

**Comments Template on
CP8 -Draft proposal for Guidelines on ORSA**

**Deadline
20 January 2012
12:00 CET**

Name of Company:	Ganado & Associates, Advocates	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ 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 <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to cp008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to Consultation Paper 008.</p>		
Reference	Comment	
General Comment	<p>We welcome the draft guidelines on the ORSA. In our view, the proposed guidelines generally establish sufficiently clear principles which undertakings are to follow when conducting their ORSA. However, certain elements require clarification, as outlined in our comments below.</p> <p>Any appreciation of facts, statements, or information provided by other parties, such as the assessment of non-quantifiable risks as mandated in para 4.28 should be carried out having regard to the standard of care established in the relevant national legislation of the undertaking's domicile. For instance, directors of Maltese insurance undertaking will have to carry out their appreciation honestly and in good faith and in the best interests of the company.</p> <p>Our comments focus on the effects of the rules on captive insurance undertakings and ring-fenced</p>	

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	funds.	
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3.2.	We agree with the principle that the undertaking should decide for itself how to perform its Own Risk and Solvency Assessment taking into account the nature scale and complexity of its risks.	
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3.6.	<p>The paragraph states that the « AMSB also takes an active role in the ORSA process, directing and <u>challenging</u> the performance ». It is not clear as to what extent the directors are to challenge the ORSA process, is performance and its results.</p> <p>We are of the view that the directors’ duty to challenge is to be carried out having regard to the national provisions on director duties and the standard of care applicable to directors of companies. Furthermore, regard is to be had to the nature, scale and complexity of the undertaking.</p>	
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3.16.	Please see comment to para 3.6 on the responsibility of the directors to challenge the results of the ORSA.	

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3.28.	The Guidelines provide that any material deviations from assumptions underlying the SCR should be quantified. In this regard, we feel that further guidance on the meaning of 'materiality' is needed.	
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4.12.	<p>We note that the ORSA is to ensure that plans are in place outlining alternatives to ensure that solvency needs can be met even under unexpectedly adverse circumstances. We would like to confirm to what extent to 'unexpected adverse circumstances' need to be taken into account and whether this phrase can be taken to refer to low frequency high impact events which in the opinion of the directors are to be considered by the undertaking.</p> <p>We believe that it is rather difficult for small and medium sized undertakings to consider each unexpected adverse circumstance which may impact the solvency needs of the company and would favour a clarification as to what sort of unexpected adverse circumstances are to be taken into account.</p>	
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4.14.	We understand that it is up to the insurance undertaking to determine the form of ORSA record-keeping required by the Guidelines.	
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Template comments

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Q1.	Generally the Guidelines establish with sufficient clarity the intentions of the ORSA. However, we would require clarification on the extent of forward-looking statements that are required to be made ; confirmation as to the standard of duty of care of directors; and a clear definition as to what constitutes a 'material deviation' when an assessment of the assumptions underlying the SCR is made.	
Q2.	In the case of ISPVs (but not SPVs established to provide financial risk mitigation to insurance undertakings) we understand that the ORSA process will be governed by L2 rules established for the purpose and will only be affected by the contents of the Guidelines where applicable.	
Q3.	No comment.	
Q4.	No comment.	
Q5.	We believe that the Guidelines are beneficial to SME insurers and to captive insurance undertakings since the principle of proportionality is clearly enshrined as the governing principle of the process. We agree that there should be no guidance as to how the ORSA is to be carried out (since this decision is to be taken by each company having regard to the nature scale and complexity of its own risks.	

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Q6.	No coment.	
Q7.	We agree with the options outlned in the Guidelines	
Q8.	We agree.	
Q9.	We believe that the results of the ORSA are to be communicated on a periodic basis (or whenever an ORSA is carried out) and should be communicated to the regulator/s tasked with the supervision of the (re)insurance undertaking.	