ECIROA Comments on the IAIS Captive Paper

General Comment			ECIROA is grateful for the opportunity to comment on the proposed Captive Paper. We have made some comments below on the draft text and would also like to make the following general comments:- (a) Proportionality - this is a very important factor in the supervision of Captive Insurance and Reinsurance companies and Supervisors should be able to get a very clear picture of most Captives due to their size and relative simplicity. It is therefore important to consider the added benefits for Supervisors of additional requirements as they could have detrimental cost implications for Captives. With this in mind, ECIROA has developed Captive Best Practice Guidelines (copy attached) which will enable Captives to meet Solvency II, Pillar 2 requirements and which can be adapted for use in other jurisdictions. (b) Captive model - the paper is very focused on the outsourced captive model. Whilst the majority of captives outsource their administration to captive managers, this is not always the case and in some jurisdictions, it is common for captives to have their own employees who run the captive. (c) Enterprise Risk Management - the Captive is itself one of the instruments used by industrial, commercial or financial companies in their risk management processes. ERM is therefore not relevant or proportionate for captives. (d) ORSA - again it is important to have a proportionate approach for Captives. Captives already document many of their risk management processes which can be used in their Governance process and may be incorporated into their ORSA. (e) Internal models - it is probably unlikely that captives will use internal models and any that do will be the bigger captives writing larger risks.
Section	**Number**	**Topic**	**Comment**
2 Scope of Paper	3 - 5	Captive Definition	We do not think it is necessary to further define captives or to explain different type of captives (as listed in the Appendix). The existing IAIS definition is comprehensive and transparent and is consistent with the Solvency II captive definition.
	10	Business Underwritten	Where a captive is writing liability business, in the majority of cases the third party (claimant) has no interest in the proceeds of the policy. The Policyholder is liable to the third party to pay compensation. This liability can be insured either externally to the insurance market or to the captive but in either case, the existence of the policy will not impact upon the requirement for compensation to be paid by the Policyholder. There are a small number of cases where the third party has a direct recourse to the Insurer but this is not common.

	13	Policyholders or Beneficiaries	It is important to distinguish between the situation where a captive is writing insurance directly for employees and where a captive is writing employee benefit risks for employees of the owner on a direct basis. This situation is similar to writing liability risks - the obligation to pay the benefits remains with the owner (Employer) regardless of whether insurance cover has been arranged or not.
4 Application of the ICPs and Standards	36	Suitability of Persons	Captive (Insurance) Managers are themselves regulated in most jurisdictions.
	41	Changes in control	As long as the new direct or ultimate owner of the captive is still part of the consolidated group of companies, an exemption to this rule should apply.
	45	Macro prudential surveillance	This is not relevant for captives as captives do not have systemic risk.
	48	Supervisory review and reporting	The need to provide reports to Supervisors is accepted and agreed by Captive Owners. The scope and nature of the information needed and the frequency of reporting should reflect the nature, scale and complexity of the captive. Most captives are very straightforward entities and it is important to consider how much information is necessary to get a full picture of the risks of the company in question. For smaller, simpler companies the supervisory body will very easily have access to more information and there will be more transparency than it would ever be possible to obtain for a complex undertaking.
	51	On-site inspections	We appreciate your comment, that supervisors should tailor the extent and frequencies of inspections due to the limited risk posed to external stakeholders and markets.
	58	Premiums to related parties	In most jurisdictions, any commercial interaction between related parties needs to be on an arms-length basis, i. e. at the same terms and conditions as of unrelated parties. Hence, premiums charged by captives to related parties has to be calculated according to actuarial standards used by unrelated (re)insurers. "Recommendations" from insurance managers might not meet this criteria.
	68	Corporate Governance	The relationship between the Captive and the Captive(Insurance) Manager is an outsourcing relationship. The Captive Manager is providing administration services to the Captive Board and is required to abide by the terms of the Service Agreement. The Board is responsible for corporate governance and therefore the comment regarding strengthening of trust between captive owners, directors and insurance managers is not appropriate. Please see our comments in 10 above regarding third party business.
	70		Please see our comments in 10 above regarding third party business.
	75	Types of Risks	Please see our comments in 10 above regarding third party business.
			Failure of a fronting Insurer - the impact of failure of a fronting insurer is not related to the security provided to the fronting insurer by the captive (which is usually in the form of a parental guarantee or letter of credit). The risk to a Captive of such a failure could be (a) premium payment - the fronting insurer has collected premiums from local entities and has not yet paid these over to the captive or (b) local regulatory requirements - fronting insurers are needed to issue local policies in certain jurisdictions.
	76		Please see our comments in 10 above regarding third party business. There is only a risk of the captive being sued in circumstances where the third party has a right to claim directly on the policy issued by the Captive.
	78	Internal Controls	The compliance function can also be provided by the Compliance Department of the Captive's Parent Company.

	83	Valuation of Liabilities	Captives normally limit their exposures by the imposition of annual aggregate limits or by the purchase of reinsurance, either facultative or stop loss. By using these risk management measures, Captives manage the risk of higher claims volatility.
	85		We do not agree with the statement that 'policies are more likely to be written on a "claims made" basis. Financial lines policies and some general liability policies can be written on a claims made basis but property insurance (which forms a very high proportion of the risks written by captives) is written on an occurrence basis. The IBNR provision may be lower for captives but this is more likely to be the result of good reporting procedures.
	117	Risk diversification	We do not agree with your comment that captives typically have little or no risk diversification. On the contrary, captives underwrite various lines of business (property, liability, cargo etc.) but especially are engaged in international programs of multinationals with a global spread of locations and exposures.
	130	Confidentiality and disclosure	Supervisors should consider the consequences of disclosure of certain types of information for Captives. Where a captive is insuring only the risks of its Parent and/or other Group Companies, disclosure of the risks underwritten will provide a clear picture of the parent or subsidiary company’s insurance programme. Similarly, the Captive may create loss reserves for outstanding claims which could be easily identified by claimants and other third parties (as Captives generally underwrite only a limited number of policies for each line of business).
	138	Anti-money laundering and CFT	The anti-money laundering function could also be carried out by the Compliance function of the Parent Company.
5. Protected Cell Companies	141		We do not believe that it is correct to say that a significant proportion of captives are established using Protected Cell Companies. This may be true in certain captive jurisdictions but not when considering all captives globally.
6.Insurance Managers	165	Internal Control	The Captive (Insurance) Manager can advise on premiums but the premiums for the risks must be set by the Captive Board.
	166		The Compliance function should be performed by a member of the Captive Board. The administration of the compliance function can be outsourced to the Captive Manager or to the Compliance department of the Parent company.