 2019. The BMA further reported that in July 2018, the BMA engaged with EIOPA in a series of meetings as part of the monitoring of its Solvency II equivalence status. The overall assessment was “positive” which means that EIOPA confirmed that the Bermuda Enhanced Regime remains fully Solvency II equivalent and that a 100% ECR ratio as calculated under the revised rules remains equivalent on an outcome basis to a 100% Solvency II SCR ratio.

The Qualified Jurisdiction Working Group approved 100% ECR as the minimum solvency or capital ratio for reinsurers domiciled in Bermuda, and the Reinsurance Financial Analysis (E) Working Group approved 100% ECR as the minimum solvency or capital ratio on October 11, 2019.

## **VI. Summary of Findings and Recommendation**

Therefore, it is the recommendation of the Qualified Jurisdiction Working Group that the NAIC recognize the BMA as a Reciprocal Jurisdiction and place it on the *NAIC List of Reciprocal Jurisdictions*, with such evaluation to be effective as of January 1, 2020. Further, the Working Group recommends that the BMA’s status as a Reciprocal Jurisdiction only apply to (re)insurers of Class 3A, Class 3B and Class 4, and long-term (re)insurers of Class C, Class D and Class E. Finally, the Working Group recommends that the minimum solvency or capital ratio for eligible reinsurers domiciled in Bermuda to be a 100% ECR ratio.