

Comments Template on EIOPA-CP-14-048 Draft proposal for Level 3 Guidelines on the supervision of branches of third-country insurance undertakings		Deadline 02.Mar.2015 23:59 CET
Company name:	Association of Bermuda Insurers and Reinsurers (ABIR)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in column "Reference". ⇒ 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>. ⇒ 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"> ○ 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. ○ If your comment refers to sub-bullets/sub-paragraphs, please indicate this in the comment itself. <p>Please send the completed template to Consultation_Set2@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).</p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-048.</p>		
Reference	Comment	
General Comment	We would like to thank EIOPA for the opportunity to comment on the EIOPA-CP-14/048 Consultation Paper on the draft proposal for Guidelines on the supervision of branches of third-country insurance undertakings. The Association of Bermuda Insurers and Reinsurers (ABIR) represents 21 Bermuda domiciled insurers and reinsurers who are worldwide business enterprises with their principal underwriting	

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	operations in Bermuda, Europe and the United States. Collectively, 97% of gross premium are written by companies traded on the New York or London stock exchanges (86% of premium written by US SEC registrants). Our members wrote €60.5 billion in global gross written premium (CY 2013) with an aggregate global capital of € 82.45 billion (CY 2013). ABIR members employ more than 9,000 people in Europe, nearly 17,000 in the US, over 1,500 in Bermuda, and nearly 39,000 worldwide (CY 2013).	
1.1.		
1.2.		
1.3.	We support alternate methods to protect policyholders which ensure ‘a <u>proportionate</u> approach to supervision’ but the consultation paper infers to limiting the principle of proportionality to ‘certain aspects’ of Solvency II, such as valuation, own funds and submission of information. We would respectfully submit that the principle of proportionality should be applied across all of the guidelines to take into consideration the nature, scale and complexity of the risks being written. We observe that the proposed guidelines place onerous and substantial regulatory reporting requirements for third-country branches and even require a legal opinion on the distribution of branch assets. It would be a useful exercise for EIOPA to analyse the existing regulatory requirements applied to branches of EEA undertakings operating in non-EEA jurisdictions in order to provide a comparison of the proposed EIOPA guideline requirements.	
1.4.	We note that the proposed guidelines are to apply to branches of those undertakings which carry out insurance rather than reinsurance business (1.4). However, we note in 1.6 that the guidelines will apply to those branch operations consisting of insurance business or a “mix of insurance and reinsurance business.” If some Member States were to extend the application of the proposed guidelines to EEA branches of third-country reinsurers, it is questionable whether the same approach could be taken towards branches of third countries that will be found equivalent under Article 172 of Solvency II. It seems that applying the full set of guidelines to reinsurers from equivalent jurisdictions without any adjustment would be incompatible with the equivalent status since these third countries will have already adjusted their solvency regimes applicable to reinsurance undertakings to bring them in line with Solvency II standards. Therefore, any policyholder protection concerns raised by the reinsurance operations of EEA branches of third country reinsurers should not be fundamentally different from those of reinsurance operations of EEA reinsurers. (Reference our comment 1.6)	

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1.5.

1.6.

It is disappointing to note that the proposed approach is to treat branches of third-country undertakings from jurisdictions deemed to be equivalent in exactly the same manner as branches of third-country insurance undertakings from jurisdictions which are not equivalent. Whilst there seems to be some opportunity for the supervisory authority to have 'regard to equivalence decisions which have been made where they are relevant to assessing the solvency of the whole third-country undertaking', this as presented is only an option and therefore discretionary. It would seem that a third-country jurisdiction having been found to be equivalent would indicate that the branch in question would already be subject to a "Solvency II-like" regime and therefore should be allowed to file and submit financial reporting documents to the relevant EEA national authority that are already submitted to the equivalent third-country jurisdiction in question. The creation of a separate "Solvency II" balance sheet for the branch is redundant and creates additional hurdles to having already achieved equivalent status and therefore recognition as being on par with Solvency II requirements.

It should be noted that the Impact Assessment on the risk of failure through inadequate own funds (paragraph 3.12) acknowledges a 'different degree of comfort as to the solvency of the whole undertaking can be taken from the home regime depending upon whether it is assessed as equivalent under Article 227 of the Directive 2009/138/EC, provisionally equivalent, or no assessment has been made.'

EIOPA indirectly confirms that there could be a link between equivalence status under Article 227 of Solvency II and the application of the guidelines to EEA branches as paragraph 2.16 of the explanatory text to guideline 3 states that "when assessing the adequacy of the margin of solvency of the undertaking, the supervisor may consider relevant equivalence determinations or advice made pursuant to Article 227 of Solvency II". Notwithstanding the nature and status of EIOPA guidelines, where equivalence is granted, we believe that supervisors should be encouraged to consider the relevant equivalence determinations or advice granted.

Further, the equivalence test under article 227 covers third-country solvency regime applicable to (re)insurance undertakings at solo level which corresponds to Pillar I requirements of Solvency II

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	(this equivalence is intended for EU groups). Thus, it is questionable whether an EEA branch of an insurance undertaking with the head office in the equivalent third-country under Article 227 should be subject to the guidelines covering Pillar I requirements (e.g. valuation rules in guideline 22). This is so where the corresponding solvency requirements of that third country are simultaneously recognized by the EU and therefore EEA branches of such entities should also benefit from this recognition. This does not mean that all concerns vis-à-vis branches will have disappeared (e.g. priority of EEA policyholders claims).	
1.7.		
1.8.		
1.9.		
1.10.		
1.11.		
1.12.		
Guideline 1 - 1.13	Guideline 1 requires the third-country undertaking to have an adequate solvency margin under its <u>home jurisdiction rules</u> , not under Solvency II rules. In this regard, third-country jurisdictions having been deemed equivalent should automatically be deemed as having an adequate solvency margin.	
Guideline 1 - 1.14	The host supervisory authority should rely on the assessment of the home supervisory authority when the home jurisdiction's solvency regime has been deemed equivalent with Solvency II.	
Guideline 2 - 1.15	Guideline 2 should provide that a third-country undertaking is not required to provide an analysis of the differences between the home country solvency rules and the rules of Solvency II if the home country solvency regime has been deemed equivalent to Solvency II.	
Guideline 3 - 1.16		
Guideline 4 - 1.17		
Guideline 4 - 1.18		
Guideline 5 - 1.19		
Guideline 6 - 1.20		

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Guideline 7 - 1.21		
Guideline 7 - 1.22		
Guideline 7 - 1.23		
Guideline 8 - 1.24		
Guideline 9 - 1.25		
Guideline 10 - 1.26		
Guideline 11 - 1.27		
Guideline 12 - 1.28		
Guideline 13 - 1.29		
Guideline 14 - 1.30		
Guideline 15 - 1.31		
Guideline 16 - 1.32		
Guideline 16 - 1.33		
Guideline 17 - 1.34		
Guideline 17 - 1.35		
Guideline 18 - 1.36		
Guideline 18 - 1.37		
Guideline 18 - 1.38		
Guideline 19 - 1.39		
Guideline 20 - 1.40		
Guideline 20 - 1.41	The guideline seems to impose a very high standard for the deposit that third-country insurance undertakings are required to lodge pursuant to Article 162(2)(e) of Solvency II since the explanatory text to guideline 20 (paragraph 2.35) refers to cash or cash equivalents as assets of sufficiently high quality for the deposit.	
Guideline 21 - 1.42		
Guideline 22 - 1.43		

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Guideline 23 - 1.44		
Guideline 24 - 1.45		
Guideline 25 - 1.46		
Guideline 26 - 1.47		
Guideline 27 - 1.48		
Guideline 28 - 1.49	The Guideline should provide that the third-country insurance undertaking is not required to comply with the system of governance requirements under Articles 41 to 50 of Solvency II with regard to branch operations if the governance requirements of the third country have been deemed equivalent to Solvency II. The third-country undertaking should be able to apply the equivalent third-country governance rules to the branch operations.	
Guideline 29 - 1.50		
Guideline 30 - 1.51		
Guideline 31 - 1.52		
Guideline 32 - 1.53		
Guideline 33 - 1.54		
Guideline 34 - 1.55		
Guideline 35 - 1.56		
Guideline 36 - 1.57		
Guideline 37 - 1.58		
Guideline 38 - 1.59		
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Guideline 38 - 1.61		
Guideline 39 - 1.62		
Guideline 39 - 1.63		
Guideline 40 - 1.64		
Guideline 40 - 1.65		

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Guideline 40 - 1.66		
Guideline 40 - 1.67		
Guideline 41 - 1.68		
Guideline 42 - 1.69		
Guideline 43 - 1.70		
Guideline 44 - 1.71		
Guideline 44 - 1.72		
Guideline 45 - 1.73		
Guideline 45 - 1.74		
Guideline 46 - 1.75		
Guideline 46 - 1.76		
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Guideline 48 - 1.80		
Guideline 49 - 1.81		
Guideline 50 - 1.82		
Guideline 51 - 1.83		
Guideline 52 - 1.84		
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Guideline 56 - 1.88		
Guideline 57 - 1.89		
Guideline 58 - 1.90		

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Guideline 58 - 1.91		
Guideline 59 - 1.92		
Guideline 60 - 1.93		
Guideline 61 - 1.94		
Guideline 62 - 1.95		
TA I (1)		
TA I (2)		
TA I (3)		
TA I (4)		
TA I (5)		
TA I (6)		
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TA II		
TA III – S.01.02 Opening submission		
TA III – S.02.01 Opening submission		
TA III – S.23.01 Opening submission		
TA III – S.01.01		
TA III – S.01.02		
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TA III – S.06.02		
TA III – S.23.01		
TA III – S.23.03		
TA III – S.29.01		
TA IV – S.01.02 Opening submission		
TA IV – S.02.01 Opening submission		
TA IV – S.23.01 Opening submission		
TA IV – S.01.01 Regular		
TA IV – S.01.02 Regular		
TA IV – S.02.01 Regular		
TA IV – S.02.03 Regular		
TA IV – S.06.02 Regular		
TA IV – S.23.01 Regular		
TA IV – S.23.03 Regular		
TA IV – S.29.01 Regular		