Position Paper

Insurance Europe position paper on key regulatory and market access issues

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With this paper Insurance Europe, the European insurance and reinsurance federation, wishes to highlight the key regulatory and market access issues (re) insurance companies encounter with respect to the US, Canada, Brazil, Japan, India, Russia, China and Argentina.

These countries all represent very important markets to the European insurance industry, however, in all cases the trading relationships could be further enhanced with the removal of certain trading barriers and increased regulatory convergence, for example through mutual recognition. In order to achieve such a goal, we believe effective regulatory dialogue between stakeholders of all levels is essential.

This briefing provides a high level summary of the key issues faced by the European insurance industry when trading with the aforementioned countries. In addition to this summary, Insurance Europe will continue to provide more detailed input to the European Commission (EC) and other relevant stakeholders on insurance related developments in these markets on request.

United States

Regulatory dialogues have been taking place between the EU and US for many years. Insurance Europe is very supportive of the considerable time and effort that policymakers on both sides of the Atlantic have committed to better understanding each other's regulatory systems and supervisory procedures.

Particularly noteworthy was the establishment of the EU-US "Insurance Dialogue Project" in 2012 and the subsequent publication of a technical report in December 2012, comparing and contrasting the EU and US regulatory approaches in seven key areas, and a way forward document setting out high level objectives due to be pursued over the next 5 years for each of the seven work streams. Insurance Europe welcomed the inclusion of reinsurance and collateral requirements and professional secrecy as priorities for 2013; however believes that group supervision and solvency regulation should also be considered as priority topics for the dialogues.

The work being conducted as part of the dialogues is noteworthy, not just in terms of the concrete outcomes which are intended to follow, but also the openness and transparency it has provided thus far to stakeholders.

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The US Federal Insurance Office (FIO), which was established in 2011, has proved to be an important new counterpart in these discussions. The FIO gives the US the ability to 'speak with one voice' and, once a covered agreement is entered into by the United States Trade Representative (USTR), it may pre-empt state insurance laws which are not in line with international agreements on prudential supervision. Insurance Europe believes that it is essential that the FIO continues to be included in the EU-US regulatory discussions as well as other relevant international fora.

Insurance Europe also welcomes the intent to negotiate a Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US. Insurance is a fundamental ingredient for creating a robust and seamless economy that can sustain growth and job creation on both sides of the Atlantic. As such we believe it is important that insurance is included as a key component of the TTIP. Moreover, we believe the greatest benefit for the insurance industry will result from the inclusion of regulatory issues in the TTIP not just market access issues which are typically dealt with in trade agreements.

It is important to clarify, however, that we are not looking for the TTIP to duplicate the insurance dialogues which are already taking place, but rather be complementary, providing political support to ensure milestones are met in a timely way.

Key Market Access Issues

Discriminatory practises/proposals

- **US Reinsurance Collateral -** Insurance Europe welcomes the NAIC's adoption of a revised credit for reinsurance model law and regulation in 2011 as a step in the right direction. This is an on-going process which continued this summer with the publication of a process for developing and maintaining a list of qualified third jurisdictions.

  However, important additional work is needed most immediately with respect to the retroactive application of the benefits and the burden associated with the financial reporting. It is important that momentum for reform is not lost and the ultimate goal of equal treatment for both non-US and US reinsurers with uniform implementation across the US is not forgotten.

  We strongly support the identification of 'reinsurance and collateral requirements' as a priority of the EU/US insurance dialogue for 2013 and hope that it will ultimately lead to the total elimination of the discriminatory collateral requirements for foreign reinsurers in the US. Meaningful engagement by the Federal Insurance Office (FIO) in these discussions is important, especially because the pre-emption powers of the FIO provide a potential avenue through which uniform reform could be achieved.

  - Insurance Europe regrets the proposal, in late August 2013, by the NAIC Life Risk-Based Capital Working Group to allow a cedant's credit in its Risk-Based Capital (RBC) only to the extent collateral is established for 100% of that reduction. We believe that this new proposal contradicts the recent developments made by the "NAIC Reinsurance Task Force" and is likely to jeopardise the progress made so far to ease collateral requirements in the US.

- **US affiliated tax proposals –** A proposal to limit the deductibility of reinsurance premiums to non US-affiliates was included in Obama's 2013 budget proposal. This proposal is similar to the companion Bills which were introduced into the US House of Representatives and the US Senate in October 2011, which would limit the tax deductibility of certain affiliated reinsurance transactions. These proposals would result in unequal treatment of European insurers whose affiliate transactions would effectively become subject to double taxation. It would also potentially place the US in violation of its General Agreement on Trade in Services (GATS) agreements under the World Trade

Organisation (WTO) and at odds with the non-discrimination provisions of income tax treaties between the US and certain member states.

Difficulties arising from dealing with multiple regulatory jurisdictions

For international insurers doing business in a number of US states, differences in state-based regulatory requirements significantly add to the cost of doing business which in turn increases the price of insurance coverage for consumers. For this reason, Insurance Europe would like to see greater uniformity in state insurance regulation in particular with respect to group supervision, US reinsurance collateral requirements and also the regulation and taxation of placements by surplus line insurers.

Key Regulatory Issues

In working towards regulatory convergence and more comparable international regimes the focus should be on equivalence of outcome not on the methodologies used in achieving it. In particular, it is important that policymakers ensure that close cooperation and frequent communication takes place with respect to the following topics:

- **Group supervision** – Developments on group supervision are taking place on both sides of the Atlantic as well as at the international level through the IAIS's ComFrame initiative. It is vitally important to companies operating both sides of the Atlantic that developments on group supervision do not result in duplicative or conflicting practices in particular with respect to reporting obligations.

- **Systemic risk regulation** – The US through its newly formed Financial Stability Oversight Council (FSOC) has moved quickly in identifying 'non-bank financial institutions' which present - in its eyes - a systemic risk to the US. At the international level, the IAIS published in July 2013 a list of 9 G-SIIS (globally systemically important insurers) along with their identification methodology and measures to be applied to G-SIIs; however some measures still require further work. They have also committed to publishing a list of globally systemically important reinsurers by July 2014. In Europe some member states are more advanced than others but it is anticipated that detailed discussions will take place in the coming months.

  For groups operating cross-border it is important that a coordinated approach is taken to both methodology and measures to avoid regulatory arbitrage and to ensure groups operating internationally do not find themselves subject to duplicative or contradictory requirements. Therefore, this is an area where regulatory dialogue between the responsible authorities is important.

- **Resolution** - It is vitally important that both supervisors and the relevant authorities are able to work together in good and bad times, which is especially challenging in a cross-border crisis situation where different authorities may become involved. We therefore believe this is one area which would benefit from inclusion and increased discussion in the regulatory dialogues.

- **Data confidentiality** – The ability for regulators to share confidential information securely is a pre-requisite for better supervisory cooperation and coordination. The work on-going on international supervisory colleges underlines the necessity for progress to be made in this area to facilitate supervisors working together internationally. We, therefore, appreciate the inclusion of a chapter on data confidentiality in the EU-US technical report and its selection as one of the priorities for on-going work in 2013.

Canada

- **Collateral requirements for reinsurance placements** – Full capital credit is only allowed for reinsurance ceded to unregistered reinsurers holding collateral equalling 115% of the outstanding losses recoverable including incurred but not reported losses plus ceded unearned premiums. If the funds held are below 115%, the ceding company attracts an additional margin on ceded unregistered reinsurance.

  In addition, the collateral must meet OSFI (Office of the Superintendent of Financial Institutions) requirements and restrictions and be held in either RSA (Reinsurance Security Agreement) or approved Letters of Credit.

  OSFI's approach does not distinguish between reinsurance placements with financially strong non-registered reinsurers from well regulated jurisdictions and placements with weaker non-registered reinsurers from less well regulated regimes. These collateral requirements limit the risk bearing capacity of international reinsurers and impede the insurability of significant risks such as severe natural disasters. In addition, the pledging of assets increases the capital costs of reinsurers and makes the premiums for reinsurance cover more expensive.

- **The re-interpretation of the phrase "insure in Canada a risk" strongly encourages foreign insurers to establish a physical presence in Canada** – The clarification of "insure in Canada a risk" under Part XIII of the *Insurance Companies Act (Canada)* means that all Canadian (re)insurance business written outside of Canada (cross border) will be classified as unlicensed/unregistered unless sufficient operational activity has been undertaken in Canada in order to retain registered risk status. This introduces a clear disincentive to conduct cross-border business.

  In addition, Central Premium Payment in Canada for risks insured abroad and accepted as assumed business are still to be treated as business in Canada and as such will attract excise tax as per the Excise Tax Act (CRA) (differs between provinces, up to 50% of premium in Alberta). In parallel, provincial insurance regulations would also impose a number of restrictions to permitted insurance activities (e.g. solicitation, claims adjusting) in respect of the Canadian insured.

- **Difficulties arising from dealing with multiple regulatory jurisdictions** – In Canada insurance companies are subject to supervisory requirements at both provincial and federal level. This creates an additional reporting burden and higher costs for doing business. This is further complicated by differences in the reporting requirements amongst the various provincial authorities.

  Work needs to be undertaken to harmonise and achieve greater uniformity in Canadian regulatory reporting requirements both between the provinces and with OSFI at the federal level. In this regard, we think that OSFI could potentially have a role as central information repository.

Brazil

On 31 March 2011 two new resolutions came into force in Brazil; CNSP Res. 225 and CNSP Res. 232. These regulations dramatically restrict the ability of private reinsurers, especially foreign (re)insurers, to conduct business in Brazil.

- **Restrictions on affiliate's transactions -** Resolution 232 prohibits local (re)insurers from transferring more than 20% of the insurance premium on each coverage to related companies located outside of Brazil. Moreover, the resolution dictates that contracts already signed will be subject to the 20% limit either at renewal or on March 31, 2012, whichever is earlier. Previously, as is the international norm, reinsurance placements made to companies in the same group were treated in a similar way to reinsurance placements with any other reinsurer. Insurance Europe would like to see the previous treatment re-established. This would be in line with the conclusions of the IMF's 2012 FSAP assessment of Brazil[1] in which they recommended the removal of this restriction as it adds cost and possibly hinders market development.

- **Compulsory reinsurance business with local participants** - Under Resolution 225, with effect from March 31st 2011, insurance companies must cede at least 40% of each reinsurance cession to local reinsurers (previously local reinsurers just had a "right of first refusal").

These reinsurance regulations mark a clear departure from international regulatory norms and negatively impact the Brazilian business of many European insurance companies. Insurance Europe requests that the EC raises the European insurance industries concerns while binding market access commitments in the EU Mercosur negotiations and during other bilateral dialogues with Brazil.

Japan

The preferential treatment granted to Japan Post remains an issue for the European insurance industry:

- **Japan Post Holding (JPH) preferential treatment -** JPH is not only a post office but the world's biggest bank ("postal savings scheme") and has a life insurance unit, which controls 40% of the market. It was privatised in 2007, however, the Japanese government still holds 100% of shares today and will continue to retain a stake of more than one-third.
  JPH entities enjoy favourable treatment from the Japanese Government. The benefits granted to JPH are inconsistent with Japan's World Trade Organisation General Agreement on Trade in Services (GATS) commitments.

  The Japanese Diet approved in April 2012 new amendments to the Postal Privatisation Law which eliminate the previous privatisation deadline of JPH (2017) and enlarge its discriminatory benefits (e.g. making easier for JPH to issue new products, restricting the access of private insurers to the JPH network). However, despite JPH applying for a licence to offer modified cancer insurance and/or stand-alone medical products, it is yet to be approved. This follows the LDP Japanese Government committing to the establishment of a level playing field in Japan's insurance market; and therefore not to approve JPH's new products until (1) equivalent conditions of competition with private sector insurance suppliers have been established; and (2) JPH has a properly functioning business management system in place.

  Insurance Europe encourages the EC to continue addressing these issues in its FTA trade talks with Japan, or in other bilateral discussions with Japanese colleagues to ensure that all market participants can compete on a level playing field, including in terms of access to the Japan Post network.

India

- **Foreign Direct Investment (FDI) cap and establishment of foreign reinsurance branches -** Insurance Europe is concerned that the Insurance Laws (Amendment) Bill has not progressed very far. This Bill originally drafted in 2004 contains an increase in the FDI limit to 49% (currently at 26%) and permission for reinsurance branches to be established.

  The rise of the FDI cap continues to be a major priority for the European insurance industry. Insurance Europe was bitterly disappointed not to see the Bill introduced to the Indian Parliament

[1] IMF (2012) Financial Sector Assessment Program Brazil. Detailed assessment of observance of IAIS ICPs.

during this summer's monsoon session; and would welcome the EC's continued support in trying to ensure the Bill is introduced in the upcoming winter session. The firm position taken by the EC in the context of the EU-India FTA is much appreciated by the European industry; and we believe vitally important in maintaining pressure on the Indian authorities.

- **Excessive requirements for reinsurers.** During the last years, the Indian insurance regulator (IRDA) has introduced additional reporting and cession requirements for cross border reinsurers:
  - In January 2012, the IRDA introduced registration requirements.
  - In February 2013, the IRDA released its final "life insurance reinsurance regulations, 2013", which mandates insurers and reinsurers to draft a "Reinsurance programme" to, among other goals, maximise retention within the country. In addition, it sets the level of minimum mandatory cession to the single domestic Indian reinsurer to 30%.

  Insurance Europe is concerned by the IRDA's desire for increased information from cross border reinsurers and the restrictions on reinsurance placements.

Russia

- **Foreign branches** - As part of its accession to the WTO, Russia committed to allow branches from foreign insurance companies (life and non-life insurance and reinsurance, but except insurance of State procurement and mandatory insurance other than mandatory insurance of civil liability of owners of cars) by 2021, subject to licensing, financial soundness and guarantee deposit requirements.

  Insurance Europe believes that this timeframe is excessive and would like to see this commitment implemented sooner.

- **Discrimination against foreign insurers in public procurement** –The Federal Law sets up onerous requirements for the participation of foreign companies in the supply of insurance services for state and municipal needs as well as state corporations. Insurance Europe would like to see a level playing field established for foreign insurers wishing to write public procurement business.

- **Limit on investment charter capital quota for foreign insurers -** Following the new Russian Insurance Law adopted on 23 July 2013; Russian insurance companies with more than 51% of foreign investment cannot participate in state funded insurance, in life insurance and in compulsory motor liability insurance. This ban will come into force on 1 July 2014 and will be lifted on 22 August 2017 in accordance with the WTO transition rules. However, the new Law introduced a clause, according to which those subsidiaries that had licenses as of 22 August 2012 may continue to be engaged in life and compulsory motor liability insurance. The limitations on foreign investors apply regardless of the country of their origin.

  As before, the new Insurance Law prohibit reinsurance of life insurance and compulsory motor liability risks.

China

- **Foreign Direct Investment (FDI) cap for foreign companies -** Currently, foreign life insurers have to establish their operations thought a joint venture with a 50% cap on equity. In the case of domestic insurers, the cap for single foreign investors in domestic insurers is set at 20%, and foreign ownership is restricted to 25%. Insurance Europe believes that such decisions should be left to the investors/shareholders.

- **Minimum capital requirements for specialised insurers** - At present, there is no distinction between general insurers and speciality insurers, such as health insurers. This results in speciality insurers being subject to excessive minimum capital requirements even if they only write one or two niche products.

- **Complicated procedures for converting (incorporating) foreign property and casualty insurance branches into subsidiaries** - It has been legally possible for four years for a branch to be converted into a subsidiary but in practice the procedure turns out to be highly selective, lacking in transparency, and often takes an excessive long time.

- **Restrictions on Related Party Transactions** - Foreign-invested insurers' related party transactions (reinsurance transaction, asset transaction and other transactions) are governed by a different regulation than the transactions of domestic insurers[2]. This way, foreign invested insurers face a much more complicated procedure which includes having to obtain approval from the China Insurance Regulatory Commission (CIRC). In addition, the latest version of this law was approved without a meaningful consultation with the industry as the consultation period was too short and concurred with the Western Christmas break (24-31 December 2013).

Argentina

In 2011 Argentina changed dramatically the business environment for local and cross border reinsurers and mandated the repatriation of insurers' investments. In addition, the recently published '2012-2020 Argentinean Insurance Plan' establishes restrictions for insurers' investments.

- **Restrictions for cross-border reinsurers** - Cross border foreign reinsurers have to be registered with the Argentine Superintendant of Insurance (SSN) and are only allowed to provide coverage for the portion of a risk above USD 50 million and retrocession services, apart from exceptions allowed by the SSN on a case by case basis. This contrasts with the previous situation whereby foreign reinsurers were free to underwrite risks on a cross border basis if they registered with the SSN or wrote business via reinsurance brokers registered with the SSN.

- **High requirements to become a local reinsurer** - To become a local reinsurer, foreign reinsurers must set up an Argentinean subsidiary or branch with capital equalling the greater of 20m Argentinean Pesos (approx. USD 5 million) or 16% of premium retained or 40% of gross written premium. Local reinsurers must retain at least 15% of reinsurance premiums ceded to them and may not transfer more than 40% of premiums corresponding to each transaction to subsidiaries or companies belonging to the same financial conglomerate located abroad.

- **Restrictions on cross-border retrocession -** If reinsurance business constitutes up to 10% of a local insurer's annual premiums, it can only place their retrocessions with local reinsurers.

- **Repatriation of investments** - In October 2011, the SSN issued without prior consultation the Resolution 36.162, which mandated the repatriation to Argentina of all liquid assets and investments of direct insurers by the end of 2011.

[2] "Notice on Certain Issues Concerning Reinsurance Transactions Conducted by Foreign-invested Insurance Companies with Their Affiliates"

- **Compulsory investments -** The 2012-2020 Argentinean Insurance Plan establishes certain levels of insurers' investment portfolios that shall be redirected to mid- and long-term productive and infrastructure projects. An Eligibility Committee (formed by the Ministries of Economy and Industry and the Argentinean Insurance Superintendency, SSN) has been established to identify the sectors and/or products where these investments shall be placed.

Insurance Europe appreciates the EC including the reinsurance restrictions in Argentina in its 2013 "Trade and Investment Barriers report". In addition we would welcome the EC supporting the current Panama WTO dispute settlement proceeding against Argentina's reinsurance restrictions. Panama is challenging two restrictions imposed by Argentina on the reinsurance sector: the requirement to establish a local subsidiary and the prohibition on reinsurance from certain jurisdictions. However, we believe it is important that the challenge is expanded to also cover the restrictions on cross-border insurance and cross-border retrocession and the minimum premium retention requirements.

Insurance Europe appreciates the EC's support on this issue to date and at the very least requests the EC to continue raising the industries concerns in bilateral dealings with Argentinean counterparts and in the context of the EU-Mercosur negotiations.