

CP-14-042		Comments Template on Consultation Paper on EIOPA Advice to the European Commission Equivalence assessment of the Bermudian supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive		Deadline 23 January 2015 23:59 CET	
Name of Company:	BERMUDA MONETARY AUTHORITY				
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/response in the relevant row. If you have <u>no response</u> to a question, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments/responses which do not refer to the specific numbers below. <p>Please send the completed template, in <u>Word Format</u>, to CP-14-042@eiopa.europa.eu . Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions refers to Consultation Paper on EIOPA Advice to the European Commission; Equivalence assessment of the Bermudian supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive</p>					
Reference	Comment				
General comments	The Bermuda Monetary Authority (the "Authority") would like to thank EIOPA for the opportunity to comment on its paper entitled "Consultation Paper on EIOPA Advice to the European Commission - Equivalence Assessment of Bermuda's Supervisory System in relation to Articles 172, 227, and 260 of the Solvency II Directive" (the "draft EIOPA Report").				

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	<p>Throughout this process, the Authority has enjoyed, and continues to enjoy, a productive working relationship with EIOPA, as we seek to navigate through the equivalence process defined under Solvency II. Some of the largest global insurance players are domiciled in Bermuda conducting substantial cross-border insurance transactions. The benefits arising out of equivalence are manifold, inter alia, creating parallel opportunities for the growth and development of the Bermuda and EU insurance sectors, promoting policyholder protection, greater collaboration and cooperation between international insurance supervisors, cross-border efficiencies and overall economic sustainability.</p> <p>We have pursued a very aggressive timetable to ensure that the regime achieves broad equivalence with the international standards and particularly, the Solvency II framework. In fact, our commitment to equivalence is such that we have accelerated our work on the development of an Economic Balance Sheet framework and its implementation for all commercial sectors, including life sector, ahead of the timeline stated in the Solvency II Directive.</p> <p>We also wish to acknowledge the hard work on both sides which is clearly reflected in the draft EIOPA Report. This Report demonstrates much collaboration, and a better understanding of the Bermudian regulatory framework and the unique nature of our insurance market. While we have inserted our comments below, we would like to take this opportunity to draw your attention to some key areas that we wish to highlight in our review of the EIOPA Report:</p> <ul style="list-style-type: none"> • Amendments to the Insurance Act 1978 (the “Insurance Act”) <p>The Authority has progressed with the amendments to the Insurance Act; the Bill was debated in Parliament in December 2014 and will be passed in Q1 2015. The passage of the Insurance Amendment Bill will address a number of areas noted in the draft EIOPA Report:</p> <ol style="list-style-type: none"> a. The submission of the declaration of compliance. 	

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	<p>b. The publication of the declaration of compliance for commercial insurers.</p> <p>c. Disposals of qualifying holdings through the notification of the sale of an insurer. The Insurance Act already covers notification to the Authority if a shareholder controller is no longer a controller due to disposals of shareholdings.</p> <p>d. Section 31B of the Insurance Act will apply to all commercial insurers.</p> <ul style="list-style-type: none"> • Bermuda’s Economic Balance Sheet (“EBS”) Framework <p>The Authority confirms that the timetable stated in Paragraph 188 of the draft EIOPA Report is currently on track and we have already issued our consultation paper and draft prudential rules on the EBS framework. The Authority’s commitment to this work and adherence to the timelines for the development and implementation of EBS, even ahead of Solvency II, emphasises our pursuit of a positive equivalence outcome.</p> <ul style="list-style-type: none"> • Head Office requirement <p>We acknowledge that our legal framework differs from Article 20 of the Solvency II Directive. However, despite these differences, we have demonstrated that we are able to conduct effective supervision. The Authority’s regulatory and supervisory regime has worked well to supervise insurers, even under difficult circumstances. The Insurance Act and associated legislation, along with our supervisory process, contain a number of tools enabling supervision to be conducted effectively. Additionally, we have effective supervisory relations with our peers around the world, facilitated by the extensive number of bilateral and multilateral arrangements that we have in place. The Authority has implemented group supervision since 2011 and, to date, has conducted 30 supervisory colleges. The college process has strengthened our relationship with other supervisors resulting in effective supervision over some of our more complex insurance</p>	

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**Deadline
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groups.

- Outsourcing

As stated in Paragraphs 105 and 140, 130 commercial insurers, predominantly Class 3A insurers, have appointed insurance managers to act as their Principal Representatives. While the insurance manager may assume different roles (as stated in Paragraph 106), we confirm that these commercial insurers have not contracted with their insurance managers to perform the CEO and senior executive functions; and it is not the Authority's policy to allow it. The Authority reinforces this policy at the licensing stage and requires all applicant insurers to submit the names and due diligence documents for their CEOs and senior executives, which we will vet for fitness and propriety. Also, commercial insurers are required to submit the names of their CEOs and senior executives as part of the Capital and Solvency return filed annually with the Authority.

- Public Disclosures

The declaration of compliance will be published for commercial insurers when the Insurance Amendment Act is passed in Q1 2015. Through the publication, the declaration will communicate whether a commercial insurer is compliant with the regulatory capital requirements and the Minimum Criteria for Registration. The latter requirement includes compliance with the Insurance Code of Conduct, which can be viewed on the Authority's website. The accessibility helps the public understand the system of governance applied to our commercial insurers. While the Authority's public disclosures regime is not the same as that prescribed under Solvency II, we believe that we achieve, on an outcomes basis, a similar level of protection for policyholders and other stakeholders, given the nature of the Bermuda insurance market. Policyholders and other stakeholders will be able to assess whether or not the insurer has an appropriate system of governance through this attestation of compliance/non-compliance with the Code. We remind EIOPA of the over-arching principles as stated in Paragraph 7 where the "third country

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	<p>supervisory system provides a similar level of policyholder and beneficiary protection.”</p> <ul style="list-style-type: none"> • The Insurance Code of Conduct <p>The consultation period for the Insurance Code of Conduct has ended; therefore the Code is now in effect and has been posted on our website. Notably, the Code establishes the independence of the internal audit function.</p> <ul style="list-style-type: none"> • The Insurance (Eligible Capital) Rules 2012 (the “Eligible Capital Rules”) <p>The Eligible Capital Rules have been amended to include Class C and Class D insurers. Additionally, Rule 3 has been amended to require Class C and Class D insurers to hold the prescribed amounts of eligible capital to satisfy the Enhanced Capital Requirement “ECR”) and the Minimum Margin of Solvency (“MSM”). This amendment takes effect from year-end 2015.</p> <ul style="list-style-type: none"> • Amendments to the Bermuda Solvency Capital Requirement (“BSCR”) <p>The Authority confirms that we will be reviewing the BSCR Model in 2015 to take account of geographical diversification, currency risks, concentration risks and counterparty risks related to cash in banks.</p> <ul style="list-style-type: none"> • Dispute Resolution Framework under Group Supervision <p>Paragraph 303 of the draft EIOPA Report makes reference to the development of “a more formal approach and dispute resolution framework” for insurance groups for which the Authority is the group supervisor. The Authority, as a third country supervisor, cannot develop nor impose any binding requirement on other third country supervisors, including the EU member states. Agreement on matters governing the appropriate and effective supervision of an insurance group must be achieved through consensus, usually developed through the supervisory college</p>	

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	<p>mechanism. Through the College, the Authority is able to establish the dispute resolution strategy applicable for that insurance group.</p> <p>We would like to thank EIOPA for the opportunity to submit our comments and we look forward to further discussions as we near finalisation of the Solvency II equivalence process.</p>	
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19.	<p>The Insurance Amendment Act was debated in Parliament in December 2014. The Bill will be formally passed in Q1 2015, after which, the provisions noted will come into effect for Class 4, Class 3B, Class 3A and Class E insurers. We confirm that the Insurance Code of Conduct is now in effect and can be found on our website. We also confirm that work on the BSCR will commence in 2015.</p>	
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43.	Refer to comments on Paragraph 108	
44.	Refer to comments on Paragraphs 140/148/149	
45.	Refer to comments on Paragraphs 162/180	
46.	For sub-paragraph (a) - Refer to comments on Paragraph 228. For sub-paragraph (d) - Refer to comments on Paragraphs 206/207/269(d).	
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49.	For sub-paragraph (a) - Refer to comments on Paragraph 228. For sub-paragraph (d) - Refer to comments on Paragraphs 206/207/269(d).	
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56.	Refer to comments on Paragraph 162/180	
57.	Refer to comments on Paragraph 228	
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72.	<p>We conduct a needs assessment in relation to the current and potential workload at our annual strategic planning sessions. Based on the needs assessment, we believe that our actuarial resources are sufficient.</p>	
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82.	<p>The legislative amendment to extend Section 17A of the Insurance Act has been passed. The Authority needs to advise on the effective date to enact the amendment requiring Class C and</p>	

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	Class D insurers to submit additional GAAP financial statements. We confirm that the requirement will be in effect from year-end 2016.	
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105.	The 130 commercial insurers are predominantly Class 3A insurers (refer to Paragraph 140) who have appointed insurance managers to act as their Principal Representatives.	
106.		
107.	We acknowledge that our legal framework differs from Article 20 of the Solvency II Directive. We emphasise that despite the legal difference, the Authority will not (and has not) allowed a “large commercial insurer not to have a substantive head office in Bermuda.” At the licensing stage, the Authority will review the insurer’s application to determine, among other things, the nature of their operations and presence in Bermuda. If the applicant is a large commercial insurer, the Authority will not review the application unless the applicant demonstrates that it intends to establish a substantive office with key functions located in Bermuda. The Authority will also visit the insurer’s place of business to make certain that the substantive operations are in fact present and operational in Bermuda.	
108.	We acknowledge that our legal framework differs from Article 20 of the Solvency II Directive. However, despite these differences, we have demonstrated that we are able to conduct effective supervision. The Authority’s regulatory and supervisory regime has worked well to supervise insurers, even under difficult circumstances. The Insurance Act and associated legislation, along with our supervisory process, contain a number of tools enabling supervision to be conducted effectively. Additionally, we have effective supervisory relations with our peers around the world, facilitated by the extensive number of bilateral and multilateral arrangements that we have in place. The Authority has implemented group supervision since 2011 and, to date, has conducted 30 supervisory colleges. The college process has strengthened our relationship with other supervisors resulting in effective supervision over some of our more complex insurance groups.	
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120.	See comments on Paragraph 108	
121.	The Insurance Amendment Act was debated in Parliament in December 2014. The Bill will be formally passed in Q1 2015. We confirm that the amendment require insurers to submit the declaration of compliance. The declaration will be published for commercial insurers.	
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124.	We confirm that the revised Insurance Code of Conduct is in effect and is posted on our website.	
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132.	We confirm that the revised Insurance Code of Conduct is in effect and the requirement to establish the independence of the internal audit function is in Paragraph 50 of the Code.	
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140.	<p>As stated in Paragraph 105, 130 commercial insurers (predominantly Class 3A insurers) have appointed insurance managers to act as their Principal Representatives. While an insurance manager may assume different roles (as stated in Paragraph 106 of the draft EIOPA Report), we confirm that these commercial insurers have not contracted with their insurance managers to perform the CEO and senior executive functions; and it is not the Authority's policy to allow it. The Authority reinforces this policy at the licensing stage and requires all applicant insurers to submit the names and due diligence documents for their CEOs and senior executives, which we will review. Also, commercial insurers are required to submit the names of their CEOs and senior executives as part of the annual Capital and Solvency Return filing.</p>	
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148.	<p>The Insurance Amendment Act was debated in Parliament in December 2014. The Bill will be formally passed in Q1 2015. The amendment provides for the publication of the declaration for commercial insurers according to Section 17A(6) of the Insurance Act. Through the publication, the declaration will communicate whether a commercial insurer is compliant with the regulatory capital requirements and the Minimum Criteria for Registration. The latter requirement includes</p>	

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	<p>compliance with the Insurance Code of Conduct which can be viewed on the Authority’s website. The accessibility helps the public understand the system of governance applied to our commercial insurers. While the Authority’s public disclosures regime is not the same as that prescribed under Solvency II, we believe that we achieve, on an outcomes basis, a similar level of protection for policyholders and other stakeholders, given the nature of the Bermuda insurance market. Policyholders and other stakeholders will be able to assess whether or not the insurer has an appropriate system of governance through this attestation of compliance/non-compliance with the Code. We remind EIOPA of the over-arching principles as stated in Paragraph 7 where the “third country supervisory system provides a similar level of policyholder and beneficiary protection.”</p>	
149.	We confirm that the additional GAAP financial statements for Class 3A, Class C, Class D and Class E insurers will be published for the year end 2016.	
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156.	See comment in Paragraph 140.	
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162.	We confirm that the Insurance Amendment Act was debated in Parliament in December 2014 and the Bill will be formally passed in Q1 2015.	

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180.	We confirm that the Insurance Amendment Act was debated in Parliament in December 2014 and the Bill will be formally passed in Q1 2015.	
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182.	We confirm that the Insurance Amendment Act was debated in Parliament in December 2014 and the Bill will be formally passed in Q1 2015.	
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185.		
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188.	We confirm that the timetable to establish a Bermuda Economic Balance Sheet Framework is still on track. The Consultation Paper and draft Prudential Rules have already been published and are available on our website.	
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206.	We confirm that Paragraph 3(1) of Insurance (Eligible Capital) Rules 2012 has been amended to include Class C and Class D insurers. Effectively, the amendment requires that these commercial	

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	insurers maintain available statutory capital and surplus, in accordance with the eligible capital requirement, that is equal to or exceeds the value of its minimum margin of solvency. The amendment takes effect from year-end 2015.	
207.	We confirm that Paragraph 3(3) of Insurance (Eligible Capital) Rules 2012 has been amended to include Class C and Class D insurers. Effectively, the amendment requires that these commercial insurers maintain available statutory capital and surplus, in accordance with the eligible capital requirement, that is equal to or exceeds the value of its ECR. The amendment takes effect from year-end 2015.	
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225.	We confirm that work to review the BSCR to account for geographical diversification will commence in 2015. Once that work is completed, the BSCR-SME will be aligned with the BSCR.	
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228.	We confirm that work to review the BSCR and BSCR-SME to account for currency and concentration risks will commence in 2015.	
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234.	We confirm that work to review the BSCR to account for counterparty risks associated with cash in bank will commence in 2015.	
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269.	Refer to comments on Paragraphs 206-207. We suggest that the current wording in sub-paragraph (d) of the Report be amended to clarify that the requirement pertains to Eligible	

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	Capital. The current wording can be misconstrued to suggest that Class C and Class D insurers are not required to maintain the MSM.	
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271.	Refer to comments on Paragraph 228.	
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303.	<p>As a third country supervisor, the Authority is unable to create a “formal” dispute resolution framework that is binding on other jurisdictions. To address this matter, the Authority, through the supervisory college process, has created a dispute resolution charter/document that is specific to the insurance group and agreed by all the relevant supervisors. While we consistently evaluate our supervisory college process, a dispute resolution framework for a third country will be different from that under the Solvency II Directive. The Directive creates binding legislation across EU member states whereas a sovereign third country, like Bermuda, cannot impose legally binding requirements on another sovereign third country, including the EU member states.</p>	
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Annex 1		
Annex 2		