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COMMISSION DELEGATED DECISION (EU) 2015/2290

of ► **C1** 5 June 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

(OJ L 323, 9.12.2015, p. 22)

Corrected by:

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Corrigendum, OJ L 328, 12.12.2015, p. 126 (2015/2290)

**COMMISSION DELEGATED DECISION (EU) 2015/2290****of ►C1 5 June 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 of 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 of the European Parliament and of the Council ⁽²⁾ to the Commission contributing to the assessment of third

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

⁽²⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

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countries under Article 227(5) of Directive 2009/138/EC⁽¹⁾. Regarding the United States, the insurance dialogue which started in 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 authorise 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

⁽¹⁾ EIOPA equivalence analysis of Brazil, 10 March 2015.
EIOPA equivalence assessment of Bermuda, 9 March 2015.
EIOPA equivalence analysis of Canada, 28 January 2015.
EIOPA equivalence analysis of Australia, 16 July 2013.
EIOPA equivalence analysis of Mexico, 16 July 2013.

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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 companies⁽¹⁾: 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. 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 recognised 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 authorised to operate, as well as the Risk Capital, which is the sum of capital requirements for underwriting, credit, operational and market

⁽¹⁾ 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.

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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 OFSI, along with an Auditors' Report, an Appointed Actuary's Report, a Dynamic Capital Adequacy Testing report summarising the

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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

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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, Authorised 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.

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- (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 10 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 Chapter VI of Title I 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*.