



Comments Template on EIOPA-CP 04-11		Deadline 23.09.2011 17.30 CET
EIOPA Draft Report - Equivalence assessment of the Bermudan supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive		
Name of Company:		
Disclosure comments:	of EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments should be treated as confidential:	Confidential/Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in the column "reference".</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below.               <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub bullets/subparagraphs, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template, <u>in Word Format</u>, to <a href="mailto:equivalence@eiopa.europa.eu">equivalence@eiopa.europa.eu</a> . Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to Consultation Paper No. 03 (EIOPA-CP-04-11).</p>		
<b>Reference</b>	<b>Comment</b>	

Template comments

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General Comment	<p>ECIROA welcomes the opportunity to comment on this Consultation Paper.</p> <p><b>For more information please visit our website on <a href="http://www.eciroa.org">www.eciroa.org</a></b></p> <p>It is disappointing to see that negative comments have been made on the manner in which the BMA applies the proportionality principle to their regulation of captives. Firstly, the manner in which the proportionality principle will be applied has not yet been determined by the EU and secondly, it is clear that the operation of captives and their risk profiles have not been fully understood.</p> <p>It is important to recognise the particular nature of captive companies which differ from commercial insurance and reinsurance undertakings in that:-</p> <ol style="list-style-type: none"> <li>1. They write a restricted number of lines of insurance business (e.g. property damage &amp; liability) and normally issue a small number of policies (e.g. global programmes with only one policy per insurance class);</li> <li>2. They insure or reinsure a restricted number of risk units (e.g. sites, premises, vehicles);</li> <li>3. They have a restricted number of insureds / clients;</li> <li>4. They often outsource up to 100% of their administration to other professional companies. This outsourcing is done to ensure that a broader and more appropriate level of expertise is brought to bear on the company's activities, if needed;</li> <li>5. The purpose of the captive is to add flexibility to the tools available to the group risk manager in managing and mitigating the risk of the parent group in a cost efficient manner.</li> </ol> <p>We have received verbal confirmation from the EU and EIOPA that the captive industry will not be negatively impacted by the introduction of Solvency II. If the proportionality principle is interpreted in Europe as it has been in this assessment, the majority of captives will be very negatively impacted.</p> <p><b><i>Please note that where a comment has not been made on a particular paragraph, this does</i></b></p>	



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	<i>not indicate that we agree with the paragraph.</i>	
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11.	<p>We believe that the way the Principle of Proportionality has been applied in this review is not correct. The EIOPA interpretation of the principle and how it should be applied has been challenged by ECIROA (see our Position Paper – The Principle of Proportionality and its application). Clearer guidance is needed for (Re)Insurance Undertakings and Supervisors as the principle and its application must be understood by all parties if it is to be applied correctly. Supervisory authorities must be able to use discretion in the application of the proportionality principle.</p>	
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119.	<p>As per Article 41 (2) the system of governance should be proportionate to the nature, scale and complexity of the (re) insurance undertaking. We do not agree that the application of the proportionality principle to the risk management function means that insurers in classes 1 to 3 will not meet the requirements of Article 44. There are a number of areas where Supervisors can apply the proportionality principle without exempting the Insurer from its obligation to meet the requirements. Some examples of this are: (1) The person or persons carrying out the risk management function -</p>	

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	must meet the 'fit and proper' requirements but in the case of insurers in classes 1 to 3, this person may also be a member of the Board of the Company (as some of these companies do not employ their own staff); (2) Information systems – most of these insurers will not need a sophisticated information system to capture data. As long as the data is available to and can be easily interpreted by the Supervisor, this should be acceptable. Please refer to the ECIROA 'Captive Best Practice Guidelines' which provides corporate governance guidelines for captives which will enable them to meet Solvency II requirements.	
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121.	Article 47 states 'Insurance and reinsurance undertakings <b>shall provide for</b> an effective internal audit function not that an internal audit function <b>be established</b> . Insurers in classes 1 – 3 can provide for an effective and independent internal audit function either by using the Internal Audit function of the Parent Company or Group internal audit function or by outsourcing this function to a company which has appropriate and relevant experience.	
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126.	Article 48 states 'Insurance and reinsurance undertakings <b>shall provide for</b> an effective actuarial function.....Insurers in classes 1 – 3 can provide for an effective actuarial function by outsourcing this function to person or persons who meet the 'fit and proper' criteria and who are able to demonstrate their relevant experience with applicable professional and other standards.	
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129.	It is common for captives to outsource 100% of their administration to professional captive managers. However, the responsibility for the captive's organisation, administration and affairs must stay with the Board.	
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131.	Captives often outsource compliance support to the captive manager. We agree that the captive should have its own compliance function which reports to the Captive Board. The proportionality principle can be applied by allowing this function to be carried out by a member of the captive board.	
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139.	Where captives are insuring only the risks of their parent or group company (and where there are no third party insureds), a proportionate approach should be applied to public disclosure requirements. The Policyholder (parent or group company) and the Supervisor has full access to all information. Publication of detailed information can be harmful where captives are underwriting a limited number of policies and claims reserves are therefore easily identifiable by claimants (which is not the case for larger Insurers underwriting a wide spread of insurance business).	
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143.	<p>As mentioned above, we believe that captives can meet the requirements of Solvency II by providing for the required key functions. However, the majority of captives will not be able to continue trading if the requirement is interpreted to mean that they must employ one individual to carry out each of these functions. Provided that the functions are carried out properly by qualified individuals, we see no reason why one individual should not be able to carry out more than one function or that they be outsourced to suitably qualified companies.</p>	
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