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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: COMMISSION DELEGATED DECISION (EU) .../... of 5.6.2015 on the
provisional equivalence of the solvency regimes in force in Australia,
Bermuda, Brazil, Canada, Mexico and the United States and applicable to
insurance and reinsurance undertakings with head offices in those
countries

Delegations will find attached document C(2015) 3740 final.

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Brussels, 5.6.2015
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COMMISSION DELEGATED DECISION (EU) .../...

of 5.6.2015

on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Solvency II Directive (Directive 2009/138/EC), due to be fully applied from 1 January 2016, as modified by the "Omnibus II" Directive (Directive 2014/51/EU), introduces a modernised risk-based prudential and supervisory regime for insurance and reinsurance undertakings in the European Union.

The Solvency II Directive provides for equivalence determination of third countries in three areas:

1. A (re)insurer located in a third country enters into a reinsurance arrangement with a (re)insurer in the EEA (Article 172);
2. A (re)insurer is headquartered within the EU and has participations or subsidiaries (collectively known as related undertakings) located outside the EEA (Article 227);
3. A (re)insurer is headquartered within a third country and has related undertakings located within the EU (Article 260).

For each of the three areas, equivalence can be determined for an unlimited period (if complete equivalence has been determined) or for a limited period (where progress is being made towards equivalence). In the latter case, the duration of the fixed-term equivalence is not discretionary, but laid down in the relevant Solvency II article, 5 years (non-renewable) for reinsurance and third country groups operating in the EU (articles 172 and 260), and 10 years (renewable) for EU groups operating in the third jurisdiction. Determination of third country equivalence under Solvency II is to be effected by a Commission Delegated Act according to article 290 of the Treaty.

Only equivalence under article 227 is the object of the present Delegated Decision. Here, the issue is how to integrate third country related undertakings into the calculation of the group solvency capital requirement of an EU parent undertaking. The group solvency assessment allows for two consolidation methods – the default method is accounting consolidation, the second method is deduction and aggregation. A positive equivalence determination will allow EU insurance groups which are allowed by their EU group supervisor to use the second calculation method to use the local rules relating to capital (own funds) and capital requirements rather than the Solvency II rules, for their related undertakings in the third country in question. This would relieve the related undertaking in the third country concerned from having to recalculate its data according to the Solvency II requirements.

The criteria related to the determination of provisional equivalence under article 227(5) are currently as follows:

- (a) it can be shown that a solvency regime capable of being assessed equivalent in accordance with paragraph 4¹ is currently in place or may be adopted and applied by the third country;

¹ Paragraph 4 of Article 227 of the Directive 2009/138/EC

- (b) the third country has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;
- (c) the third country's law, in principle, allows cooperation, and exchange of confidential supervisory information, with EIOPA and supervisory authorities;
- (d) the third country has an independent system of supervision; and
- (e) the third country has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

A determination of provisional equivalence is valid for a period of ten years. At the end of that period, the European Commission should carry out an analysis of the developments in the third country's regime, resulting in either a determination of full equivalence according to article 227(4) or a renewed determination of provisional equivalence under article 227(5), or non-renewal of provisional equivalence.

A number of third jurisdictions have been assessed under these criteria, either at their own request or on the initiative of the European Commission. The European Insurance and Occupational Pensions Authority (EIOPA), has assisted the Commission in this assessment and provided input and advice. The Commission has taken full account of the input provided by EIOPA in making the present determination under the procedure set out in Article 227(5). The Commission has also made use of IMF reports under its Financial Sector Assessment Programme.

Regarding the United States of America, an important part of the information for the present assessment has been gathered through the EU/US insurance dialogue project (the Dialogue), which started in 2012, with the aim of achieving improved mutual understanding of the respective insurance regulatory and supervisory regimes. Participants are the US National Association of Insurance Commissioners, the US Federal Insurance Office, the European Commission, EIOPA, and certain supervisors of EU member States. In December 2012, the Steering Committee of that Dialogue presented a report comparing the insurance supervisory regimes in the European Union and the United States², but the present assessment is based on more recent information provided in the framework of the Dialogue.

The process described above has enabled the Commission to reach a positive provisional equivalence assessment under article 227(5) in relation to six third countries at this point in time: Australia, Bermuda, Brazil, Canada, Mexico and the United States of America.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Expert Group of member States on Banking Insurance and Payments was consulted on 5 March 2015 regarding the Commission's intention to adopt a positive equivalence determination of Australia, Bermuda, Brazil, Canada, Mexico and the United States of America under article 227(5) of Solvency II. The Expert Group agreed with the Commission's intentions in this area.

² EU-U.S. Dialogue Project Technical Committee Reports Comparing Certain Aspects of the Insurance Supervisory and Regulatory Regimes in the European Union and the United States, December 2012

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for the present Commission Delegated Decision is article 227(5) of the Solvency II Directive.

Even though the Solvency II Directive will be fully applied from 1 January 2016, the Commission may already adopt the present Delegated Decision as indicated under Article 311 of the Solvency II Directive.

COMMISSION DELEGATED DECISION (EU) .../...

of 5.6.2015

on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)¹, and in particular Article 227(5) thereof,

Whereas:

- (1) Directive 2009/138/EC establishes a risk-based prudential regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016. Even though Directive 2009/138/EC will be fully applied as of 1 January 2016, the Commission may already adopt the present Delegated Decision by virtue of Article 311 of Directive 2009/138/EC.
- (2) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination under Article 227 of Directive 2009/138/EC, by a delegated act of the Commission, allows such groups, when deduction and aggregation is used as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.
- (3) Paragraph 5 of Article 227 of Directive 2009/138/EC provides for a determination of fixed-duration provisional equivalence for third countries whose insurance solvency regimes meet certain criteria. A determination of provisional equivalence is valid for a period of 10 years with possibility of renewal.
- (4) The European Insurance and Occupational Pensions Authority has provided advice according to Article 33(2) of Regulation (EU) No 1094/2010 to the Commission contributing to the assessment of third countries under Article 227(5) of Directive 2009/138/EC². Regarding the United States, the insurance dialogue which started in

¹ OJ L 335/1, 17/12/2009, p.1-155.

² EIOPA equivalence analysis of Brazil, 10 March 2015

EIOPA equivalence assessment of Bermuda, 9 March 2015

EIOPA equivalence analysis of Canada, 28 January 2015

2012 with the aim of achieving improved mutual understanding of the respective insurance regulatory and supervisory regimes has been a principal framework for mutual exchange of information, leading to the conclusion reached in this Decision.

- (5) In Australia, the Life and General Insurance Capital Standards (LAGIC) (General Insurance Prudential Standard (GPS) 110: Capital Adequacy, Life Insurance Prudential Standards (LPS) 110: Capital Adequacy) require insurers to calculate capital charges for insurance risk, insurance concentration risk, asset risk, asset concentration risk, operational risk and aggregation benefit. A total balance sheet approach is used. There is a minimum capital requirement (the Prudential Capital Requirement (PCR)); insurers are also required to establish an ICAAP (Internal Capital Adequacy Assessment Process) setting out the actions that will occur to rectify a decline in capital through set points above its PCR. Non-life insurers are allowed to use internal models subject to their approval by Australian Prudential Regulation Authority (APRA). GPS 220 and LPS 220 (Risk management) require a risk management framework, which must include as a minimum a risk management strategy describing risk management policies, procedures, management responsibilities and internal controls. Insurers must report to the APRA their solvency, financial position, financial performance, capital adequacy, investments, assets and asset concentrations, premiums and claims data, policy liabilities and off-balance sheet exposures. Under the Corporations Act 2001, companies are required to prepare and lodge annual financial reports with the Australian Securities and Investments Commission. For life insurers, non-life insurers and insurance groups there are additional disclosures obligations regarding capital management and capital adequacy. APRA is able to share information with other financial supervisors; it is a signatory to the Multilateral Memorandum of Understanding on Cooperation and Information Exchange of the International Association of Insurance Supervisors (the IAIS MMoU), and has concluded MoUs with foreign supervisors (including a number of Union supervisors). APRA is independently responsible for prudential regulation and supervision of insurers; only APRA can authorize an entity to carry on insurance business in Australia. APRA has the power to issue prudential standards which have the force of law. No present or former APRA staff member is allowed to disclose confidential information obtained in the course of duties or capacity, under sanction of the law. Disclosure of information to a court is strictly limited.
- (6) In Bermuda, the Insurance Act lays down two capital requirements for insurers other than captive insurance companies³: the Minimum Solvency Margin (MSM) and the Enhanced Capital Requirement (ECR), applicable to both commercial life and non-life insurers. The ECR is determined from the relevant Basic Solvency Capital Requirement (BSCR) according to a standard formula or the insurer's approved internal capital model provided that the ECR is at least equal to the insurer's MSM. The BSCR covers the following risks: credit risk, spread risk, market risk, premium risk, reserve risk, interest risk, catastrophe risk and operational risk. A Target Capital Level of 120% of the ECR is used as an early warning solvency threshold. Qualifying capital rules differ for different categories of insurers. The Insurance Act also includes provisions on undertakings' reporting obligations regarding their solvency positions.

EIOPA equivalence analysis of Australia, 16 July 2013

EIOPA equivalence analysis of Mexico, 16 July 2013

³ The Insurance Act establishes different categories of insurers which are subject to different sets of rules. Captive insurers are one specific category of insurers, which has not been included in EIOPA's assessment and is not covered by the present act.

The Bermudan Monetary Authority (BMA) is the independent regulator and supervisor. Most Bermudian insurers are obliged to prepare additional financial statements in accordance with International Financial Reporting Standards; otherwise insurers may use any generally accepted accounting principles recognized by the BMA. Insurers must publish their financial statements, which contain quantitative and qualitative information. The BMA may enter into agreements and exchange information with foreign supervisory authorities; it is a signatory to the IAIS MMoU. The BMA is bound by confidentiality law, requiring that any information regarding the business or affairs of supervised financial institutions, or regarding persons dealing with them, that is obtained by BMA staff, shall be treated as confidential.

- (7) In Brazil, the Insurance Decree-Law No. 73/1966 determines that insurers, to guarantee all their obligations, establish technical provisions, special funds and provisions in accordance with the criteria established by the National Council of Private Insurance (CNSP). Under Resolution CNSP 316, the Minimum Capital Required (CMR) is the higher of the Base Capital and the Risk Capital. The Base Capital is a fixed amount linked to the type of entity and the regions in which it has been authorized to operate, as well as the Risk Capital, which is the sum of capital requirements for underwriting, credit, operational and market risks. For most insurers, the Risk Capital is higher than the Base Capital, thus constituting the CMR. Resolution CNSP 3162/2014 establishes the rules for the use of an internal model as an alternative to a standard formula to calculate the CMR. There are minimum corporate governance requirements applicable. Insurers must have internal controls over their activities, information systems and compliance with legal requirements. The Superintendência de Seguros Privados (SUSEP) is responsible for the supervision of the Brazilian insurance industry. SUSEP operates under the Ministry of Finance as the executive body of the regulations set by the CNSP. Its managing council has independent authority to establish SUSEP's general policies for regulation and compliance with CNSP's resolutions within its area of competence. Insurers are required to submit data on capital, assets, liabilities, revenue and expenditure to SUSEP on a monthly basis, as well as details of operations, the balance sheet, a profit and loss account on a quarterly basis; insurers must publish their financial statements, which contain quantitative and qualitative information. SUSEP may enter into agreements and exchange information with foreign supervisory authorities; it is a signatory to the IAIS MMoU. Information may only be used for supervisory purposes within the scope of SUSEP's supervisory functions. Further, information obtained from another authority is only used for the purposes of that request. SUSEP's staff and former staff are bound to confidentiality by law.
- (8) In Canada, the Insurance Companies Act requires insurers to maintain adequate capital. The guidelines published by the Office of the Superintendent of Financial Institutions (OSFI) set out the detailed standards. The applicable capital requirements for insurers are the Minimum Continuing Capital and Surplus Requirement (MCCSR Guideline) for life insurers and the Minimum Capital Test (MCT Guideline) for non-life insurers. Both the MCCSR and the MCT address risks related to both assets and liabilities on and off the balance sheet. Non-life insurers are required to hold capital in excess of 100% of the MCT, while life insurers are required to hold capital in excess of 120% of the MCCSR. Below those levels, insurers are not allowed to operate. In addition to those requirements, there is a Supervisory Target Capital Level of 150% of the MCT for non-life insurers, and of the MCCSR for life insurers, respectively. Capital requirements are calculated according to a standard formula; use of internal

models is only permitted in very limited cases. Insurers are also required to establish an internal target capital ratio based on an Own Risk and Solvency Assessment (ORSA), including non-prescribed stress tests that take into account the insurer's specificities. The Office of the Superintendent of Financial Institutions (OSFI), the Canadian insurance supervisor, is an independent, self-financing federal agency. Every regulated insurer is required to submit audited annual accounts and supplementary information to OSFI, along with an Auditors' Report, an Appointed Actuary's Report, a Dynamic Capital Adequacy Testing report summarizing the results of various stress-tests, and quarterly filings about capital position. Insurers are also required to prepare and make available on demand, an annual ORSA setting an Internal Capital Target. OSFI may enter into agreements and exchange information with foreign supervisory authorities; it acceded to the IAIS MMoU in July 2012. OSFI is bound by confidentiality law, requiring that any information regarding the business or affairs of supervised financial institutions, or regarding persons dealing with them, that is obtained by OSFI staff, shall be treated as confidential.

- (9) In Mexico, the act laying down a revised insurance prudential framework, the Ley de Instituciones de Seguros y de Fianzas (LISF), entered into force on 4 April 2015. Under the LISF, the Solvency Capital Requirement (SCR) applies, covering underwriting risks and financial and counterparty risks. Stress testing takes place at least once a year (dynamic solvency test). The Mexican regime allows the use of either a standard formula or an internal model for the calculation of the SCR. The Comisión Nacional de Seguros y Fianzas (CNSF) is responsible for the supervision of life and non-life insurers in Mexico; it has independent power to licence or withdraw the license of insurance undertakings, and carries out stress tests at least once per year. Insurers must report data on their organisation, operations, accounting, investment and capital to the CNSF on at least a quarterly basis; they must also disclose their objectives, policies and practices in risk retention, transfer or mitigation; and they must publish quantitative and qualitative information on their operations, technical and financial situation and risks. The CNSF may cooperate and exchange information with foreign supervisors if there is an information exchange agreement; a number of such agreements are in place, and the CNSF applied to join the IAIS MMoU in 2010. Where an information exchange agreement exists between CNSF and a foreign supervisor, the CNSF must ask the foreign supervisor for its prior consent before disclosing information which it provided. No person who is or was a CNSF staff member is allowed to disclose confidential information; professional secrecy requirements are laid down in the national law and any breach of professional secrecy leads to sanctions.
- (10) In the United States, regulation and supervision of insurance and reinsurance is essentially state-based. Insurers must comply with the relevant laws for each state in which they write policies, and insurance supervision is in the hands of independent state supervisors under insurance commissioners. State capital adequacy requirements are based on the National Association of Insurance Commissioners (NAIC) Risk-Based Capital (RBC) Model Law, which has been adopted by all states. The RBC standard formula covers the most material risks for each of the primary insurance types (life, property and casualty, and health), allowing the use of internal models for specific products and risk modules. RBC is calculated by applying factors to various assets, premium, claim, expense and reserve items. There are four levels of quantitative capital requirements with different supervisory interventions in each case: Company Action Level, Regulatory Action Level, Authorized Control Level, and

Mandatory Control Level. The United States regime has an ORSA for insurers comparable to that under Solvency II. Regarding reporting and transparency, there are standardised reporting requirements, covering mainly: business and performance, risk profile, valuation methods and assumptions used, capital requirements and management. Financial statements, including the actuarial opinion and the auditor's statement, are publicly disclosed. State insurance commissioners may share confidential information with foreign supervisors, provided that the recipient agrees to maintain the confidentiality of the information. They may also enter into agreements governing the sharing and use of confidential information. A number of Memoranda of Understanding on exchange of information have been signed between Union supervisors and insurance departments of states; a number of state insurance departments are signatories of the IAIS MMOU, and several more have recently applied. Confidentiality requirements, incorporated into state legislation on the basis of NAIC model laws, provide that information obtained by state supervisors is confidential and that they shall maintain the confidentiality of information received from foreign supervisors. Staff of state supervisory authorities is covered by obligations of professional secrecy under state-level legislation.

- (11) Following these assessments, third countries' solvency regimes covered in this Decision should be considered to meet the criteria for provisional equivalence laid down in Article 227(5) of Directive 2009/138/EC, with the exclusion of rules on captives in Bermuda, which are subject to a different regulatory regime.
- (12) The initial period of the provisional equivalence determined by this Decision should be ten years. The Commission may nevertheless undertake a specific review relating to an individual third country or territory at any time outside the general review, where relevant developments make it necessary for the Commission to re-assess the equivalence determined by this Decision. The Commission should therefore continue to monitor, with the technical assistance of EIOPA, the evolution of the regimes in force in the third countries covered by this Decision and the fulfilment of the conditions on the basis of which this Decision has been adopted.
- (13) Directive 2009/138/EC applies from 1 January 2016. This Decision should therefore also grant provisional equivalence as of that date,

HAS ADOPTED THIS DECISION:

Article 1

The solvency regimes in force in Australia, Bermuda (with the exception of rules on captives), Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries shall be considered as provisionally equivalent to the regime laid down in Title I of, Chapter VI of Directive 2009/138/EC.

Article 2

Provisional equivalence shall be granted for a period of 10 years from 1 January 2016.

Article 3

This Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 5.6.2015

For the Commission
The President
Jean-Claude JUNCKER