

Guidance for US Reinsurers Carrying Out Reinsurance Business With Primary Insurance or Reinsurance Undertakings in Germany

The Federal German Financial Supervisory Authority (BaFin) recently published a [Guidance Notice](#) related to the business activities of reinsurers from the US carrying out reinsurance business with primary insurance or reinsurance undertakings in Germany.

The Guidance Notice relates to the fact that the European Union (EU) and the US have signed a bilateral agreement that, among other things, will make it possible for reinsurers from the US to carry out reinsurance business with primary insurance or reinsurance undertakings in the EU without a branch being required in the relevant EU member state (Bilateral Agreement between the EU and US on prudential measures regarding insurance and reinsurance or Agreement).

If the undertaking-specific criteria set out in the Agreement are met, no authorization or branch under section 67 (1) sentence 1 of the German Insurance Supervision Act (*Versicherungsaufsichtsgesetz – VAG*) is required to carry out reinsurance business in Germany. The relevant requirements can be found in Article 3(4) of the Agreement. These relate on the one hand to certain financial conditions. The reinsurer from the US must meet certain capital requirements (“capital and surplus” of at least EUR 226 million (Article 3(4)(a) of the EU-US Agreement)) as well as certain local risk-based capital requirements (at least 300% “Authorized Control Level” (Article 3(4)(b) of the EU-US Agreement)). On the other, reinsurers from the US are required to submit certain declarations to the insurance supervisory authority responsible for the ceding insurer and to meet further conditions applying to their business activities. A distinction is made here between initial and subsequent submissions as summarized below.

The following documents must be submitted to BaFin for the initial submission:

- A declaration by the assuming reinsurer that it will provide prompt written notice and explanations to BaFin
- A written confirmation by the assuming reinsurer regarding its consent to the jurisdiction of the courts of the territory in which the ceding insurer has its head office or is domiciled (Article 3(4)(d) of the Agreement)
- A written declaration that the assuming reinsurer will pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained (Article 3(4)(f) of the Agreement)
- Submission of annual audited financial statements, solvency and financial condition reports or actuarial opinions, a list of all disputed and overdue reinsurance claims outstanding for 90 days or more, information regarding the assuming reinsurer’s assumed reinsurance by ceding undertaking, ceded reinsurance by the assuming reinsurer, and reinsurance recoverable on paid and unpaid losses by the assuming reinsurer, and the aggregate amount of reinsurance recoverables due from the reinsurer from the US that are not in dispute but are overdue by 90 days or more

- Written confirmation by the assuming reinsurer that it is not presently participating in any solvent scheme of arrangement that involves EU ceding insurers, and a declaration that it will notify the ceding insurer and BaFin and provide 100% collateral to the ceding insurer consistent with the terms of the scheme should the reinsurer enter into such an arrangement, and
- Confirmation by the competent authority that the reinsurer complies with the risk-based capital ratio

Under the Agreement, BaFin can periodically require reinsurers from the US to submit further documents. BaFin expects the following documents to be submitted each year:

- Annual audited financial statements in accordance with the applicable law of the territory of the head office of the assuming reinsurer, including the external audit report
- A list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance contracts from ceding insurers from Germany
- Information regarding the assuming reinsurer’s assumed reinsurance by ceding company, ceded reinsurance by the assuming reinsurer, and reinsurance recoverable on paid and unpaid losses by the assuming reinsurer, and
- Confirmation by the competent authority that the reinsurer complies with the risk-based capital ratio

BaFin presumes that the documents will be submitted directly after the audit of the annual financial statements within the meaning of Article 3(4)(h)(i) of the Agreement. Further, original versions of all declarations by the assuming reinsurer referred to above must be submitted to BaFin in writing and signed by the governing body authorized to represent the assuming reinsurer. Scans are not sufficient in this respect. The documentation can be filed in English. If no translation into German of the submitted documents is filed, an original version of a declaration, signed by the governing body authorized to represent the assuming reinsurer, must be submitted in which the reinsurer undertakes to submit a translation of the documents to BaFin upon request.

Submissions and questions can be sent by email to reinsurance@bafin.de. However, it should be noted that the declarations referred to above must be submitted to BaFin as original documents, not merely as scans. The other documents can be submitted electronically.

Contacts

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