Position Paper

Insurance Europe position paper on key regulatory and market access issues

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Insurance Europe, the European insurance and reinsurance federation, welcomes this opportunity to highlight our key regulatory and market access issues with respect to the US, Brazil, Japan, India, Russia, China and Argentina.

These countries all represent 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. In order to achieve such a goal, effective regulatory dialogue between stakeholders of all levels is essential. The Financial Market Regulatory dialogues play a key part in achieving this and ensuring regulatory reform best fits the needs of its markets.

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 detailed input to the EC on insurance related developments in these markets.

United States

Regulatory dialogues have been taking place between the EU and US for many years. However, 2012 has been a real milestone with the establishment of a one year work program running from January to December 31st 2012. As part of this more intensive dialogue a draft Technical Report[1] was published in September and it is expected to be followed by policy decisions 'regarding whether and how to achieve further harmonisation in regulation and supervision' by the end of the year.

Insurance Europe is very supportive of the considerable time and effort policymakers both sides of the Atlantic have committed to better understanding each other's regulatory systems and supervisory procedures. 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 provides to stakeholders. These regulatory dialogues have previously provided little stakeholder feedback so this increase in transparency is a welcome change.
The US Federal Insurance Office, 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 may pre-

[1] Draft report on the EU-US Dialogue Project, September 27th 2012 https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/consultationpapers/EU_US_Dialogue_Project_Report_for_Consultation.pdf

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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.

In addition, Insurance Europe supports the work conducted by the EU/US High Level Working Group and would like to request this Group to include the insurance sector within its final recommendations. In our view, the High Level Working Group should ensure that political support is given to the insurance dialogues already in place to see them continue into 2013.

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 early November 2011 as a step in the right direction. 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. Meaningful engagement by the Federal Insurance Office (FIO) in these discussions is important, not least because the pre-emption powers of the FIO provide a potential avenue through which uniform reform could be achieved. Differences in approach to reinsurance supervision, including the US reinsurance collateral arrangements, are one of the areas covered in the EU-US technical report and we would welcome its inclusion in the concrete outcomes agreed to at the end of the project (December 31st).

- **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 released on February 13th 2012. 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.

Extra-territorial application of US law:

Over the last few years, legislation has been passed by US Congress which directly affects the business of some European insurers' which do not even write business in the US:

- **Foreign Accounts Tax Compliance Act (FATCA) –** The main aim of FATCA is to increase the ability of the U.S. tax authorities to combat cross-border tax evasion by US persons with off-shore accounts. To achieve this FATCA requires entities classified as Foreign Financial Institutions (FFIs) to report identification and personal data to the US Internal Revenue Service (IRS) or be subject to a 30% withholding tax on US source payments. The draft FATCA regulations and draft model agreements include some life insurance companies as FFIs. European insurers have both a low incidence of US policyholders and present a low risk of tax evasion; however, compliance will create a significant burden. We appreciate the engagement of DG TAX UD and the support they have provided to European insurance companies in discussions with the IRS/US Treasury. As the focus moves towards designing the reporting criteria we would welcome DG TAX UD's continued support and engagement on the issue.

- **Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA)** – US law mandates that CMS (US Centres for Medicare and Medicaid Services) bear secondary liability for the claims of Medicare beneficiaries. To achieve this, liability insurers, including foreign insurers qualifying under "doing business in the US" criteria are required to collect and report identification and personal data to CMS on US claimants. Due to the broad definition of "doing business in the US", this legislation creates a

significant reporting/compliance burden for European insurers and may place European insurers in breach of EU data protection legislation.
A significant amount of discretion is left to the CMS for implementing the legislation. Therefore, it is important for the Commission to speak now with their US counterparts to ensure that the concerns of the European insurance industry are heard.

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. In particular, Insurance Europe would like to see greater uniformity in state insurance regulation with respect to group supervision, US reinsurance collateral requirements and also the regulation and taxation of placements by surplus line insurers.

Key Regulatory Issues

- **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 practises developing in particular with respect to reporting obligations. We welcome the inclusion of group supervision in the draft EU-US technical report and believe this item should remain firmly on the agenda for future EU-US insurance dialogues.

- **Regulatory convergence** - 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.

- **Systemic risk regulation** – the US through its newly formed Financial Stability Oversight Council (FSOC) has moved quickly in defining which 'non-bank financial institutions' present a systemic risk to the US and in proposing measures for these Institutions. At the international level the IAIS are expected to publish their methodology and measures for G-SII (globally systemically important insurers) in April. In Europe some member states are more advanced than others but it is anticipated that detailed discussions will take place in 2013/2014. 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 increased regulatory dialogue between the responsible authorities would be welcomed.

- **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.

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 do 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.

- **Compulsory reinsurance business with local participants** - Under CNSP Res 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").

In August 2011 Mr Moreira Mendes, Brazilian Congressman, filed an appeal to the Brazilian General Attorney requesting his opinion on the constitutionality and legality of these regulations. This opinion would be a very strong position if positive as it could be enforced in the Court, with immediate effect. However, it is unclear when the opinion will be released.

These reinsurance regulations mark a clear departure from international regulatory standards 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 a key issue for the European insurance industry in Japan:

- **Japan Post Inc (JPI) preferential treatment -** JPI 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, but the government still remains a majority shareholder retaining a stake of more than one-third.

    - The Japan Post (JP) entities enjoy favourable treatment from the Japanese Government. The benefits granted to JP 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 JP (2017) and enlarge its discriminatory benefits (e.g. making easier for JP to issue new products, restricting the access of private insurers to the JP network).

- Following the approval of this law, on 22 of November 2012 the Japan's Postal Services Privatization Committee (PSPC) recommended the approval of a new JPI education endowment product. The PSPC justified its decision by stating that a new product can be approved if it is "a typical product/service generally available in the market place, and is also a product/service targeted at individuals and strongly connected with JPI's core competence."

Insurance Europe encourages the EC to address these issues in its FTA trade talks with Japan, or in other bilateral discussions with Japanese colleagues. The EU should seek a commitment from Japan that JPI will not be authorized to issue new or modified products until equivalent conditions of competition have been established between JPI and private insurance suppliers. In this regard, the recent PSPC's decision establishes a worrying precedent as under the logic used there would be virtually no limits on new or modified products offered by JPI.

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 which was originally drafted in 2004 contains an increase in the FDI limit to 49% (currently at 26%) and permission for reinsurance branches to be established.
  In November 2011, the Indian Standing Committee on Finance (SCF) submitted its report on the Bill to the Indian Parliament. This report:
    - rejects the FDI increase;

- does not reject the proposal to allow the establishment of foreign reinsurance branches, but adds very specific conditions such as capital requirements and the prohibition of investing policyholder funds outside India.

Although, this report is not binding it is very influential.

The rise of the FDI cap continues to be a major priority for the European insurance industry. In this regard, Insurance Europe would welcome further EC support for an increase in the FDI cap, and permission for establishment of foreign reinsurance branches without overly restrictive accompanying requirements.

- **An additional registration requirement for cross-border reinsurers** –In January 2012 the Indian insurance regulator (IRDA) introduced new registration requirements for cross border reinsurers, effective from 1st April 2012, as well as a methodology to implement these requirements.

- The IRDA is currently working on a draft regulation for reinsurance which would mandate (re)insurers to draft a Reinsurance Programme to, among other objectives, "maximise retention within the country". If a Programme is deemed inconsistent with the regulation the IRDA may allow for a lesser credit for reinsurance. In addition, the regulation also sets minimum retention limits for mortality/morbidity risks as well as conditions for placing reinsurance outside India.

  Insurance Europe is concerned by the IRDA's desire for increased information on reinsurance placements (business to business transactions between sophisticated counterparties). The purpose of reinsurance is to spread a risk amongst a number of insurers and in doing so to provide protection and stability to the primary market, through imposing restrictions on the ability of reinsurers to globally diversify and pool their risk it limits the efficiency of reinsurers and their ability to act as global shock absorbers.

Russia

European (re)insurers face a number of market access restrictions in Russia, therefore, the list below should not be viewed as exhaustive. Insurance Europe would be happy to provide a more comprehensive list upon request:

- **Licensing procedure for insurers** –Under the current Russian insurance law the regulator is given significant discretion in granting insurance licenses. This procedure lacks transparency and licenses are being refuted on grounds that contradict local law and regulations. This is further complicated by the lack of real procedures to challenge the decision of the regulator.

- **Foreign branches** – It is currently prohibited to start-up branches for foreign insurers and reinsurers. We understand that during Russia's bilateral WTO-negotiations with the US, foreign branches were accepted.

- **Public procurement** – Foreign-invested insurers are discriminated against in the area of public procurement.

- **Limit on investment charter capital quota for foreign insurers** – Foreign insurers are only allowed to account for a maximum of 25% of the total factual charter capital of all insurance companies in Russia. Russia has committed to increase the factual charter capital for all foreign insurers to 50%, however we understand that this has not been implemented yet. Despite this planned improvement, Insurance Europe would ultimately like to see the cap on foreign insurers removed completely.

China

In China European (re)insurers face a wide range of market access restrictions, therefore, this list should not be viewed as exhaustive and Insurance Europe would be happy to provide a full list and further details upon request:

- **Foreign Direct Investment (FDI) cap for foreign companies -** Currently, foreign life insurers have to establish their operations thought a joint venture with a cap on equity held of 50%. In the case of domestic insurers, the cap for single foreign investors in domestic insurers is set at 20%, while foreign ownership is restricted to 25%. Insurance Europe believes that such decisions should be left to the investors/shareholders as long as the results are in line with People's Republic of China company law.

- **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.

- **Compulsory insurances restrictions** – Insurance Europe welcomes China's decision to open up mandatory motor third party liability insurance (MTPL) to foreign insurers as of 1st May, 2012, and looks forward to the implementation of this decision. Motor insurance in China currently accounts for about 70% of the total non-life premiums of which 35% is MTPL business.

- **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 a long time. This is an essential requirement for further expansion into more provinces because only subsidiaries can establish branches.

- **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. This way, foreign invested insurers face a much more complicated procedure and shall first obtain the approval from the China Insurance Regulatory Commission (CIRC).

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** - Under these resolutions, cross border foreign reinsurers will have to be registered with the Argentine Superintendant of Insurance (SSN) and will only be 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 write 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.

- **Repatriation of investments** - In addition, without prior consultation, the SSN issued Resolution 36.162 on October 2011, which mandated the repatriation to Argentina of all liquid assets and investments of insurance companies by the end of 2011. The Resolution, however, did not apply to

reinsurers whose investments and liquid assets held abroad continue to be limited to 50% of their capital.

- **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) is established to identify the sectors and/or products where these investments shall be placed.

Insurance Europe appreciates that the EC is including the reinsurance restrictions in Argentina as a key priority in its 2012 "Trade and Investment Barriers report". In this regard, Insurance Europe encourages the EC to continue raising the industries concerns in bilateral dealings with Argentinean counterparts and in the context of the EU Mercosur Trade Negotiations.

Argentina is fully committed for cross border services in the WTO's GATS agreements; therefore, we request that the EC works with its international trade partners to call Argentina to honour its international commitments.