Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation		Deadline 31 August 2017 23:59 CET
Name of Company:	Deloitte Touche Tohmatsu	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	**Public**
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-17-004@eiopa.europa.eu** **Our IT tool does not allow processing of any other formats.** **The numbering of the reference refers to the sections** of the consultation paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation. Please indicate to which paragraph(s) your comment refers to.	
Reference	**Comment**	
General Comment	In general, we welcome EIOPA's thorough approach and its willingness to adapt the SII framework for feedback from the industry following its first year of implementation. The suggested improvements are discussed below where we have specific comments. The suggested improvements focus on calculations and we would welcome more simplifications and/or reduction in reporting burden for smaller undertakings.	
1		

	Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation	Deadline 31 August 2017 23:59 CET
2.1		
2.2		
2.3	**Non-listed simplified calculations** Paragraphs 22 and 23 imply that using a non-listed simplification would be akin to using an internal model. However, we consider that this is not always the case and would welcome EIOPA's view on whether a non-listed simplification which results in a more prudent position may be permissible in certain cases. We consider that National Supervisory Authorities should be allowed to grant waivers for specific simplifications on the grounds of materiality and/or proportionality. **Non-life underwriting risk module and non-similar-to-life-techniques health underwriting risk sub-module** Paragraph 26 reflects on feedback that certain risks and mitigants are not captured appropriately in the standard formula and the EIOPA response implies that this requires additional complexity rather than simplification. Consideration should be given to addressing the more common issues by adapting the non-life SCR standard formula for the more frequent exceptions observed. We consider that this would appropriately address the majority of issues and agree with EIOPA's position that for more complex and firm-specific risks, partial internal models would be appropriate.	
2.4		
2.4.1		
2.4.2		
2.4.3		
2.4.4		
3.1		
3.2		
3.3		

3.4	The reliances on external credit could be further reduced by placing a restriction on the recency of the external credit ratings is. The Directive prescribes that in the case of more than two available credit assessments, the undertaking may use the rating generating the second lowest capital requirement. There may be some bias if multiple credit ratings are available to select from. We suggest, with the aim of reducing selection bias, that the median credit assessment is preferred to the one generating the second lowest capital requirements in the case of multiple credit assessments. We welcome the on-going work noted in paragraph 90, regarding work to further assess the possibility to extend the framework to assessments provided by commercial and/or non-commercial third parties in the context of the second call for advice. The use of official credit ratings agencies is key in many undertakings' risk assessments, but there are undertakings which require more bespoke assets and counterparties to be rated, as noted in this consultation (for example mortgages, personal loans, or unrated debt). EIOPA should consider how such internal ratings would achieve compliance in a consistent manner across (re)insurance undertakings and member states. We also welcome the assessment in paragraph 109 that where external firms provide ratings, (re)insurance undertakings should be able to evidence their understanding of the rating process as part of their Prudent Person Principle. We do not believe that requiring (particularly smaller) undertakings to form internal credit ratings for all counterparties is proportionate and consider that this approach would cause smaller undertakings significant difficulty and/or cost. We welcome the decision in paragraph 147 that EIOPA advises not to further extend internal rating approaches as this stage.	
3.4.1		
3.4.2		
3.4.3	This section discussed the introduction of a simplified calculation such that in the case of a "(re)insurance undertaking has already nominated an ECAI that covers most of its debt portfolio",	

	the undertaking should be allowed to calculate its risks as if the assets not covered by the nominated ECAI would be of credit quality step 3. We welcome the proposal of introducing a threshold on the coverage ratio of the debts with ECAI ratings as a proportion of the complete debt portfolio, before a (re)insurance undertaking's debt portfolio is eligible for the simplified calculation. The impact on SCR would be influenced by not only the credit quality step of the unrated bonds, but also the modified duration of those bonds. Bonds with longer duration will be more sensitive to changes in spreads and ECAI ratings than bonds with shorter duration. Therefore we propose that the overall threshold for using the simplified calculation should be calculated as: **80% plus 1% * modified duration of total assets for which credit ratings are not available.** With a cap of 100% By applying the above threshold, the expected impact on the spread risk SCR by using a credit quality step of 3, in the event that the actual credit quality is 4 would generally be less than 5%. This spread risk SCR would further be diversified with other market and non market risks so the (potential) impact of mis-statement in the undertaking's overall SCR would not be significant. The minimum threshold of 80% is consistent with the threshold for using prudent data groupings as per Article 84(3) of the Delegated Regulation, where prudent data groupings cannot be used for more than 20% the total value of the assets of the insurance or reinsurance undertaking. Under all circumstances, (re)insurance undertakings should comply with the overarching Prudent Person Principle as defined in Article 132 of the SII Directive, and a credit quality step of 3 shall not be used if there is evidence that the actual credit of the portfolio is lower than 3. Internal ratings could be used if external ratings are not available or obtained. Undertakings may use a credit quality step lower than 3 subject to the Prudent Person Principle.	

Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation		Deadline 31 August 2017 23:59 CET
4.1		
4.2		
4.3		
4.4	In principle, we welcome harmonisation of the insurance and banking regulations regarding market risk capital requirements in this area and consider it a sensible approach, on the basis that there is no additional regulatory burden for (re)insurance undertakings.	
4.4.1		
4.4.2		
4.4.3		
4.4.4		
5.1		
5.2		
5.3	**Adverse Development Covers ("ADC")** We understand EIOPA's reluctance to allowing ADC use in the standard formula and consider the suggested approach of use of USPs to reflect this risk mitigation technique would be a suitable approach to achieving a proportional outcome on an undertaking-by-undertaking basis.	
5.4		
5.4.1		
5.4.2		
5.4.3		
6.1		
6.2		
6.3		
6.4		
6.4.1		

6.4.2	We welcome the clarity which EIOPA is seeking to put in place around investment entities and the look-through approach. Specifically, we agree with EIOPA on paragraph 369 that a clear definition should be given of these "investment related undertakings" and that the existence of a specific investment mandate will be a key element of the judgement.	
6.4.3	While we agree with EIOPA's principle of specifying which undertakings will be considered investment undertakings and, therefore, require look-through approach, we consider a materiality threshold appropriate; for example the SII value participation as a percentage of total invested assets of the participating undertaking. Setting an appropriate threshold would achieve a proportional outcome.	
7.1		
7.2		
7.3	We agree with EIOPA's statement in paragraph 385: "If some risks are assessed as non-material by (re)insurance undertakings, one would rather expect that simplified calculations are used as a proportionate way to calculate the SCR standard formula. If not, the deviation in the standard parameters compared to undertaking specific parameters would also be expected to be not material.".	
7.4		
7.4.1		
7.4.2		
7.4.3		
7.4.4		
8.1	Article 15.3 of the Delegated Regulation sets out a seemingly simple rule for when deferred tax assets should be valued – a "probable" test. Despite this, many materials have been produced, by NSAs, commentators and firms, re-interpreting and sometimes changing this test. In our view, as long as Article 15 is unchanged, EIOPA guidance should place emphasis on applying the "probable" rule in the Regulation.	

	It may be that the simple "probable" rule in Article 15 (which reflects the IAS 12 'temporary difference with no discounting' approach) is not seen as adequately addressing the needs of a solvency regime. If this is the case, then the solution should be to amend Article 15.	
8.2		
8.2.1		
8.2.2		
8.2.3	The reference to an undertaking being required to have credible evidence (para 461) is an example of how the "probable" test gets modified. It raises the question of what is meant by "credible" and may lead to a wider discussion on credibility. Focussing on Article 15.2, we see the Regulation ask whether evidence is sufficient to show it is probable a deferred tax asset will be utilised (which, for LAC DT, is in the post-shock environment). The evidence to support that assertion must have credibility – but that credibility only needs to be sufficient to overcome the "probable" threshold.	
8.2.4		
8.3	There is no reference to Annex XVIII of the Delegated Regulation or Guideline 22 of the Guidelines on Loss-absorbing Capacity of Technical Provisions and Deferred Taxes (EIOPA-BoS-14/177), which may explain the lack of commentary in the Consultation Paper on LAC DT within group SCR. It would be useful for EIOPA to develop guidance on the relevance, or otherwise, of IAS 12 to the interpretation of the Solvency II rules (para 471). Solvency II has its own code (Article 15), as acknowledged at 2.4.b in the Feedback Statement of the Final Report on the EIOPA Guidelines on the Recognition and Valuation of Assets and Liabilities Other Than Technical Provisions (EIOPA-BoS-15/113). A number of EIOPA Guidelines diverge from IAS 12 (Guidelines 9, 13 and 22 of EIOPA-BoS-14/177). Although it is usually assumed that IAS 12 offers guidance for matters not covered in EIOPA or NSA guidance, the lack of EIOPA guidance makes it difficult in practice as to how far to take this, and different approaches have developed. It would be useful to have EIOPA's views.	
8.4		
8.4.1		

8.4.2		
8.4.3		
8.4.4		
8.4.5		
8.4.6		
8.5		
8.5.1		
8.5.2		
8.5.3	The text here, and in subsections to 8.5.3, implies divergence from the Article 15 "probable" test. Artificial and sometimes irrebuttable assumptions have been made. In our view, whether a firm has sufficient evidence to overcome the "probable" threshold is a firm-specific test. General statements can be, and have been, made. For example, the longer the planning horizon, the less certain it is likely to be that the projected profits will be made. But it will always be a firm-specific question as to whether there is sufficient evidence to support the proposition that it is probable that those future profits will arise.	
8.5.3.1		
8.5.3.2		
8.5.3.3	With regard to the pull to par example, we note that the IASB issued *Recognition of Deferred Tax Assets for Unrealised Losses* (Amendments to IAS 12) in January 2016, which covers similar ground – and again note that EIOPA guidance on the relevance or otherwise of IAS 12 would be helpful. We agree NSAs should require the evidence firms use to support the "probable" assertion to be consistent with the data and approaches they use elsewhere. But stress that consistency does not mean taking the same view of different things : for example, it is not inconsistent to argue that it is probable loan assets held to maturity will be recovered at a value different from that on the stressed Solvency II balance sheet. That is because the accounting requirements for loan assets on the stressed balance sheet do not say they should be valued at the amount that is expected to be	

	recovered. However, a firm must still show that it is probable that a loan asset will be held to maturity. A proper application of the "probable" test should leave it open to firms to show they have evidence to demonstrate that it is probable assets and liabilities in the post-shock scenario will be recovered at some value other than carrying value.	
8.6		
8.6.1	The point made in para 562 that allowing for recapitalisation or other management actions would make the calculation more complex and subjective is another example of guidance that could detract from the "probable" test. If, for a firm, the calculation is so complex and subjective that the "probable" test cannot be met, then deferred tax assets cannot be valued. On the other hand, if the complexity and subjectivity is not such as to cause that test to be failed, then deferred tax assets can be valued.	
8.6.2		
8.6.3		
9.1		
9.2		
9.3		
9.4		
9.4.1		
9.4.2		
9.4.3		
9.5		
9.5.1		
9.5.2		
9.5.3		
9.6		

	Comments Template on Consultation Paper on EIOPA's first set of advice to the European Commission on specific items in the Solvency II Delegated Regulation	Deadline 31 August 2017 23:59 CET
9.6.1		
9.6.2		
9.6.3		
9.7		
9.7.1		
9.7.2		
9.7.3		
9.8		
9.8.1		
9.8.2		
9.8.3		
9.9		
9.9.1		
9.9.2		
9.9.3		