

Summary of Comments on Consultation Paper 04 - EIOPA-CP-11/04				EIOPA-BoS-11-032
CP No.4 - Draft Report - Bermudan Equivalence				10.10.2011
<p>EIOPA would like to thank ABI, ABIR, BIMA, BMA, ECIROA, GNAIE, and M. Poulding The numbering of the paragraphs refers to Consultation Paper No. 04 (EIOPA-CP-11/04)</p>				
No.	Name	Reference	Comment	Resolution
1.	ABI	General Comment	<p>The ABI welcomes the work done to date by EIOPA on the subject of equivalence and is grateful for the opportunity to comment on EIOPA's draft report. The strengthening of supervisory cooperation internationally and the implementation of an appropriate equivalence regime is an extremely important facet in the success of the Solvency II programme. The ABI notes the progress made in relation to the equivalence of the Bermudan supervisory system and strongly encourages continued cooperation between the relevant parties in order to deal with the outstanding points outlined in the draft report. Where such caveats exist, they should be addressed through an assessment of the adherence to principles and outcomes, as opposed to the application of detailed rules.</p> <p>Where the equivalence assessment is caveated, or where changes are needed for the supervisory regime to be deemed equivalent, it is not entirely clear what the process and timeline is from here on in to achieve equivalence (or not). Full clarity should be provided on the processes and timeline to achieve equivalence where caveats or prescribed changes are stated.</p>	<p>Noted.</p> <p>Consistent with EC Call for Advice, each of the reports will be revisited by EIOPA once the Level 2 criteria are agreed.</p> <p>EIOPA's approach has been determined by the</p>

				<p>EC CfA that asked that the assessments also identify “which aspects of the third country solvency regime could be deemed equivalent and what additional steps would need to be taken in order for the remaining criteria to be met”.</p> <p>EIOPA is providing technical advice to the EC. The Equivalence Decision will ultimately be taken by the EC.</p>
2.	ABIR	General Comment	<p>Firstly, ABIR would like to thank EIOPA for this opportunity to provide comments and feedback on the EIOPA Draft Report-Equivalence Assessment of the Bermuda supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive (herein referred to as the „Report”).</p> <p>We note specifically that it is indeed a ‘draft’ Report and as such understand that EIOPA will consider the comments received and make the necessary amendments where appropriate.</p> <p>ABIR wishes to provide the following general comments:</p> <ol style="list-style-type: none"> 1. We are pleased to note EIOPA’s advice is that Bermuda meets the criteria set out in EIOPA’s methodology for equivalence assessments under Solvency II with respect to Articles 172 and 227 for Classes 3A, 3B and 4 (the commercial sector) with certain caveats; 2. We are also pleased to note EIOPA’s advice is that Bermuda 	<ol style="list-style-type: none"> 1. Noted. 2. Noted.

			<p>meets the criteria set out in EIOPA’s methodology for equivalence assessments under Solvency II for group supervision (Article 260) with certain caveats;</p> <p>3. With reference to items 1 and 2 we acknowledge EIOPA for recognizing Bermuda as largely equivalent for commercial insurers and reinsurers as indicated in the Report;</p> <p>4. Further, ABIR supports EIOPA’s recognition of the distinction in their assessment of the Bermuda regulatory framework between the commercial and captive markets which is keeping with the risk-based approach of that framework.</p> <p>5. As noted in paragraph 18, the Bermuda insurance market is predominantly focused on wholesale business, (with less than .01% being the local retail market) and as such the BMA has made the major focus of its supervisory framework the Bermuda commercial market which is a sophisticated ‘business to business’ market;</p> <p>6. We note that the assessment was carried out in accordance with the methodology proposed in CP 82 but were surprised at the level of detail, the depth of the assessment, and the nature of the Report given (1) the understanding that third countries would be predominantly judged and assessed based on the principles; and (2) and the absence of final Level 2 Implementing Measures. In light of the absence of final Level II Implementing Measures we would have expected that the focus would have been more principles based and assessed on regulatory outcomes since it seems untimely to assess a jurisdiction on granular elements which are still fluid;</p>	<p>3. Noted.</p> <p>4. Noted.</p> <p>5. Noted.</p> <p>6. EIOPA’s assessment is based on principles and objectives. However EIOPA clearly needs to understand the underlying support for its conclusions on the principles. This is illustrated in several parts of the Report where detailed analysis of third country practice has revealed equivalent outcomes.</p> <p>We recognise that the</p>
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			<p>7. We acknowledge and understand that this Report together with the assessments for Japan and Switzerland represent a „first wave” approach to assessing and granting equivalence to third countries. As such, recognition should be given to the nature of the assessments as they set precedents for future third country reviews.</p> <p>8. In this regard, there are many paragraphs that deal with the ‘valuation’ methodology for technical provisions, assets and liabilities and the inference is not clear whether or not EIOPA in their assessment will accept other methodologies for economic balance sheet valuation other than what is articulated in the Solvency II Directive. The Report notes that the BMA is monitoring the work of the IASB in this area and as such is still in the process of developing its views and positions on valuation.</p>	<p>Bermudan regime is in transition. Consistent with the EC Call for Advice, the report will be revisited by EIOPA once the Level 2 criteria are agreed and we will take into account any changes that have been implemented at that time.</p> <p>7. Noted. Please also see above reply on item 6.</p> <p>8. In the context of equivalence, the expectation is use of market consistent valuation.</p> <p>This should not be read as requiring an identical valuation approach to that set out in SII.</p>
3.	BIMA	General Comment	The Bermuda Insurance Management Association („BIMA”) is pleased to have this opportunity to provide comments on EIOPA’s Draft Report on	Noted.

		<p>its recent equivalency assessment of the Bermudian supervisory system in relation to articles 172,227, and 260 of the Solvency II Directive.</p> <p>BIMA was established in the late 1970s and its membership is comprised of the Island’s licenced insurance managers and self-managed captive insurance companies. As of September 20, BIMA has 50 member firms who manage 95% of Bermuda’s captive insurance companies.</p> <p>BIMA is pleased to note that EIOPA has recognised the segregated nature of the Bermuda insurance market and the differences between the commercial insurance sector and the captive insurance sector. The Bermuda Monetary Authority („BMA”) recognised this segregation in 1995 with the introduction of the class system for the licensing of insurance and reinsurance companies. This system was further refined in 2008.</p> <p>The Principle of Proportionality – enshrined in the Lisbon Treaty – was a key principle adopted by the BMA in 1995 when the class system was put in place. The level of regulatory oversight was directly linked to the underlying risk profile of the entity being regulated.</p> <p>EIOPA in its report has noted that the class system is an important specificity for the Bermudian insurance market and encourage EIOPA to continue to be cognisant of this in the months ahead as the final report is prepared for the Commission.</p> <p>BIMA is very aware of the importance of Solvency II equivalency for Bermuda’s commercial insurance and reinsurance sector – specifically those companies with Class 4, 3B and 3A licences. Those companies conduct a significant amount of international business.</p> <p>However, the majority of Bermuda’s captive insurance companies (Classes 1, 2 and 3) do not conduct business in Europe and thus equivalency is not of concern to the majority of that sector. In addition, those few which do have risks insured or reinsured from Europe are purely for policyholders which are either parent companies or related</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>subsidiaries and affiliates. This, also, applies to risks insured by a European captive and reinsured to a Bermuda captive. For European risks reinsured by a European commercial insurer, collateral is in place to protect that insurer in the unlikely event that this is needed. Thus BIMA would encourage EIOPA to remain focused on the segmented nature of the Bermuda insurance market and continue the dialogue and assessment of the commercial sector to enable that sector to obtain Solvency II equivalence.</p> <p>Notwithstanding BIMA's comments above, we have reviewed EIOPA's entire draft report and note the comments where the regulatory environment for Classes 1,2 and 3 are deemed not to be equivalent or partly equivalent. It is not BIMA's intention to comment on each paragraph where such comments are made. Our only specific comments will be referring to paragraphs 14 and 19.</p> <p>However we do wish to state that we believe that the BMA has applied the principle of proportionality in an appropriate manner for Classes 1,2 and 3 and that the regulatory regime in place for the captive sector is appropriate to the nature of the companies in this sector, the underlying risk profile of the sector and is in accordance with international standards.</p>	<p>Noted.</p> <p>Noted. EIOPA has explained in detail its approach to proportionality in the introductory sections of each of the reports it has published for public consultation.</p>
4.	BMA	General Comment	<p>The Authority wishes to thank EIOPA for its comprehensive and thorough review of the Bermuda insurance regulatory and supervisory regime in relation to articles 172, 227 and 260 of the EU Solvency II Directive (the Directive) and for the opportunity to comment on the report dated 17 August 2011 in respect thereof (the Report).</p> <p>We appreciate that the equivalence assessment is a flexible process based on principles and objectives that are applied in accordance with</p>	Noted.

			<p>the principle of proportionality. We support EIOPA's recognition of the distinctions between the commercial and captive classes, which is in keeping with the principle of proportionality and reflects a risk-based approach to a highly sophisticated business-to-business commercial market.</p> <p>We also appreciate that the equivalence assessment can only be made in respect of the regime in existence and applied at the time of the assessment. We look forward to EIOPA's further consideration of the regime upon the adoption of the Solvency II Level 2 Implementing Measures under the Directive, as a number of the elements of the regulatory and supervisory framework in Bermuda are in the process of further development and/or implementation.</p>	
5.	ECIROA	General Comment	<p>ECIROA welcomes the opportunity to comment on this Consultation Paper.</p> <p>For more information please visit our website on www.eciroa.org</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"> 1. They write a restricted number of lines of insurance business (e.g. property damage & liability) and normally issue a small number of policies (e.g. global programmes with only one policy per insurance class); 2. They insure or reinsure a restricted number of risk units (e.g. 	<p>Noted.</p> <p>Please see EIOPA's detailed presentation on the application of the proportionality principle, including how it applies to captives in SII, in par. 9 to 11 of the Report.</p>

			<p>sites, premises, vehicles);</p> <p>3. They have a restricted number of insureds / clients;</p> <p>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;</p> <p>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.</p> <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>Please note that where a comment has not been made on a particular paragraph, this does not indicate that we agree with the paragraph.</p>	<p>Equivalence assessments reflect the provisions of the EU regulatory regime.</p> <p>Level 1 text of SII Framework sets out the approach to captives. L2 implementing measures currently being drafted will also set out how the proportionality principle applies in certain cases (for example simplifications that can be applied by captives).</p>
6.	GNAIE	General Comment	<p>GNAIE would like to thank EIOPA for this opportunity to provide feedback on the EIOPA Draft Report-Equivalence Assessment of the Bermuda supervisory system in relation to articles 172, 227 and 260 of</p>	<p>Noted.</p>

			<p>the Solvency II Directive. GNAIE is an association of North American Insurance companies and includes companies which are headquartered in and underwrite premiums from Bermuda. We believe that the Bermuda market is vitally important in the global reinsurance market and that it is appropriate that Bermuda be considered in the first wave of equivalence assessments.</p> <p>GNAIE was pleased to note EIOPA's advice is that Bermuda meets the criteria set out in EIOPA's methodology for equivalence assessments under Solvency II with respect to Articles 172 and 227 for Classes 3A, 3B and 4 (the commercial sector) and Article 260 for groups with certain caveats.</p> <p>We were, however, surprised at the level of detail in the assessment given the statements in CP 82 indicates that the equivalence review of third countries would be „a flexible process based on principles and objectives.“ We would have expected that the focus of this review would have been more principles based and assessed on regulatory outcomes. We strongly recommend a reconsideration of the EIOPA review in this light.</p>	<p>Noted.</p> <p>EIOPA assessment is based on principles and objectives. However EIOPA clearly needs to understand the underlying support for its conclusions on the principles. This is illustrated in several parts of the Report where detailed analysis of third country practice has revealed equivalent outcomes.</p>
7.	ABIR	4.	<p>We note EIOPA's acknowledgement that the criteria set out in this report reflect those published in the previous consultation papers, but the analysis aimed to take into account the most recent draft of the criteria which was available to EIOPA. Again we stress the fluid nature of the</p>	<p>Please see above re general comment no.2.</p>

			criteria and the importance of assessing the framework on an outcomes basis as the spirit of equivalence is not 'exactness' but that which achieves the same outcomes.	
8.	ABIR	7.	ABIR supports EIOPA's position to take into account plans and on-going initiatives for changes to come in the Bermuda supervisory regime with due consideration given to the expected timing and the degree of commitment to them when performing an equivalence assessment and providing advice to the Commission. The assessment articulates areas where Bermuda is already in alignment with Solvency II in advance of the Solvency II Directive implementation date.	Noted.
9.	ECIROA	11.	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.	Level 1 text of SII Framework sets out the approach to captives. This framework has also been presented in detail in par. 9 to 11 of the BM report. We note that equivalence assessments reflect the provisions of the EU regulatory regime.
10.	BIMA	14.	We note the definitions of Classes 1 and 2 presented in the draft report and believe some clarification is required. Class 1 – the draft report states that third party liability risks of the owner can be insured. Under The Insurance Act, a Class 1 insurer can only write related business – no unrelated business can be written	The Report agrees that no unrelated business can be written by Class 1 insurers. This does

			<p>Class 2 – the draft report states „single or multi-owner captive insurers deriving up to 20% of their net premiums from unrelated parties.” The majority of class 2 companies are multi-owner or association captives writing business related or connected to the owners or members of the association. Class 2 company may write up to 20% unrelated business and this is usually for joint ventures and so, again, is connected business.</p>	<p>not either legally or practically exclude writing third party liability risk of the owner.</p> <p>The EIOPA report accurately reflects the legal definition. EIOPA has also been provided with practical examples of Class 2 insurers that differed from your description.</p>
11.	BMA	18.	<p>As EIOPA has noted, the Bermuda insurance market is a highly sophisticated business-to-business commercial market. The Authority’s insurance regulatory and supervisory scheme reflects this reality and is applied in practice in a manner that reflects the nature, scale and complexity of the particular company.</p>	Noted.
12.	BIMA	19.	<p>The draft report notes that the Bermuda insurance market has a strong focus on captive insurers, which makes up more than half of the insurers supervised by the BMA. We believe it is important to note that the Bermuda market began as a captive insurance market in the 1960s and 1970s and an evolution into the segregated market that it is today commenced in the 1980s. Since the captive insurance concept was first used, Bermuda was the world’s number one domicile. Bermuda continues to maintain that number one position today.</p>	Noted.
13.	BMA	19.	<p>As EIOPA has noted, the Bermuda captive industry is substantially U.S.-facing (as opposed to EU-facing). Given the nature of this segment of</p>	Equivalent level of policyholder and

			the industry – i.e. designed to underwrite the risks of its owners – and its limited scope in the EU market, concerns vis-à-vis policyholder and beneficiary protection can be minimized.	beneficiary protection is the overarching principle for equivalence assessments. SII framework provides equal levels of protection for all policyholders/beneficiaries.
14.	M. Poulding	37.	This comment also applies to paragraphs 41 and 43. There are references to the Bermuda regime being considered to be largely or partially equivalent in respect of class 3 and 4 commercial insurers and reinsurers but not equivalent in respect of class 1 and 2 captive insurers. It would be helpful if EIOPA could clarify if it will be possible for Bermuda or any other jurisdiction to ultimately be granted equivalence status in respect of part of its insurance sector whilst the regime applying to other parts of the sector continues not to meet the equivalence criteria.	The Equivalence Decisions will ultimately be taken by the EC.
15.	BMA	39.	The Authority has determined to issue a consultation paper that would enhance the information required to be submitted in connection with a licensing application to include a five-year business plan, the inclusion in the five-year pro forma balance sheets and income statements a demonstration of compliance with the ECR, an outsourcing policy, a conflicts of interest policy and a compensation policy. This, in addition to planned enhancements to Form 1B, which is submitted in connection with licensing applications, will provide a robust set of authorization requirements more directly comparable to Solvency II. This comment relates to paragraph 106 as well.	Noted. EIOPA will take this into account, if available, at the time it will review the current report following L2 text agreement.
16.	ABIR	40.	ABIR believes that EIOPA should acknowledge that legal systems and	We would note that

		<p>structures of jurisdictions differ. The Solvency II Directive was formulated for implementation by countries within the European Union. Countries outside of the EU may have different legal and corporate structures to satisfy the market it regulates and which is appropriate to that market. Paragraph 18 testifies that the local retail market is 0.01% of the total premiums written therefore 99.99% of all premiums written are not those related to Bermuda citizens or property. In addition, Bermuda companies operate globally and are not uniquely different from other globally active companies operating throughout the EU and the US under various legal structures. The head office/registered office 'requirement' is inconsistent with how internationally active insurance groups are structured, as demonstrated by existing group structures in Europe, Bermuda and the US. Finally, it is not a prerequisite for sound prudential oversight. In this regard, we believe that the approach taken by the BMA is appropriate.</p> <p>It is our understanding that the EU Commission has recently considered and discussed the issue of the establishment of a head office of a life insurance undertaking and concluded that the issue of where business is conducted either entirely or mainly outside its home Members State is irrelevant for the purposes of granting or withdrawing authorization. Given there is no single set of rules or legal guidance in order to determine where a company's head office is located under EU rules, the assessment of the „head office“ of an insurance company in the EU is determined on a case by case basis. In sum, the EIOPA Assessment Report seeks from Bermuda mirror legislation to Article 20 of the Solvency II Directive even though the assessment of a „head office“ is conducted on a case by case basis in the EU in light of criteria which are not found in the legislation.</p>	<p>company law/legal systems within the EU also differ.</p> <p>SII requires that the head office of an insurance undertaking is situated in the same country as its registered office. This is an important element for the supervision of the undertaking.</p> <p>SII does not require that the head office is in the same jurisdiction as where the majority of the business is conducted.</p>
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			<p>We make a similar comment regarding the 'possibility' of carrying out both insurance and non-insurance business in a single company. Under Bermuda law, companies upon incorporation are granted 'objects' or rights which 'legally' would allow them to carry out non-insurance business but in practice this is not done. The insurance law also requires that a licensed insurance company make application to the BMA to carry out non-insurance business. Accordingly, whilst a company may have broad objects, it still requires the permission of the BMA to carry out non-insurance business. This is a safeguard to prevent an insurance company from engaging in non-insurance business which is not ancillary to their insurance business.</p>	<p>Although we take note that BMA pre-approval is required, the principle embedded in SII framework aims at ensuring that policyholder protection is safeguarded by not allowing an insurer to engage in any other commercial business.</p>
17.	BMA	40.	<p>We understand that under EU law, the head office is the location of the main center of administration of the insurer's activities. The head office is required to be located in the same jurisdiction as the registered office in order to prevent the evasion of stricter standards of the jurisdiction in which the insurer carries on or intends to carry on the greater part of its activities. (Recital (7) of Directive 95/26/EC.) We have been advised that the main center of administration of an insurer's activities would be that location where decisions regarding risk management and underwriting are adopted and where significant governance functions are located.</p> <p>In general, for the commercial classes, significant administration of the insurer's activities takes place in Bermuda. Thus, the key operations generally undertaken by the home office, in practice, are conducted in Bermuda. That is, while the Authority does not have a legislated requirement that the head office be located in the same jurisdiction as the registered office, the role of the head office generally is, in practice,</p>	<p>Noted. SII requires that the head office of an insurance undertaking is situated in the same country as its registered office. This is an important element for the supervision of the undertaking.</p> <p>Noted. See above comment.</p>

			<p>conducted in Bermuda.</p> <p>The comments with respect to the head office relate to paragraphs 93, 100 and 111 as well.</p> <p>With respect to the issue of conducting insurance and non-insurance business in a single company, while this has not been the case in Bermuda, a consultative paper scheduled to be issued shortly would propose the clear segregation and separate capitalization of non-insurance activities. Moreover, under the current legislative framework, the Authority is required to affirmatively approve the conduct of non-insurance activities in an insurance undertaking. The Authority would not be favourably inclined towards any such application and notes that no such applications have been made to date.</p> <p>This comment relates to paragraphs 109, 110 and 112 as well.</p>	<p>While we will review the proposed changes to BM law as part of the review following L2 text agreement, the principle embedded in SII framework aims at ensuring that policyholder protection is safeguarded by not allowing an insurer to engage in any other commercial business.</p>
18.	GNAIE	40.		
19.	BMA	41.	<p>EIOPA has identified a number of areas where the BMA regime would have to be strengthened or addressed in order to be considered equivalent to Solvency II: stricter provisions around the requirements for key functions, independence of internal audit, outsourcing and public disclosure. The Authority will be consulting on a number of proposals, including proposals that would require the commercial classes to: (i) segregate and make the internal audit function independent from business lines, the underwriting and finance operations and the compliance function; (ii) provide prior notice to the Authority of material outsourcing arrangements, with provision for the Authority to object to such arrangements; and (iii) publicly disclose compliance with solvency requirements. The Insurance Code of Conduct applies to all insurers. Amendments to the Insurance Code of Conduct would clarify that all</p>	<p>Noted. These announced developments will be reviewed as part of the review following L2 text agreement. Also please see new text in par. 18 of the Report.</p>

			<p>insurers must have the key functions of internal audit, compliance, actuarial and risk management.</p> <p>This comment relates to paragraphs 54, 141, 143 and 168 as well. The comments with respect to internal audit relate to paragraph 121 as well. The comments with respect to outsourcing relate to paragraph 129 as well. The comments with respect to public disclosure relate to paragraph 137 as well.</p>	
20.	BMA	42.	<p>EIOPA finds that the Authority does not require insurers to provide details of changes to their scheme of operations. While in fact many such changes are required to be noticed to the Authority through the material change provisions of the Insurance Act, the Authority is proposing to expand the scope of what would constitute a material change subject to notice to and non-objection by the Authority to include specifically all material portfolio transfers and divestitures, as well as material changes to a business plan (scheme of operations). As noted above in our comment on paragraph 41, provision would also be made for notice to and non-objection by the Authority of material outsourcing arrangements. This comment relates to paragraph 168 as well.</p> <p>The comment with respect to the inclusion of divestitures as a material change relates to paragraph 148 as well. The comment with respect to the inclusion of material portfolio transfers as a material change relates to paragraph 160 as well. The comment with respect to material changes to the business plan (scheme of operations) relates to paragraph 161 as well.</p> <p>The Authority will be publishing enhanced criteria for shareholder controller assessments in connection with the enhancements to its licensing application requirements noted above in paragraph 39. This comment relates to paragraph 55 as well.</p>	<p>Noted. These announced developments will be reviewed as part of the review following L2 text agreement. Also please see new text in par. 18 of the Report.</p>
21.	ABIR	44.	<p>ABIR appreciates that EIOPA cannot positively conclude on the current</p>	<p>Please see comment</p>

			valuation framework „given the variety of different valuation standards available or on the proposed valuation standards, given the material uncertainties which remain around the economic balance sheet framework being developed.” Can EIOPA please clarify what it requires to conclude positively on this matter and confirm whether a variety of valuation standards would be accepted and if not what rationale would be provided?	above under comment 2 point 8.
22.	BMA	44.	<p>EIOPA notes that it cannot positively conclude on the current valuation framework given the material uncertainties which remain around the development of an economic balance sheet (EBS) framework. The Authority had taken a decision earlier in 2011 to postpone the development of an EBS framework in light of delays in the work on insurance-related issues among the accounting standards setters. However, in light of the need for more clarity on EBS issues notwithstanding these delays, the Authority will be publishing a consultative paper on an EBS framework. At present, this paper is slated for publication in Q1 2012.</p> <p>This comment relates as well to paragraphs 48, 57, 173 and 244.</p>	Noted. These announced developments will be reviewed as part of the review following L2 text agreement. Also please see new text in par. 18 of the Report.
23.	GNAIE	44.	<p>The report indicates that EIOPA cannot positively conclude on the current valuation framework „given the variety of different valuation standards available or on the proposed valuation standards, and given the material uncertainties which remain around the economic balance sheet framework being developed.” GNAIE agrees that there are many valid valuation methodologies used within the context of an economic balance sheet valuation other than what is articulated in the Solvency II Directive. The IAIS, in the development of ICP 14 on Valuation, struggled with this issue for years and is still working on revisions. EIOPA in CP 82 refers to compatibility with IFRS, but even The International Accounting Standards Board is also struggling with the process for developing the correct valuation method for insurance liabilities.</p>	Please see comment above under comment 2 point 8.

			<p>This is one area in which a principles approach seem to be the appropriate benchmark the equivalence review. The issue is whether the selected valuation method guarantees policyholder protection by ensuring that there are sufficient resources to meet the liabilities, looks at both the assets and the liabilities of the enterprise, is responsive to changes in the market and captures all the risks. These are the principles upon which Solvency II was based. Even though the Bermuda system is evolving in its details, as is Solvency II, it would seem that the objectives and approach of both systems are clear and compatible. We believe that on further examination, the BMA is establishing a system which meets these criteria and we would suggest a more positive assessment be given to the economic valuation approach being developed in Bermuda.</p>	<p>Noted. These developments will be reviewed as part of the review following L2 text agreement.</p>
24.	ABIR	48.	See paragraph 44.	Please see reply on par. 44.
25.	BMA	48.	Please refer to our comments with respect to paragraph 44.	Please see reply on par. 44.
26.	GNAIE	48.	See paragraph 44.	Please see reply on par. 44.
27.	ABIR	53.	<p>ABIR refers to the BMA's 'partly equivalent' with regard to its co-operation and exchange of information with other supervisory authorities under Principle 9. As reported in the Report, the BMA have carried out several rounds of supervisory colleges. We support that further development and documentation of the specific and more detailed processes would be beneficial to capture the existing practices of Bermuda's internal co-operation and well developed exchange of information frameworks.</p> <p>We note that the BMA has at March, 2010 completed the following</p>	Noted.

		<p>Memorandums of Understanding including the IAIS which sets out the terms for co-operation and exchange of information with other supervisory authorities (c.f. paragraph 90). Further, the both the BMA Act 1969 and the Insurance Act 1978 set out in law the gateways for the co-operation and exchange of information.</p> <p>Signed MMoUs with other jurisdictions /organisations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> International Association of Insurance Supervisors (IAIS) - signed June 25th 2009 <p>Signed MOUs with other jurisdictions / organisations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> States of Jersey Financial Services Department - signed April 10th 1997 <input type="checkbox"/> Isle of Man Financial Supervision Commission - signed October 28th 2002 <input type="checkbox"/> UK Financial Services Authority - signed April 21st 2004 <input type="checkbox"/> Luxembourg (Commission de Surveillance du Secteur Financier) - signed May 31st 2005 <input type="checkbox"/> Cayman Islands Monetary Authority - signed June 30th 2005 Financial Services Board of the Republic of South Africa - signed August 15th 2005 <input type="checkbox"/> International Organization of Securities Commissions - signed June 6th 2007 <input type="checkbox"/> Malta Financial Services Authority - signed June 3rd 2008 The Office of the Superintendent of Financial Institutions of Canada - signed August 19th, 2008 <input type="checkbox"/> New York State Insurance Department - signed September 25th 	
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			<p>2008</p> <ul style="list-style-type: none"> <input type="checkbox"/> Luxembourg (Commissariat Aux Assurances) - signed February 2nd 2009 <input type="checkbox"/> Florida Office of Insurance Regulation - signed September 24th 2009 <input type="checkbox"/> Nebraska Department of Insurance - signed October 28th 2009 <input type="checkbox"/> Pennsylvania Insurance Department - signed December 10th 2009 <input type="checkbox"/> Swiss Financial Market Supervisory Authority - signed March 11th 2010 	
28.	BMA	53.	<p>EIOPA notes that specific and more detailed processes would be beneficial with respect to supervisory colleges and cooperation in general, information sharing, crisis management, dispute-solving mechanisms and supervisory cooperation with respect to internal models. The Authority will be publishing a guidance note on these matters in Q1 2012.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Moreover, the Authority reiterates the fact that it has concluded a number of memoranda of understanding (MoU) with 17 key jurisdictions and organizations, including the International Association of Insurance Supervisors. These MoUs provide an effective framework for information sharing and facilitate our cooperation with other supervisors through supervisory colleges. With respect to supervisory colleges, please refer also to our comments with respect to paragraph 264. 	<p>Noted. These developments will be reviewed as part of the review following L2 text agreement.</p> <p>Noted.</p>
29.	GNAIE	53.		
30.	BMA	54.	Please refer to our comments with respect to paragraph 41.	Please see reply on par. 41.
31.	ABIR	55.	ABIR refers to our comments in paragraph 40 which highlights the appropriateness of the current mechanism in place to deal with 'non-	Please see reply on par. 40.

			insurance business'. The Solvency II regime has been developed quite appropriately to span the European market place which covers a wide range of business including retail and wholesale business alike and including personal lines. ABIR accepts that the BMA approach to change of business approvals need s some adjustments . It is, however, appropriate , in adapting the regime, to take into account the different circumstances of the retail and wholesale insurance markets and the fact that Bermuda's retail market domestically and internationally is insignificant. Otherwise there is a risk that a disproportionate regime would hamper a wholesale business's ability to operate in constantly changing markets.	The application of the solvency regime may reflect the nature, scale and complexity of the business being written. Equivalence assessments reflect the provisions of the EU regulatory regime. Please note that SII does not differentiate between retail & wholesale business.
32.	BMA	55.	Please refer to our comments with respect to paragraph 42.	Please see reply on par. 42.
33.	BMA	57.	Please refer to our comments with respect to paragraph 44.	Please see reply on par. 44.
34.	GNAIE	57.	See paragraph 44.	Please see reply on par. 44.
35.	BMA	76.	The legislation is being updated to require all classes of insurers to report breaches of the minimum margin of solvency directly to the Authority. This comment relates to paragraphs 170 and 171 as well.	Noted. These developments will be reviewed as part of the review following L2 text agreement.
36.	BMA	93.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.

37.	ABIR	100.	See paragraph 40.	Please see reply on par. 40.
38.	BMA	100.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.
39.	BMA	106.	Please refer to our comments with respect to paragraph 39.	Please see reply on par. 39.
40.	BMA	109.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.
41.	BMA	110.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.
42.	BMA	111.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.
43.	BMA	112.	Please refer to our comments with respect to paragraph 40.	Please see reply on par. 40.
44.	BMA	116.	The Code of Conduct applies to all classes of insurers.	We note BMA reply under par. 41 noting that "Amendments to the Insurance Code of Conduct would clarify that all insurers must have key functions of internal audit, compliance, actuarial and risk management". Amendments to the Code and their practical application will be reviewed as part of the

				review following L2 text agreement.
45.	ABIR	117.	As noted the Group Rules have been published and will be in force at the end of 2011. However, the BMA's legal framework for group wide supervision was enacted in 2010 and determination of Bermuda groups by the BMA has already been made in accordance with that legislation.	Noted.
46.	ECIROA	119.	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 - 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.	Please see reply under general comment of ECIROA.
47.	BMA	120.	The rules underlying the Group's Solvency Self Assessment (GSSA) and Commercial Insurer's Solvency Self Assessment (CISSA) do require explicitly that the risk assessment take account of future strategy. The Authority will make corresponding changes to the Code of Conduct to reflect the requirement for a forward-looking assessment. This comment relates to paragraph 143 as well.	Noted. These developments will be reviewed as part of the review following L2 text agreement.
48.	BMA	121.	As noted in our comments with respect to paragraph 41, the Authority	Amendments to the

			will be consulting on a proposal that would require the commercial classes to segregate and make the internal audit function independent from business lines, the underwriting and finance operations and the compliance function. The Authority notes that all classes of insurer are required to have internal audit, compliance, risk management and actuarial functions.	Code and their practical application will be reviewed as part of the review following L2 text agreement.
49.	ECIROA	121.	Article 47 states 'Insurance and reinsurance undertakings shall provide for an effective internal audit function not that an internal audit function be established. 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.	Noted. Article 47 also requires in par. 2 that "The internal audit function shall be objective and independent from the operational functions". Please see re-draft in par. 122.
50.	BMA	122.	Please see our comments with respect to paragraphs 41 and 121.	Please see our replies under comments on par. 41 and 121.
51.	BMA	124.	Since 2008 the AML regime in place has been revised and several new laws were enacted providing a more comprehensive regime for enforcing Bermuda's AML obligations. Within the BMA there has been a dedicated team established since 2009 with the single purpose of ensuring compliance by regulated institutions with their obligations under AML legislation. This dedicated AML unit consisting of four members reports to the BMA's Senior Legal Counsel. In addition, there has been established a separate Financial Intelligence Agency to deal with money laundering investigations as well as additional focus by law enforcement and crown prosecution services. While Bermuda does not have a cash threshold reporting, it is noted that this is not a FATF requirement and most European countries, including	- STRs are required by the 3 rd MLD and

			the United Kingdom, do not appear to have such thresholds either.	presented in 3L3 Compendium of 15 October 2009 available at: https://eiopa.europa.eu/publications/reports/index.html .
52.	ABIR	125.	We do not believe that the remarks regarding the IMF's October 2008 Assessment's of Bermuda's AML regime are balanced- the comments only highlight the findings of the 2008 report and does not accurately reflect Bermuda's AML regime in 2011.	Noted.
53.	BMA	125.	<p>Since the 2008 IMF review, there have been a variety of significant developments which have addressed the majority of the deficiencies identified in that report. Bermuda has been providing annual updates on its efforts in this regard to CFATF. In May 2011, the level of compliance demonstrated in those reports was sufficient to have the level of reporting reduced to regular updates submitted biannually.</p> <p>Specifically, the BMA's AML team conducted supervisory reviews of three regulated long-term insurance companies between 2008 and 2010, one of which resulted in a finding of significant compliance failures. The Authority is currently considering the imposition of a monetary penalty on this insurer and the publication of the enforcement action.</p> <p>In addition, training has been provided to supervision staff on AML matters and a review of AML issues is included in on-site reviews.</p>	Noted and par. 125 is deleted from final report.
54.	BMA	126.	As noted in our response to paragraph 121, all insurers are required to have an actuarial function.	Noted. Our concern remains that the requirement is not exercised in a consistent manner in respect of insurers in

				classes 1 to 3 and life firms of a similar profile.
55.	ECIROA	126.	Article 48 states 'Insurance and reinsurance undertakings shall provide for 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.	Noted. Our concern remains that the requirement is not exercised in a consistent manner in respect of insurers on classes 1 to 3 and life firms of a similar profile.
56.	BMA	129.	Please refer to our comments with respect to paragraph 41. The inclusion of material outsourcing arrangements in the scope of material changes subject to prior notification to, and non-objection by, the Authority would enhance considerably the Authority's ability to restrain activities that could comprise good corporate governance or increase operational risk.	Noted. These announced developments will be reviewed as part of the review following L2 text agreement. Also please see new text in par. 18 of the Report.
57.	ECIROA	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.	Please see SII Directive – art. 49 which imposes various constraints on outsourcing.
58.	BMA	131.	The Authority anticipates a comprehensive review of the Code of Conduct in 2012, at which time the requirement to have a compliance function will be reaffirmed for all classes of insurers.	Noted. These announced developments will be reviewed as part of the review following L2 text agreement.

59.	ECIROA	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.	Please see reply above re comment no.5.
60.	BMA	133.	Groups will be required to file quarterly returns with the BMA and the Authority is consulting on a requirement to extend quarterly reporting to Class 4 and 3B insurers.	Noted. These announced developments will be reviewed as part of the review following L2 text agreement.
61.	BMA	137.	Please refer to our comments with respect to paragraph 41.	Please see our reply re par. 41
62.	ECIROA	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).	Please see reply above re comment no.5 Art. 53 of SII regulates the situations where exemptions from the obligation of public disclosure are allowed.
63.	BMA	141.	Please refer to our comments with respect to paragraph 41.	Please see our reply re par. 41.
64.	BMA	143.	Please refer to our comments with respect to paragraph 41.	Please see our reply re par. 41.
65.	ECIROA	143.	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	Please see reply above re comment no.5.

			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.	
66.	BMA	148.	As noted in the comments to paragraph 42, the Authority is proposing to expand the scope of what would constitute a material change subject to notice to and non-objection by the Authority to include specifically all material portfolio transfers and divestitures, as well as material changes to a business plan (scheme of operations).	Noted. These announced developments will be reviewed as part of the review following L2 text agreement.
67.	BMA	152.	It should be noted that the Code of Conduct is an indicator of compliance with the Minimum Criteria set forth in the Insurance Act. Failure to comply with the Minimum Criteria gives rise to enforceable actions by the Authority.	Noted. Please see redraft in par. 152.
68.	BMA	160.	As noted in the comments with respect to paragraph 42, the Authority is proposing to expand the scope of what would constitute a material change subject to notice to and non-objection by the Authority to include specifically all material portfolio transfers.	Noted. These announced developments will be reviewed as part of the review following L2 text agreement.
69.	BMA	161.	As noted in the comments with respect to paragraph 42, the Authority is proposing to expand the scope of what would constitute a material change subject to notice to and non-objection by the Authority to include specifically material changes to a business plan (scheme of operations).	Noted. These announced developments will be reviewed as part of the review following L2 text agreement.
70.	BMA	168.	As noted in the comments with respect to paragraph 41, the Authority will be consulting on a proposal to provide prior notice to the Authority of material outsourcing arrangements, with provision for the Authority to	Noted. These announced developments will be

			<p>object to such arrangements.</p> <p>As noted in the comments with respect to paragraph 42, the Authority is proposing to expand the scope of what would constitute a material change subject to notice to and non-objection by the Authority to include specifically material changes to a business plan (scheme of operations).</p> <p>The Authority will be publishing enhanced criteria for shareholder controller assessments in connection with the enhancements to its licensing application requirements noted above in the comments with respect to paragraph 39.</p>	<p>reviewed as part of the review following L2 text agreement.</p>
71.	BMA	171.	<p>The Authority will be consulting on a proposal to require all commercial insurers to report directly and immediately to the Authority any non-compliance with the minimum margin of solvency (MSM) or enhanced capital requirement (ECR) and to file a plan with the Authority outlining the actions to be taken by the insurer to restore the MSM and/or ECR to required levels and the timeline for such action.</p> <p>This comment relates to paragraph 252 as well.</p>	<p>Noted. These announced developments will be reviewed as part of the review following L2 text agreement.</p>
72.	BMA	173.	<p>Please refer to our comments with respect to paragraph 44.</p>	<p>Please see our reply re par. 44.</p>
73.	BMA	188.	<p>We wish to clarify that the target capital level (as opposed to the ECR) is 120 percent of the BSCR or approved internal model.</p>	<p>Please see revised drafting of par. 188.</p>
74.	BMA	200.	<p>The Authority will be consulting on a proposal to impose a floor on the MSM equal to 25 percent of the ECR. This comment relates to paragraph 246 as well.</p>	<p>Noted. These announced developments will be reviewed as part of the review following L2 text agreement.</p>
75.	BMA	244.	<p>Please refer to our comments with respect to paragraph 44.</p>	<p>Please see our reply re comments on par. 44.</p>

76.	BMA	246.	Please refer to our comments with respect to paragraph 200.	Please see our reply re comments on par. 200.
77.	BMA	252.	Please refer to our comments with respect to paragraph 171.	Please see our reply re comments on par. 171
78.	ABIR	264.	ABIR supports the requirement for the establishment of supervisory colleges and additional defined processes to co-operation and information sharing.	Noted.
79.	BMA	264.	<p>The differences between the two systems noted in this paragraph appear to reflect a narrow definition of a supervisory college in Bermuda, versus a more expansive definition in the EU of the types of arrangements that could constitute a college. The Authority has a number of bi-lateral and multi-lateral exchanges of information that, while not considered supervisory colleges per se, certainly involve equivalent activities and exchanges of supervisory information. As noted, Bermuda has a number of gateways for the exchange of information and a proven track record of supervisory cooperation.</p> <p>A guidance note with respect to supervisory colleges and cooperation in general, information sharing, crisis management, dispute-solving mechanisms and supervisory cooperation with respect to internal models will be published in Q1 2012.</p> <p>This comment relates to paragraph 268 as well.</p>	<p>Note SII establishes an extensive body of law covering the establishment, role and functioning of colleges.</p> <p>These announced developments and their implementation will be reviewed as part of the review following L2 text agreement.</p>
80.	BMA	268.	Please see our comments with respect to paragraph 264.	Please see our reply re par. 264.
81.	ABIR	269.	ABIR supports the development of details for the decision-making process in the college of supervisors and for resolving disputes in the	Noted.

			case of disagreements with other relevant supervisory authorities.	
82.	BMA	269.	Please see our comments with respect to paragraph 264.	Please see our reply re par. 264.
83.	GNAIE	269.		
84.	BMA	272.	Please see our comments with respect to paragraph 264.	Please see our reply re par. 264.
85.	BMA	273.	Please see our comments with respect to paragraph 264.	Please see our reply re par. 264.