

# Report

on the audits conducted by the

**Federal Financial Supervisory Authority**

*(Bundesanstalt für*

*Finanzdienstleistungsaufsicht – BaFin)*

at ten German life insurance companies pursuant to  
number 8 of Annex I to the Agreement Concerning Holocaust Era Insurance  
Claims of 16 October 2002

presented by

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Bonn, 28 December 2005

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## **A Basis and Procedures**

## **I Agreements**

### **1. Agreement of 16 October 2002**

On 16 October 2002

- the Foundation “Remembrance, Responsibility, and Future”,
- The International Commission on Holocaust Era Insurance Claims (“ICHEIC”) and
- The German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft e. V. or “GDV”)

entered into an agreement on insurance policies from the Holocaust period (hereinafter referred to as “Agreement of 16 October 2002”, Enclosure 1). This Agreement settles individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice.

The BaFin participated in the implementation of this Agreement in two areas: the provision of policyholder lists and the carrying out of audits under Annexes H and I respectively of the Agreement. This report is concerned solely with audits.

### **2. Contract between the ICHEIC and the BaFin**

#### **Objective of audits**

The BaFin conducted on-site investigations at ten German life insurance companies with the assistance of two Observers who were suitably qualified and appointed by the ICHEIC. The objective of these audits was to ensure that the insurance companies satisfactorily met each of the five Standards

set out in Exhibit 2 of Annex I to the Agreement of 16 October 2002 (Enclosure 3). The individual Standards read as follows:

Standard 1:

Whether the companies have established an accurate "family tree" identifying all their relevant companies and branches operating during the period 1920- 1945. This "family tree" should cover all life insurance branch offices and subsidiaries of the company operating inside Germany or in other relevant territories occupied by the Third Reich in the period 1938-1945 and also any portfolio acquired from other companies which includes policies in force during the 1920-1945 period. Relevant companies should include any subsidiary or branch office where a control-relationship exists today or, in countries where nationalization occurred, where control existed before nationalisation. The "family tree" should be authenticated by the supervisory authority.

Standard 2:

Whether the companies have made all reasonable efforts to find, secure and organise all relevant archive sites, containing archives and records relevant to policies in force in the period 1920-1945.

Standard 3:

Whether the companies have made all reasonable efforts to identify and secure all surviving relevant policy files and other company records. "Other company records" is to be widely interpreted as covering e.g., name cards, life policy registers, reserving registers, correspondence, compensation files and any other document likely to contain details about the policyholders of life insurance policies, whether paid or unpaid, which were in force in the period 1920-1945.

Standard 4:

Whether the companies have or have established electronic or manual databases which they can use to carry out an effective search of their records of relevant life insurance policies, wherever reasonably possibly solely on the basis of the policyholder names submitted by the claimants.

Standard 5:

Whether the companies have developed fair and efficient systems and procedures for the investigation of all claims received in accordance with the provisions of the Agreement, with the investigation system described in a work-flow chart. It is desirable that each claims file will contain a complete audit trail allowing auditors to validate, on a sample basis, whether the investigation has been carried out in accordance with the agreed claims handling procedures and with the other relevant provisions of the Agreement.

Annex I to the Agreement of 16 October 2002 (Enclosure 2) contains two references with regard to the level and degree of compliance with these Standards:

- First, paragraph 4 is intended to ensure that the life insurance companies satisfactorily meet each of the agreed Standards;
- second, the chosen wording of the certificate ("Testat") under paragraph 6 intends to ensure that the audited company is, in all material respects, in compliance with the Standards.

For the purpose of carrying out these audits, the President of the BaFin commissioned the Deputy-President to co-ordinate and organize all activities of the BaFin for the purpose of intensive and trusting co-operation with the ICHEIC. The aim was to support the goals of the ICHEIC by using

the particular possibilities and powers of the BaFin in order to meet the legitimate expectations of the victims and their heirs in the best possible way.

## **II Structure of Audits**

The audits were organised and carried out pursuant to Annex I of the Agreement of 16 October 2002.

### **1. Audit Teams**

Each of the on-site teams was headed by a Senior Director, Director or Senior Advisor with the BaFin. In addition, experienced experts from the Insurance Supervision department, were recruited for the special issues which were outside the usual supervisory routine. These experts were supported by their own qualified Directors or (Senior) Advisors who also acted as auditors. The teams were thoroughly trained in both the historical background and the provisions of Annex I of the Agreement of 16 October 2002 (Enclosure 2).

### **2. Observers**

In addition to the BaFin team members, two teams of two Observers each were appointed by the ICHEIC pursuant to paragraph 9 of Annex I to the Agreement of 16 October 2002 (Enclosure 2). The teams participated in six and four audits respectively.

The Observers had two roles in assisting the BaFin auditors:

- they acted as full and active members of the audit team, with the opportunity to take the same part in the preparation of this report as the auditors selected by the BaFin, and



- acted as Observers on behalf of ICHEIC.

The Observers affirmed to the President of the BaFin that they would maintain confidentiality according to Section 84 of the German Insurance Regulatory Law (*Versicherungsaufsichtsgesetz – VAG*)

### 3. Conduct of the Audits

#### a) Legal Basis

The audits were conducted in accordance with Sections 81 and 83 of the German Insurance Regulatory Law. Accordingly, the investigations complied with the rules of the German supervisory law, and the execution and extent of these investigations corresponded to common supervisory practice.

#### b) Preparation

The BaFin informed each company to be audited approximately six weeks in advance requesting a detailed preparatory report on the measures taken with regard to the five Standards under consideration. The reports were to be submitted so as to provide adequate lead time prior to the start of the field work. The reports were made available to all members of the relevant audit team so that they could prepare themselves thoroughly.

Each of the competent departments at the BaFin compiled an official “family tree” for each company which was also made available to the members of the audit teams prior to their visit.

#### c) On-site work

Each audit began with an initial meeting between the audit team, the board of directors and the participating employees of the company. At the end of

the field work, a similar meeting was held to review in detail the results of the audit.

## **B Audit Findings**

## **I Overall Results**

### **1. Findings**

All ten companies were found to be compliant in all material respects, with the Standards set out in Exhibit 2 of Annex I to the Agreement of 16 October 2002 (Enclosure 3).

### **2. Certificates (“Testate”)**

The BaFin, with the agreement of the ICHEIC Observers, provided all ten audited companies with a certificate (“Testat”) pursuant to the provisions of paragraph 6 of Annex I to the Agreement of 16 October 2002 (Enclosure 2), stating that they are, in all material respects, in compliance with the Standards set out in Exhibit 2 of Annex I to the Agreement of 16 October 2002 (Enclosure 3).

The Audits have produced the following findings in relation to each Standard.

## **II Individual Criteria**

### **1. Standard 1: “Family tree”**

The BaFin matched the “family trees” presented by the companies against the “family trees” established by the competent department at the Authority and came to the conclusion that the “family trees” submitted by the companies were complete and correct in all material respects and covered all subsidiaries of the audited life insurance companies as well as mergers and portfolio transfers.

## 2. Standard 2: Search for archives

Documents, interviews with contemporary witnesses, including retired employees, and the detailed explanations of all audited companies convinced the auditors that the companies had searched for relevant company archives with utmost care and thoroughness. Nevertheless, many companies had only very few records from the relevant time in their archives, many documents having been irretrievably lost due to:

- devastation during World War II;
- Communist expropriation after the end of the war, and
- routine destruction of records following the expiry of statutory retention periods.

## 3. Standard 3: Securing all surviving records

The auditors found that the surviving relevant records were all properly kept by the audited companies. The records were well-protected from unauthorised access, fire, vermin and other hazards. All of the companies had instructed their employees early on not to destroy any records concerning the relevant period.

## 4. Standard 4: Databases

The audit teams investigated the means whereby the companies had made their records available for searching, whether manually or by databasing electronically and using automated searches. Whilst there is no specific requirement under the Agreement of 16 October 2002 or any of the Annexes attached thereto (Enclosures

1 – 3) for records to be databased electronically, the companies had nevertheless databased up to 1.3 million records in some cases, and had databased close to 100% of the surviving complete (i.e. first name, last

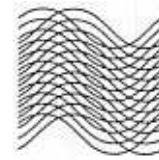
name, date of birth) records. Furthermore, some companies had also databased incomplete records, notwithstanding that such well-intentioned efforts did not have an effect on the claims of the victims or their heirs.

The audits showed that the companies include all records that are available to them when investigating a claim. Furthermore, in some cases, claimants' interests were increased by the companies taking into account name variations notwithstanding that there was no obligation to do so.

### 5. Standard 5: Claims processing

The audits were carried out while the companies were still handling claims. Consequently, the audit teams were able to examine the process as it was being undertaken, thereby enabling them to obtain a clear understanding of the process.

The procedure for processing incoming claims differed from company to company. Nevertheless, all audited companies investigated the claims without unnecessary delay by using all available company data that may be relevant. The working instructions varied significantly depending on the individual archiving situation and differences in general company policy. The audit teams satisfied themselves that all of the companies' claims processing procedures were transparently structured in all material respects and that they met or exceeded the requirements set out in Exhibit 2 of Annex I to the Agreement of 16 October 2002 (Enclosure 3).



Bonn, 28 December 2005

A handwritten signature in black ink, appearing to read 'Kaulbach', written in a cursive style.

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Detlef Kaulbach

Enclosure 1



## **Agreement Concerning Holocaust Era Insurance Claims**

This Agreement is entered into by and among the Foundation “Remembrance, Responsibility, and Future” (hereinafter referred to as the “Foundation”), the International Commission on Holocaust Era Insurance Claims (hereinafter referred to as “ICHEIC”), and the German Insurance Association (hereinafter referred to as the “GDV”) regarding the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice and by the Foundation and ICHEIC regarding payments to the Humanitarian Fund of ICHEIC.

WHEREAS, on July 17, 2000 an Executive Agreement was executed between the Government of the Federal Republic of Germany and the Government of the United States of America concerning the Foundation (hereinafter referred to as the “Executive Agreement”); and

WHEREAS, on July 17, 2000 a Joint Statement was executed between the Government of the Federal Republic of Germany, the Government of the United States of America and the Government of Israel, among others, (hereinafter referred to as the “Joint Statement”); and

WHEREAS, effective August 12, 2000 the Federal Republic of Germany enacted the German Federal Law to establish the Foundation (hereinafter referred to as the “Foundation Law”); and

WHEREAS, the parties to this Agreement:

- Recognizing the political and moral responsibility of Germany for the victims of the genocide and other severe human rights violations committed against the Jewish people and people of other nations;
- Recognizing that German insurance companies wish to respond to their moral and historical responsibility arising from their participation in the injustices of the National Socialist Regime. These injustices resulted in the suffering and losses of their policyholders during the Holocaust era;
- Recognizing the heavy losses of property, financial and other assets belonging to the Jewish people and other victims of the National Socialist Regime, including the proceeds of insurance policies;

- Recognizing that the Federal Republic of Germany has provided comprehensive and extensive restitution and compensation for material wrongs caused by the National Socialist persecution, including damage to property and losses of insurance policies;
- Recognizing the legitimate interest German insurance companies have in all embracing and enduring legal peace in this matter;
- Recognizing that German insurance companies, having contributed substantially to the financing of all the Foundation's objectives, including compensation of unpaid or confiscated and not otherwise compensated insurance policies, cannot be expected to contribute again to the compensation of any wrongs committed during the National Socialist era and World War II;
- Recognizing that it is in the interest of all parties to this Agreement to have a resolution of the outstanding issues in a non-adversarial and non-confrontational way;
- Confident that ICHEIC, the Foundation and the GDV will provide a just and expeditious mechanism for making payments on individual claims on unpaid or confiscated and not otherwise compensated policies.

The parties have agreed as follows:

**Section 1. Scope of the Agreement**

- (1) The parties to this Agreement agree to work together in a close and trustful cooperation in order (i) to compensate unpaid or confiscated and not otherwise compensated insurance policies of German insurance companies (ii) to ensure that the terms of this Agreement are followed in full by all parties and (iii) to make the claims processing efficient, effective and responsive to claimants.
- (2) For this purpose 76,693,784 Euro (150 million Deutschmark) pursuant to Section 9, Paragraph 4, Sentence 2, Number 3, of the Foundation Law and an additional 25,564,594 Euro (50 million Deutschmark) from interest earned by the Foundation's capital pursuant to Section 9, Paragraph 5 of the Foundation Law shall be made available to cover this compensation and the costs as set out in

Section 6 (1). Monies from those funds may also be used for the other purpose in each case.

- (3) In the event that the funds of 102,258,376 Euro (200 million Deutschmark) should not be completely drawn down after all approved claims and the agreed costs pursuant to Section 6 (1) have been met, the monies not used shall be transferred to the Humanitarian Fund of ICHEIC as created in Section 9, Paragraph 4, Sentence 2, Number 5 of the Foundation Law (hereinafter referred to as the Humanitarian Fund).
- (4) If approved claims against German insurance companies cannot be covered by the funds pursuant to Section 9, Paragraph 4, Sentence 2, Number 3 and Paragraph 5 of the Foundation Law, the Foundation shall make available up to 51,129,188 Euro (100 million Deutschmark) from the Fund “Remembrance and the Future” to meet those claims.
- (5) The payment of 178,952,160 Euro (350 million Deutschmark) to the Humanitarian Fund pursuant to Section 9, Paragraph 4, Sentence 2, Number 5 of the Foundation Law shall be effected according to the provisions in Section 7 of this Agreement.

## **Section 2. Eligible Claims**

- (1) A claim concerning a life insurance policy is eligible for compensation, if
  - (a) the claim relates to a life insurance policy in force between January 1, 1920 and May 8, 1945 and issued by or belonging to a specific German company and which has become due through death, maturity or surrender; and
  - (b) the insurance policy was not paid or not fully paid as required by the insurance contract or was confiscated by the German National Socialist

Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14; and

(c) the policy (or policies) in question was not covered by a decision of a German restitution or compensation authority. A policy or policies will be considered as having been covered by a decision of a German restitution or compensation authority, where the decision covers the same specific policy or policies as those referred to in the claimant's claim form, except in cases where:

- the claim was rejected by the German restitution or compensation authorities due to their own lack of jurisdiction; or
- the claim was rejected by the German restitution or compensation authorities due to the fact that the claim was made by a person not entitled to claim; or
- the claim was not timely filed; or
- documentary evidence that would have led to a decision in favor of the claimant was previously unavailable but subsequently became available (such as opening of company or government archives);

and

(d) the claimant is, in the following order of priority:

- the policy beneficiary or his heir pursuant to the Succession Guidelines (Annex C);
- the policyholder or his heir pursuant to the Succession Guidelines;
- the insured or his heir pursuant to the Succession Guidelines;

and

(e) the policy beneficiary or the policyholder or the insured life, who is named in the claim, was a Holocaust victim; and

- (f) the claim was lodged before a date mutually agreed by the parties to this Agreement. This date, once agreed, will be appropriately publicized by the parties.
- (2) A claim concerning non-life insurance is eligible for compensation, if
- (a) the insured event occurred while the policy was in force at the time of the event. Notwithstanding the above, a non-life insurance claim shall not be eligible if it was caused by war unless it can be attributed to racial or religious persecution; and
  - (b) the claimant is entitled as policyholder or as rightful heir of the policyholder to benefits of the policy notwithstanding the statutes of limitation; and
  - (c) the benefits of the policy were not paid out, because the policyholder became a Holocaust victim before an original insurance claim could be lodged, or if lodged before it could be settled or the benefits were confiscated by the German National Socialist Regime or by the government authorities as specified in the definition of Holocaust victim in Section 14; and
  - (d) the damage from the insured event was not compensated or restituted; and
  - (e) the claim was lodged before a date mutually agreed by the parties to this Agreement. This date, once agreed, will be appropriately publicized by the parties.
- (3) For the processing of a claim concerning a non-life insurance policy ICHEIC will send, where necessary, a questionnaire to the claimants requesting the following information:
- (a) the name of the German company that issued the policy;
  - (b) the type of insurance which was issued;

- (c) where and when the insurance had been issued and whether the insurance policy was still in force at the time the loss occurred;
  - (d) who took out the insurance and who might have been entitled to proceeds under the policy;
  - (e) when and how the damage or loss happened or the injury occurred which the claimant believes was covered by the insurance policy;
  - (f) in the case a business was insured, the type of business, legal entity and/or name under which the business was carried out; and
  - (g) whether any claim for restitution or compensation dealing with the insured property has been filed by the claimant or claimant's relatives.
- (4) Where there is a claim on an insurance policy which meets all the criteria in this section, but where the company determines that the proceeds of the policy was or is deemed to have been paid into a blocked account, the provisions of Section 20 of Annex A will apply. Any appeal will name the GDV as the relevant party.

**Section 3. Processing of application**

- (1) ICHEIC shall forward claims to the GDV to be processed by them and the companies in accordance with this Agreement.

**Section 4. Appeals Procedure**

- (1) Pursuant to Section 19 of the Foundation Law and the attached Appeal Guidelines (Annex E) ICHEIC shall – with the consent of the Foundation – set up an independent appeals body (the Panel).
- (2) The Panel shall consist of three members: Judge William Webster, Judge Abraham Gafni and Dr. Rainer Faupel. The three members shall select a Chairman from among themselves. If it becomes necessary, for any reason, to fill a vacancy on the Panel, the Chairman of ICHEIC and a member of the board of the Foundation shall consult.

- (3) An applicant may file an appeal to the Panel for a fresh review of (i) a German insurance company's decision to deny his claim or, (ii) whether the Valuation Guidelines have been correctly applied in calculating an offer made to the claimant. Any such appeal must be filed within 120 days of the receipt of the company's decision.
- (4) The decisions of the Panel are not open to legal challenge.
- (5) All claims decisions, including provisional claims decisions, taken by the German MOU companies prior to the signing of this Agreement will be eligible for the ICHEIC appeals process. All claims decisions taken by all of the German companies after the signing of this Agreement will be eligible for the appeals process specified in this Agreement (Annex E).

**Section 5. Procedure for payment of awarded compensation**

- (1) Claimants with approved claims shall be paid on the basis of the following procedure, which rests on the principles of fairness, justice, security, speed and cost-effectiveness.
- (2) The Foundation will pay companies for any payments they make to claimants in accordance with the provisions of this Agreement. The companies should record the names of claimants of the approved claims, and submit them, following receipt of the signed consent and waiver forms, to the GDV. The GDV will compile a comprehensive list and forward the list in electronic format to the Foundation. Once the Foundation has the appropriate information in respect of claims, the Foundation will prefund the companies to pay the submitted claims. The submission of requests for payment and the payment to the claimant must be completed within four weeks.
- (3) Each insurance company, in the case of a claim that names the company or is otherwise matched with the company, will provide ICHEIC, the Foundation and the GDV with a copy of each of the following information: (i) each decision letter, both offers and denials, and copies of all relevant documents as specified in

Annex A, paragraph 18, sent to a claimant, (ii) for each offer that is accepted, a copy of the consent and waiver forms (the original version goes to the Foundation as required in Section 16, paragraph 2 of the Foundation Law), properly signed by the claimant, together with the ICHEIC claim number, the claimant's family name and the first name and the amount of the agreed offer. The Foundation will inform ICHEIC of the claims accepted and of the payments it makes to the companies.

- (4) The Foundation may at any time ask the BAFin to make checks regarding the correct processing of claims by a given company through sampling. The reasons for such checks could be, inter alia: The company was not covered by the auditing described in Annex I, or the company has received a considerable amount of claims, or there are reasons to assume that the company has not respected the agreed claims handling procedure.
- (5) Each company, either directly or through the GDV shall cooperate and respond to any reasonable inquiry from ICHEIC having regard to speed and efficiency, regarding any decisions with respect to a claim mentioned in Section 5 (3).
- (6) If at any time during the claims process the Chairman of ICHEIC informs the Foundation in writing that he has reason to believe that in taking their decisions one or more companies are, or may be, failing to comply with any of the requirements of this Agreement, the Foundation shall ask the BAFin to investigate the possible failures of compliance either in the course of carrying out the checks referred to in paragraph 4 above on the company concerned or, if necessary because the matters in question need to be resolved urgently, by carrying out a special investigation immediately. The BAFin shall carry out both the checks referred to in paragraph 4 and any special investigations under this paragraph having regard to paragraphs 3 to 7 of the Audit procedure set out in Annex I and with the participation of ICHEIC observers as provided in paragraphs 9 and 10 of Annex I. Should significant irregularities be found in the claims process, the BAFin shall require the company in question to remedy those irregularities. In



cases of disagreement between the BAFin and the ICHEIC observers, the procedures set out in paragraphs 11 to 23 of Annex I will apply.

- (7) Payments to claimants will be on the basis that no fees will be charged to the claimant.

## **Section 6. Distribution of Foundation Funds**

- (1) The payments and costs to be met from within the 102,258,376 Euro (200 million Deutschmark) ceiling calculated in accordance with Section 9, paragraph 4, sentence 2, number 3 and Section 9, paragraph 5 of the Foundation Law, are as follows:

ICHEIC will receive, upon the signing of this Agreement, 102,258,376 Euro (200 million Deutschmark) for the payment of claims and a portion of ICHEIC's operating expenses. The uses of the 102,258,376 Euro (200 million Deutschmark) will be:

- To fund 50% of all actual operating expenses of ICHEIC from January 1, 2001 until the termination of ICHEIC'S claims process (with the exception of expenses associated with the Generali Trust and the administration of the Humanitarian Fund). These actual operating expenses are not to exceed \$60 million, including a provision for financing the publication of lists, paying banking fees incurred by the companies for payments to claimants and a contingency reserve. If, due to unforeseen circumstances, operating expenses exceed the \$60 million amount, there will be consultation between ICHEIC and the Foundation on providing additional funds from the 102,258,376 Euro (200 million Deutschmark) to ensure completion of ICHEIC's claims process. Any additional contribution would require the agreement of the Foundation.
- To prefund German insurance companies for claims to be paid by them (including approved claims on confiscated policies and approved claims against expropriated German insurance companies and their subsidiaries) from the date of signing of, and in accordance with, this Agreement.

- To reimburse the German MOU companies for ICHEIC claims paid by them prior to the signing of this Agreement in compliance with ICHEIC's Memorandum of Understanding.
  - Should there be any funds remaining at the end of the life of ICHEIC, they will be used for humanitarian purposes, at ICHEIC's discretion.
- (2) Prior to the signing of this Agreement, ICHEIC will have established banking arrangements, with the agreement of the Foundation, to enable the Foundation to withdraw funds from the 102,258,376 Euro (200 million Deutschmark) account to prefund the German insurance companies for payments to claimants approved in accordance with Section 5 and the banking charges incurred by them in making the payments through a bank selected by ICHEIC based upon the lowest cost.
  - (3) No German MOU companies or any other German entities will be entitled to any offsets or any reimbursements (other than as provided in Section 6 (1) above), including costs of peer review audits.
  - (4) There will be no payments from the 102,258,376 Euro (200 million Deutschmark) or from the 178,952,160 Euro (350 million Deutschmark) to any costs incurred by the GDV or individual German companies in investigating claims.
  - (5) The German MOU companies will have no further financial obligation to cover ICHEIC's operating and other expenses (other than peer review audit) after this Agreement is signed.
  - (6) Any interest earned on the sums transferred to ICHEIC from the 102,258,376 Euro (200 million Deutschmark) and the 178,952,160 Euro (350 million Deutschmark) Humanitarian Fund in accordance with Section 1 (2) and Section 1 (5) above shall, from the date of the transfers, accrue to ICHEIC and may thereafter be freely used by ICHEIC for any legitimate purpose permitted by its Memorandum of Understanding. Any interest earnings that are used for the purpose of financing ICHEIC's administrative expenses shall not be regarded as

part of the Foundation's 50% contribution to ICHEIC's future operating expenses as specified in Section 6 (1) above.

- (7) If approved claims against German insurance companies cannot be covered by the 102,258,376 Euro (200 million Deutschmark) fund, the Foundation shall make available up to 51,129,188 Euro (100 million Deutschmark) from the Fund "Remembrance and the Future" to meet those claims.

## **Section 7. Humanitarian Fund of ICHEIC**

The Foundation and ICHEIC have agreed between themselves on the following provisions:

- (1) According to Section 9, Paragraph 4, sentence 2, number 5 of the Foundation Law, 178,952,160 Euro (350 million Deutschmark) will be transferred to the ICHEIC, upon the signing of this Agreement.
- (2) These funds will be used for the following purposes:
  - At the discretion of ICHEIC, for the payment of claims against unknown or no longer existing insurance companies and their subsidiaries (Section 8A1 of the MOU);
  - For the payment of claims on insurance policies whose proceeds were transferred to blocked accounts;
  - For the payment of the difference between the calculated value according to the BEG method and the minimum payment as described in Section 2 (3) of the Valuation Guidelines;
  - At the discretion of ICHEIC, for the benefit of needy victims of the Holocaust and for other Holocaust-related humanitarian and educational purposes;
  - At the discretion of ICHEIC, for the payment of costs related to administration of the funds. Any such administrative costs shall be minimized to the maximum extent possible.
- (3) Prior to the signing of this Agreement, ICHEIC will have established banking arrangements, with the agreement of the Foundation, to enable the Foundation to withdraw funds from the 178,952,160 Euro (350 million Deutschmark)

Humanitarian Fund to prefund (i) the German insurance companies for the payment of the difference between the BEG calculated value and the minimum value on approved claims (ii) the GDV for the payment on policies transferred to blocked accounts and (iii) the banking charges incurred by the companies or the GDV in making such payments through a bank selected by ICHEIC based upon the lowest cost.

- (4) The administrator of the Humanitarian Fund will inform the Foundation by 1 April every year about the usage of the funds in the previous year.

### **Section 8. Liability**

If any employee or executive of one of the contracting parties violates their contractual obligations, either willfully or through gross negligence, the liable party shall compensate the other party or parties for any resulting damage.

### **Section 9. Duration of contract, termination**

- (1) This Agreement shall remain in effect until all obligations under this Agreement have been satisfied.
- (2) This Agreement may be terminated through written notification by any party upon the gross violation of its provisions by one of the other parties, but only after the failure of the notified party to correct such violation within 30 days from the receipt of such notification and subject to the arbitration provisions of Section 11 (4).

### **Section 10. Audit and the preservation of records**

- (1) ICHEIC is required to comply with Swiss accounting standards and shall maintain its records in accordance with generally accepted good practices. The ICHEIC shall keep the 178,952,160 Euro (350 million Deutschmark) Humanitarian Fund in a separate account for ease of administration and audit. ICHEIC will provide the Foundation, one month after the end of each semi-annual period, with a statement of its expenses as referred to in Section 1(2) during that period under each of its main subject headings. In addition ICHEIC will provide annual reports

of its expenses related to administering the Humanitarian Fund. ICHEIC shall provide the Foundation with a copy of its audited accounts for each fiscal year together with its audited financial statement, including the auditor's report, as soon as such accounts and financial statement are available. The Foundation may make a reasoned request to ICHEIC to provide further information about ICHEIC's expenses and its budget process, where such information is needed in order to satisfy the Foundation that the funds provided to ICHEIC by the Foundation have been applied solely for the purposes set forth in this Agreement. Such request will be timely met. ICHEIC agrees that, upon receipt of a reasonable notice and written request, the Foundation, and its authorized auditing firm (which shall be an internationally recognized auditing firm), shall have access, at the Foundation's expense, to ICHEIC's Chief Financial Officer and external auditors for the purpose of obtaining information to enable the Foundation to determine whether the funds provided by the Foundation to ICHEIC have been applied by ICHEIC solely for the purposes set forth in this Agreement.

- (2) If on examination it is determined that ICHEIC has incorrectly applied the funds paid by the Foundation for ICHEIC administration, ICHEIC, shall, from other sources, restore to the appropriate fund the amount which has been incorrectly applied.
- (3) ICHEIC shall ensure that the records generated during the processing of the claims and the appeals process are kept for at least a year after all claims have been processed and appeals concluded. If ICHEIC no longer wishes to retain these records, it shall offer them to the Foundation for further safekeeping.

**Section 11. Choice of law clause, place of jurisdiction and arbitration**

- (1) This agreement shall be subject to Swiss law.
- (2) The place of jurisdiction for all legal disputes arising from this Agreement shall be Geneva, Switzerland.

- (3) The parties shall endeavor in good faith to resolve any dispute in relation to the interpretation or application of this Agreement amicably by negotiations between the parties.
- (4) Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, which cannot be settled by amicable agreement between the parties, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

## **Section 12. Legal Peace**

ICHEIC will use its best efforts to achieve an all embracing and enduring legal, regulatory, legislative and administrative peace for German insurance companies which are in compliance with this Agreement.

## **Section 13. Final Provisions**

- (1) This Agreement constitutes a final settlement between the three parties. No further verbal or written agreements between the three parties to this Agreement have been reached.
- (2) This Agreement supersedes, for German MOU companies, the procedures established under the MOU, except that German MOU companies will remain subject to ICHEIC audit procedures including, at their own expense, the phase two peer review audits as provided in Annex J, the monitoring processes provided in Annex K and the appeals provisions as provided in Section 4 (5). The MOU companies will cooperate directly with ICHEIC in resolving any problems identified through the claims process.
- (3) In light of ICHEIC's continued responsibility to ensure the implementation of the claims process, ICHEIC may make future decisions and arrangements as deemed necessary, provided that such decisions are consistent with this Agreement. Should there be any disagreement (1) as to whether a future ICHEIC decision is consistent with this Agreement or (2) otherwise pertaining to the interpretation of this Agreement, it should be addressed by a high level representative of (i)

ICHEIC, (ii) the Foundation, (iii) the GDV, (iv) US insurance regulators and (v) Jewish organizations participating in ICHEIC with the aim of finding a reasonable resolution of the dispute.

- (4) A member of the Board of Directors of the Foundation or the Chairman of the ICHEIC or the Managing Director of the GDV may each at any time, by written notice, inform the other two parties of any amendment which it considers should be made to this Agreement. The other two parties shall, in such case, agree to discuss the amendment(s) proposed at a meeting to take place not more than one calendar month after receipt of the written notice. In order to become effective any amendment to this Agreement must be agreed by all three parties and must be made in writing.
- (5) Should one or several of the provisions of this Agreement be or become ineffective this shall not affect the remaining provisions. If one of the provisions becomes ineffective the parties shall nevertheless endeavor to achieve the aim of the clause in question as far as this is legally permissible.
- (6) This Agreement is executed in two languages (English and German). Each version is equally authentic.
- (7) The following Annexes are attached and form an integral part of this Agreement:

<b><u>Annex</u></b>	<b><u>Subject</u></b>
Annex A	Claims Handling Procedure
Annex B	Relaxed Standards of Proof
Annex C	Succession Guidelines
Annex D	Valuation Guidelines
Annex E	Appeal Guidelines
Annex F	Consent and Waiver

Annex G	Appeal Form
Annex H	Agreement on Publication of Lists
Annex I	Agreements on Audits
Annex J	ICHEIC Stage II Peer Review Audit
Annex K	ICHEIC – Monitoring Group – Terms of Reference

## Section 14. Glossary

Definitions—words used in this Agreement have the following meanings:

**Agreement:** means both this Agreement and its Annexes, as they may be amended from time to time.

**Appeal:** means the request by a Claimant for a fresh review of a decision made by a German Company in connection with the handling of insurance claims under this Agreement and that is submitted by the Claimant to the Appeals Panel for resolution.

**Appeal Form:** is the written document attached as Annex G.

**Arbiter:** means a suitably qualified person, with the necessary independence and impartiality, skills, and experience, appointed by the Panel to determine an Appeal or Appeals.

**BAFin:** means the German Bundesanstalt für Finanzdienstleistungsaufsicht, which is the federal agency for the supervision of financial services.

**BEG:** means the Bundesentschädigungsgesetz, which is the federal compensation law.



**Blocked Account:** means a bank account from which the owner was constrained in withdrawing the proceeds due to the legal restrictions on the account from 1933 to 1945 imposed by the German National Socialist Regime and other relevant governments.

**BZK:** means Bundeszentralstelle, which is the federal central filing agency.

**Claimant:** is an individual or representative of any individual(s) who has submitted an insurance claim covered by this Agreement.

**Claims Handling Procedures:** means the procedures laid out in Annex A.

**Confiscated Policy:** a policy the proceeds of which were paid as required by local law in the relevant countries (or are deemed to have been under the Valuation Guidelines) directly to a governmental authority that was not the named beneficiary of the policy.

**Foundation:** means the German Foundation “Remembrance, Responsibility and the Future” established under the German Foundation Law effective on August 12th, 2000.

**GDV:** means Gesamtverband der Deutschen Versicherungswirtschaft, which is the German Insurance Association.

**German Company** or **Company:** as defined in Annex C of the Executive Agreement means those enterprises that had their headquarters within the 1937 borders of the German Reich or that have their headquarters in the Federal Republic of Germany, as well as their parent companies, even when the latter had or have their headquarters abroad. Enterprises situated outside the 1937 borders of the German Reich in which during the period between

January 30, 1933, and the entry into force of the legislation establishing the Foundation "Remembrance, Responsibility and the Future," German enterprises as described in the first sentence had a direct or indirect financial participation of at least 25 percent. "German companies" does not include foreign parent companies with headquarters outside the 1937 borders of the German Reich in any case in which the sole alleged claim arising from National Socialist injustice or World War II has no connection with the German affiliate and the latter's involvement in National Socialist injustice, unless there is pending a discovery request by plaintiff(s), of which the United States is provided notice by the defendant with copy to plaintiff(s), seeking discovery from or concerning World War II or National Socialist era actions of the German affiliate.

**German MOU Company:** means Allianz AG and its affiliates and the branches and affiliates of AXA, Zurich Financial Services, Winterthur Lebensversicherungs-Gesellschaft and Assicurazioni Generali, which meet the definition of a German company.

**Holocaust victim:** for the purposes of this Agreement means anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property. For the purpose of this definition, persecution by governmental authorities of the following countries for the period in brackets until the end of the Second World War in the following countries is considered equal to persecution by the organs of the German National Socialist Regime: Bulgaria (1941), Vichy France (1940), Slovakia (1939), Italy (1939), Hungary (1939), Romania (1940), and Croatia (1940).

**ICHEIC:** means the International Commission on Holocaust Era Insurance Claims.

**Insurance Claim:** means a claim to an insurance policy submitted to the claims process.

**Life Insurance Policy:** means all forms of life insurance, including annuities, endowments and dowries.

**MOU:** means the Memorandum of Understanding dated August 25, 1998 creating ICHEIC which was signed by certain European insurance companies, certain non-governmental Jewish organizations, the State of Israel and certain insurance regulators.

**Panel:** means the body comprising three Panel Members which is the supreme decision making body for determining an Appeal or Appeals.

**Panel Member:** is one person of the Panel who may make a decision on an Appeal or Appeals as the case may be.

**Relaxed Standards of Proof:** means the Relaxed Standards of Proof as annexed to the this Agreement as Annex B.

**Serious Irregularity:** means an irregularity by the Panel, Panel Member or Arbiter which is likely to cause substantial injustice to the claimant by reason of (1) the Panel, Panel Member or Arbiter exceeding their powers (other than by exceeding their substantive jurisdiction), (2) failure of the Panel, Panel Member or Arbiter to conduct the proceedings in accordance with the Appeal Guidelines, or to deal with the issues put to them, and (3) the decision being obtained by fraud or in a manner which is contrary to public policy.

**Succession Guidelines:** means the guidelines determining the rights of the Claimant to succeed to the benefits of an insurance policy as annexed to this Agreement as Annex C.

**Valuation Guidelines:** means the guidelines assigning values to the proceeds of Holocaust era insurance policies as annexed to this Agreement as Annex D.

Executed in Washington, DC this 16 day of October, 2002, to be effective upon the signature of all parties.

for INTERNATIONAL COMMISSION ON HOLOCAUST ERA  
INSURANCE CLAIMS

By: \_\_\_\_\_  
Lawrence S. Eagleburger

for FOUNDATION “REMEMBRANCE, RESPONSIBILITY AND  
FUTURE”

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael Jansen Hans Otto Bräutigam

for GERMAN INSURANCE ASSOCIATION (GDV)

By: \_\_\_\_\_  
Bernd Michaels

By: \_\_\_\_\_  
Jörg Freiherr Frank von Fürstenwerth

Enclosure 2

## ANNEX I

### AUDIT OF GERMAN NON-MOU INSURANCE COMPANIES

1. The Bundesanstalt für Finanzdienstleistungsaufsicht (the BAFin) and the International Commission on Holocaust Era Insurance Claims (ICHEIC) have discussed the arrangements for auditing certain German insurance companies (not belonging to ICHEIC) as a part of the overall agreement among the German Foundation, ICHEIC and the GDV (the “Agreement”) and have reached the understandings, set out in the rest of this Annex, on the following issues:

- companies to be audited;
- objectives and methodology of the audits;
- certification and reports by the BAFin;
- the role of the observer(s) appointed by ICHEIC to be members of the BAFin audit teams;
- a procedure for resolving any disagreements between the BAFin and the ICHEIC observer(s).

(a) **Companies to be audited**

2. The agreed objective is to audit those companies which are most likely to receive a significant number of “named company claims” from ICHEIC. Exhibit 1 contains a list of 8 non-MOU German companies which meet this criterion. ICHEIC and the BAFin will agree on the names of two more companies to be added to this list. The BAFin and ICHEIC will consult with each other if it appears for any reason that any changes should be made to this list.

(b) **Objectives and Methodology of the Audits**

3. The BAFin will conduct its audit on the basis of the standards set out in Exhibit 2 in accordance with the provisions of, and under the powers given to it by, Sections 81 and 83 of the German Insurance Regulatory Law.
4. The BAFin will make a written assessment, giving its opinion on whether the companies satisfactorily meet each of the agreed standards set out in paragraphs 1 – 5 of Exhibit 2 in investigating all claims sent to them in accordance with the provisions of the Agreement.
5. For the purpose of making its assessments in relation to Exhibit 2 the BAFin will make full use of the information about the companies' archives and records which it acquired from the enquiries and on-the-spot investigations it carried out in 1998 and 1999, though any changes in or additions to the archives and records which had occurred subsequently will be checked by the BAFin. The BAFin will supplement the enquiries made by it in 1998 and 1999 by further audits of how each company actually investigated claims in order to enable it to determine whether the standards in paragraphs 1 to 5 of Exhibit 2 have been met. The BAFin intends to conduct these audits by examining a statistically valid sample of both named company and unnamed company claims once 15% of such claims sent to it by ICHEIC through the GDV have been processed by each company.

(c) **Certification and Reports by the BAFin**

6. Subject to the results of the audit being agreed to be satisfactory by both the BAFin and the ICHEIC observer(s), the BAFin will provide ICHEIC with a certificate ("Testat") for each of the companies audited, stating that the named company complies with each of the agreed standards described in the five

paragraphs set out in Exhibit 2. This certificate would be in the form of an assurance that:

“Following its investigations the BAFin has determined that [name of company] is, in all material respects, in compliance with the standards ...”

7. If the BAFin finds that a company is not compliant in some material respect with one or more of the agreed standards in Exhibit 2 the BAFin will require the company immediately to remedy the defect(s) before issuing an opinion. If the BAFin and the ICHEIC observer(s) disagree as to whether a company is compliant, the procedure set out in paragraphs 11 to 23 below will apply.
8. In addition to the opinion the BAFin will supply ICHEIC with one anonymised report setting out what each company has done to comply with the agreed standards of Exhibit 2. Should the ICHEIC observer(s) have reasoned doubts, the BAFin will in good faith try to resolve the disagreement concerning the report before submitting it. This report will not, however, identify the companies concerned by name, if it contains information which was subject to the confidentiality requirements of Section 84 of the German Insurance Regulatory Law. The report will be made available to ICHEIC in both German and English.

**(d) Role of the ICHEIC Observer(s)**

9. ICHEIC has the right to choose and propose one - or if desired up to two - suitably qualified observer(s) to be included by the BAFin in any of the above-mentioned audits of the BAFin. The observer(s) must affirm to the President of the BAFin that they will maintain confidentiality according to Section 84 of the German Insurance Regulatory Law pertaining to the procedures in this agreement.
10. The observer(s) will:



- participate actively and fully throughout the audit. In particular, they will be able to put whatever questions they want to the insurance companies and to the BAFin and to contribute their views to the assessments of the companies' compliance with the standards;
- like all other members of the BAFin audit team, be provided with all information obtained in Holocaust-related enquiries carried out by the BAFin in 1998 and 1999 and needed for the preparation of the auditing of the company in question;
- participate in the preparation of the initial BAFin-questionnaire sent to a company in advance of an on-site investigation visit and in the formulation of the additional work to be done by the audit team, taking into account the results of the BAFin's earlier investigations.
- participate in the preparation of the reports and opinions referred to in paragraphs 4 to 8 above. In particular they will contribute to answering the question whether the insurer is appropriately processing the claims with the legitimate interests of the victim in mind and is in compliance with the agreed standards, set out in Exhibit 2.

(e) **Procedure for Resolving Disagreements Between the BAFin and an ICHEIC Observer**

11. In the event that there is a disagreement between the ICHEIC observer(s) and the BAFin either regarding the adequacy of the audit procedures or on whether the company concerned complies with the agreed standards relevant for the claims processing, the ICHEIC observer(s) shall, in good time before the completion of the audit, set out in writing to the leader of the audit team the reasons for the disagreement and any proposals for resolving it. The ICHEIC observer(s) and the BAFin shall endeavour in good faith to resolve any such disagreement. If the

disagreement cannot be resolved the ICHEIC observer(s) may appeal to the Appeal Panel (Panel).

12. The ICHEIC observer(s) shall, within four weeks after they and the BAFin have determined that they are unable to resolve the disagreement, notify the Panel in writing of his (their) intention to submit the disagreement to the Panel for resolution. The ICHEIC observer(s) shall then within a further four weeks from the date of the initial notification, file a written statement to the Panel, giving a full explanation of the facts and reasons which lead him (them) to consider that the company concerned may not be in compliance with the agreed standards. The Panel may on a reasoned request of the observer(s) allow a short extension of the four week deadline.
13. The Panel shall consider all appeals filed within the four week filing period (paragraph 12 above); the Panel may reject an appeal if it was not timely filed. The Panel and all other participants involved in this procedure shall strictly protect the confidentiality of all documents or other information received by them in connection with the appeal.
14. Copies of the observer's written statement shall be sent to the BAFin and the company concerned. The Panel shall invite the BAFin and the company concerned to file a written response to the observer's written statement within a period of four weeks.
15. The Panel shall provide the written statements of the ICHEIC observer(s) and of the company and of the BAFin to the Chairman of ICHEIC and to not more than 8 other ICHEIC representatives named by the Chairman and to a designated member of the board of the Foundation and shall invite them to present their views on each appeal.
16. To protect the confidentiality of the information in these documents the Panel shall require that:

- the recipients of the documents each sign a confidentiality undertaking;
  - the documents (which shall be numbered) shall only be read in secure circumstances and that no copies shall be taken;
  - the documents shall all be returned to the Panel on completion of the appeal procedure in each case.
17. The Panel shall review each appeal, based on ICHEIC's observer's report and on any responses received from the company and the BAFin and taking into account the views presented by the Chairman of ICHEIC and the member of the Board of the Foundation. The Panel may reject or accept the appeal in whole or in part, setting forth its reasoned decision in writing.
18. The Panel shall determine whether the auditing standards set out in Exhibit 2 have been complied with. If the Panel determines that additional documents, evidence or information is needed in order to properly evaluate if the agreed auditing standards were met, it may request such documents, evidence or information.
19. If a company fails to provide requested existing documents, evidence or information, the Panel may, after taking all relevant facts into account, render a decision as it seems just and fair in the circumstances.
20. If the Panel, when determining an appeal, has a substantial basis for believing that the company concerned has not complied with the agreed auditing standards, it shall notify the company concerned of its decision and of the measures it considers necessary to remedy the non-compliance. The company shall implement the measures considered necessary by the Panel as quickly as possible, informing the Panel, the BAFin, the Foundation, the Chairman of ICHEIC and the appellant observer(s) that it is doing so. The company shall inform the Panel, the BAFin, the Foundation, the Chairman of ICHEIC and the appellant observer(s) when the measures have been fully implemented.

21. The Panel shall also state whether it considers it necessary for the company concerned to reexamine any decisions which it has already taken on named claims where those decisions may have been affected by the company's non-compliance. If the Panel detects in the framework of deciding the observer's appeal that a company has not complied with the standards set out in Exhibit 2 in investigating a particular claim the Panel shall remedy this non-compliance by directing the company to make an award to the claimant or claimants concerned in accordance with the Appeal Guidelines.
22. The Panel shall notify the company concerned, the BAFin, the Foundation, the appellant observer(s) and the Chairman of ICHEIC of its decision in writing within 14 days of the date of the decision. The decision shall be kept confidential by all parties and persons involved in the appeal. The decision of the Panel is final and shall not be appealable to any court.
23. The BAFin may issue a "Testat" when both it and the ICHEIC observer(s) are satisfied that the company has complied with the Panel's decision.

Enclosure 3

## ANNEX I

### EXHIBIT 2

**The audits shall be conducted according to Sections 81 and 83 of the German Insurance Regulatory law, on the basis of the standards set out in the following 5 paragraphs:**

1. Whether the companies have established an accurate “family tree” identifying all their relevant companies and branches operating during the period 1920-1945. This “family tree” should cover all life insurance branch offices and subsidiaries of the company operating inside Germany or in other relevant territories occupied by the Third Reich in the period 1938-1945 and also any portfolio acquired from other companies which includes policies in force during the 1920-1945 period. Relevant companies should include any subsidiary or branch office where a control-relationship exists today or, in countries where nationalisation occurred, where control existed before nationalisation. The family tree should be authenticated by the supervisory authority.<sup>1</sup>
2. Whether the companies have made all reasonable efforts to find, secure and organise all relevant archive sites, containing archives and records relevant to policies in force in the period 1920-1945.<sup>2</sup>
3. Whether the companies have made all reasonable efforts to identify and secure all surviving relevant policy files and other company records. “Other company records”

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<sup>1</sup> Since the BAFin has complete records of the past history of insurance company mergers and acquisitions they will be able to verify authoritatively whether the companies’ “family trees” are accurate.

<sup>2</sup> It is recognised that for those German companies which sold policies in occupied territories other than Germany – in particular in Eastern Europe – any records still in the hands of the companies may be incomplete and that records still held in Eastern Europe may not always be accessible.

is to be widely interpreted as covering eg, name cards, life policy registers, reserving registers, correspondence, compensation files and any other document likely to contain details about the policyholders of life insurance policies, whether paid or unpaid, which were in force in the period 1920-1945.

4. Whether the companies have or have established electronic or manual databases which they can use to carry out an effective search of their records of relevant life insurance policies, wherever reasonably possibly solely on the basis of the policyholder names submitted by the claimants.
5. Whether the companies have developed fair and efficient systems and procedures for the investigation of all claims received in accordance with the provisions of the Agreement, with the investigation system described in a work-flow chart.<sup>3</sup> It is desirable that each claims file will contain a completed audit trail allowing auditors to validate, on a sample basis, whether the investigation has been carried out in accordance with the agreed claims handling procedures and with the other relevant provisions of the Agreement.

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<sup>3</sup> It is recognised that each insurer can have different procedures in place for the investigation and handling of claims tailored to its individual circumstances.