

<b>Comments Template on EIOPA-CP 04-11</b>		<b>Deadline</b> <b>23.09.2011</b> <b>17.30 CET</b>
<b>EIOPA Draft Report - Equivalence assessment of the Bermudan supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive</b>		
Name of Company:	Bermuda Monetary Authority (BMA or the Authority)	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>Please indicate if your comments should be treated as confidential:</p>	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, in Word Format, 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	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).	

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	<p>We appreciate that the equivalence assessment is a flexible process based on principles and objectives that are applied in accordance with 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>	
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18.	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.	
19.	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 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.	
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39.	<p>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.</p> <p>This comment relates to paragraph 106 as well.</p>	
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</p>	

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	<p>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, 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>	
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 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>	
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</p>	

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	<p>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>	
43.		
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>	
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48.	Please refer to our comments with respect to paragraph 44.	
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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> <p>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>	
54.	Please refer to our comments with respect to paragraph 41.	
55.	Please refer to our comments with respect to paragraph 42.	
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57.	Please refer to our comments with respect to paragraph 44.	
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76.	The legislation is being updated to require all classes of insurers to report breaches of the minimum margin of solvency <b>directly</b> to the Authority. This comment relates to paragraphs 170 and 171 as well.	
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93.	Please refer to our comments with respect to paragraph 40.	
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100.	Please refer to our comments with respect to paragraph 40.	
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106.	Please refer to our comments with respect to paragraph 39.	
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109.	Please refer to our comments with respect to paragraph 40.	
110.	Please refer to our comments with respect to paragraph 40.	
111.	Please refer to our comments with respect to paragraph 40.	
112.	Please refer to our comments with respect to paragraph 40.	
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116.	The Code of Conduct applies to all classes of insurers.	
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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.	
121.	As noted in our comments with respect to paragraph 41, the Authority will be consulting on a proposal that would require the commercial classes to segregate and make the internal audit function	

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	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.	
122.	Please see our comments with respect to paragraphs 41 and 121.	
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124.	<p>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.</p> <p>While Bermuda does not have a cash threshold reporting, it is noted that this is not a FATF requirement and most European countries, including the United Kingdom, do not appear to have such thresholds either.</p>	
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>	
126.	As noted in our response to paragraph 121, all insurers are required to have an actuarial function.	

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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.	
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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.	
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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.	
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137.	Please refer to our comments with respect to paragraph 41.	
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141.	Please refer to our comments with respect to paragraph 41.	
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143.	Please refer to our comments with respect to paragraph 41.	
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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).	
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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.	
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159.		
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.	
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).	
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168.	<p>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 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>	
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170.		
171.	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. This comment relates to paragraph 252 as well.	
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173.	Please refer to our comments with respect to paragraph 44.	
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188.	We wish to clarify that the target capital level (as opposed to the ECR) is 120 percent of the BSCR or approved internal model.	
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200.	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.	
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244.	Please refer to our comments with respect to paragraph 44.	
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246.	Please refer to our comments with respect to paragraph 200.	

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252.	Please refer to our comments with respect to paragraph 171.	
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264.	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	

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	<p>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>	
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268.	Please see our comments with respect to paragraph 264.	
269.	Please see our comments with respect to paragraph 264.	
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272.	Please see our comments with respect to paragraph 264.	
273.	Please see our comments with respect to paragraph 264.	
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