Client Update
Solvency II: The European Commission Reveals Third Country Equivalence Decisions

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The European Commission adopted its first third country equivalence decisions under the Solvency II regime on 5 June 2015. The decisions follow the European Insurance and Occupational Pension Authority's ("EIOPA") assessment advice on the equivalence of different jurisdictions, which is set out in its final reports to the European Commission of March 2015.

Switzerland has been granted full equivalence for an indefinite period in all three areas of Solvency II: (i) solvency calculation (relevant to EU insurers operating in a third country), (ii) group supervision (relevant to third country insurers with EU activities), and (iii) reinsurance (relevant to third country reinsurers).

A further six third countries (Australia, Bermuda, Brazil, Canada, Mexico and the United States) were granted provisional equivalence for a period of ten years, but in this case in only one of the three areas—solvency calculation. Under Solvency II, provisional equivalence may be granted with respect to those jurisdictions outside of the EU which, although they do not meet the criteria for full equivalence, they either have an equivalent solvency regime in place or it is expected that they will adopt and apply one in the foreseeable future.

Full Solvency II equivalence status will allow EU insurers with subsidiaries in an equivalent third country to calculate the subsidiaries' capital and own funds using the solvency rules of that third country. Insurance groups headquartered in an equivalent third country will be supervised for the purposes of group supervision by the Third Country Supervisory Authority rather than by an EU supervisory authority. In addition, reinsurance contracts entered into by an EU insurer with a reinsurer in an equivalent third country will be treated in the same way as reinsurance contracts entered into with EU reinsurers. For countries granted provisional equivalence, EU insurance groups will be able to use the local rules relating to capital and capital requirements rather than the Solvency II rules in calculating their solvency capital requirement, but only if they use the so-called "deduction and aggregation" approach for calculating their solvency requirement. Many insurance groups use the default method of using an accounting-based consolidation of the group subsidiaries in calculating their solvency requirement, so the impact of the provisional equivalence decision may be limited.

With respect to the United States, the EU Commission noted that key information for the assessment was gathered through the EU/US insurance dialogue project (comprised of the US National Association of Insurance Commissioners (NAIC), the US Federal Insurance Office, the European Commission, EIOPA and various EU member state supervisors), which started in 2012, with the aim of achieving improved mutual understanding of the respective insurance regulatory and supervisory regimes.

The European Commission's decisions will now be scrutinised by the European Parliament and the Council, the process for which has a three month deadline with a possible further extension of three months. Once the decisions have been approved, they will be published in the Official Journal of the European Union and come into force 20 days later.

The equivalence decisions should provide more legal certainty for both EU insurers operating in third countries, and insurers in third countries operating in the EU. EIOPA and the European Commission will continue to assess other jurisdictions for equivalence status, with an intention to adopt a second set of equivalence decisions later in 2015.

The equivalence decision for Switzerland can be found here.

The equivalence decision for Australia, Bermuda, Brazil, Canada, Mexico and the United States can be found here.

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Please do not hesitate to contact us with any questions.