

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:	ASSOCIATION OF BERMUDA INSURERS AND REINSURERS (ABIR)	
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/ <b>Public</b>
<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>		
Reference	Comment	
General Comment	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”).	

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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.

ABIR wishes to provide the following general comments:

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 meets the criteria set out in EIOPA's methodology for equivalence assessments under Solvency II for group supervision (Article 260) with certain caveats;
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;
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.
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;
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;

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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>	
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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 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.</p>	
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7.	<p>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</p>	

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	Commission. The assessment articulates areas where Bermuda is already in alignment with Solvency II in advance of the Solvency II Directive implementation date.	
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40.	<p>ABIR believes that EIOPA should acknowledge that legal systems and 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>	

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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.

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.

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ABIR appreciates that EIOPA cannot positively conclude on the current 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?

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48.	See paragraph 44.	
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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 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> <p style="padding-left: 40px;">International Association of Insurance Supervisors (IAIS) - signed June 25th 2009</p> <p>Signed MOUs with other jurisdictions / organisations:</p>	

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	<p>States of Jersey Financial Services Department - signed April 10th 1997</p> <p>Isle of Man Financial Supervision Commission - signed October 28th 2002</p> <p>UK Financial Services Authority - signed April 21st 2004</p> <p>Luxembourg (Commission de Surveillance du Secteur Financier) - signed May 31st 2005</p> <p style="padding-left: 40px;">Cayman Islands Monetary Authority - signed June 30th 2005</p> <p>Financial Services Board of the Republic of South Africa - signed August 15th 2005</p> <p style="padding-left: 40px;">International Organization of Securities Commissions - signed June 6th 2007</p> <p>Malta Financial Services Authority - signed June 3rd 2008</p> <p>The Office of the Superintendent of Financial Institutions of Canada - signed August 19<sup>th</sup>, 2008</p> <p style="padding-left: 40px;">New York State Insurance Department - signed September 25th 2008</p> <p>Luxembourg (Commissariat Aux Assurances) - signed February 2nd 2009</p> <p>Florida Office of Insurance Regulation - signed September 24th 2009</p> <p>Nebraska Department of Insurance - signed October 28th 2009</p> <p>Pennsylvania Insurance Department - signed December 10th 2009</p> <p>Swiss Financial Market Supervisory Authority - signed March 11th 2010</p>	
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55.	ABIR refers to our comments in paragraph 40 which highlights the appropriateness of the current mechanism in place to deal with 'non-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.	
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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.	
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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.	
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264.	ABIR supports the requirement for the establishment of supervisory colleges and additional defined processes to co-operation and information sharing.	
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269.	ABIR supports the development of details for the decision-making process in the college of supervisors and for resolving disputes in the case of disagreements with other relevant supervisory authorities.	
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