

<b>Comments Template on EIOPA-CP-14-048</b> <b>Draft proposal for Level 3 Guidelines on the supervision of branches of third-country insurance undertakings</b>		<b>Deadline</b> <b>02.Mar.2015</b> <b>23:59 CET</b>
Company name:	International Underwriting Association of London (IUA)	
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"> <li>⇒ <u>Do not change the numbering</u> in 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/sub-paragraphs, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template to <a href="mailto:Consultation_Set2@eiopa.europa.eu">Consultation_Set2@eiopa.europa.eu</a>, in MSWord Format, (our IT tool does not allow processing of any other formats).</b></p> <p>The paragraph numbers below correspond to Consultation Paper No. EIOPA-CP-14-048.</p>		
Reference	Comment	
General Comment	Thank you for inviting comments on the draft guidelines on the supervision of third-country branches.  We understand the need to protect policyholders and to ensure fair competition between EEA and non-EEA insurers. However, we believe that fairness also requires a reasonable and pragmatic approach to the regulation of third-country branches.	

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We welcome EIOPA's emphasis on the need for proportionality in the application of reporting requirements. In our view, the same general proportionate approach needs to be taken across the board, taking into account the nature, scale and complexity of risks, as indicated in Guideline 48. We think it would be helpful if there were an additional guideline inviting national supervisors to adopt a general approach of pragmatism, flexibility and cost-effectiveness in overseeing third-country branches. That is because of the inherent difficulties encountered by undertakings operating in a foreign jurisdiction. In our view dialogue leading to simple solutions may often resolve issues. For that reason, the guidelines should not be overly prescriptive and should leave it open to national supervisors to work out with individual firms appropriate arrangements in relation to solvency, governance and reporting, within the framework of the Solvency II Directive.

The preparation of a legal opinion by the undertaking, as proposed in Guideline 4, is likely to be extremely costly and, moreover, may well not meet all the expectations of the supervisor. The necessity of taking into account the possibility of winding-up also appears to give rise to potentially inordinately complicated and burdensome arrangements and reporting requirements. Dialogue between the host supervisor and the undertaking could well lead to more efficient processes for resolving the issues underlying winding-up matters. Commitments or other arrangements on the part of the undertaking could be found to satisfy the supervisor.

We agree that it will be sensible for supervisory authorities to have regard to equivalence decisions that are relevant to assessing the solvency of the whole third-country undertaking. Where a jurisdiction has been deemed equivalent for relevant purposes, the requirement under Guideline 1, that the whole undertaking have an adequate solvency margin, should be deemed to be met, since it will be subject to rules equivalent to those of Solvency II.

We note also that, where several firms are from the same home jurisdiction, it would be inefficient and costly in time and resources for the host supervisor and for the firms if the same information and very similar legal opinions were to be required from each one of them.

Lastly, the requirements imposed by Europe on third-country undertakings will be seen as a model by other jurisdictions in both emerging and developed markets. The adoption in those markets of new capital and reporting requirements, following the example of the EU, could lead to significant

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	costs for European undertakings seeking to operate abroad. An EU model based on a pragmatic and proportionate approach is therefore needed in the interests of freedom of commerce.	
1.1.		
1.2.		
1.3.		
1.4.		
1.5.		
1.6.	We agree that it will be sensible for supervisory authorities to have regard to equivalence decisions which have been made where they are relevant to assessing the solvency of the whole third-country undertaking. Where a jurisdiction has been deemed equivalent for relevant purposes, the requirement under Guideline 1, that the whole undertaking have an adequate solvency margin, should be deemed to be met, since it will be subject to rules equivalent to those of Solvency II.	
1.7.		
1.8.		
1.9.		
1.10.		
1.11.		
1.12.		
Guideline 1 - 1.13	Please see our answers to paragraphs 1.14 and 1.15.	
Guideline 1 - 1.14	Paragraph 1.14 appears to duplicate the second half of Paragraph 1.13, which already covers the solvency margin of the whole undertaking under home jurisdiction rules.	
Guideline 2 - 1.15	Analysis of the differences between two regimes could require a deep and complex examination of theories of regulation and of practices in different parts of the world. It could also generate a great deal of cost and hard work for the undertaking and the host supervisor. It appears to us that what should be expected is that the host jurisdiction should be able to evaluate the capital adequacy of the whole undertaking and that the annual returns of the company and related	

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	documentation would provide the information needed for the host jurisdiction to make that evaluation and to understand the home-state regulation of solvency	
Guideline 3 - 1.16	It appears to us that dialogue between the host supervisor and the undertaking could lead to commitments to satisfy the supervisor that branch policyholder claims would be met fairly. That should be an alternative to entering into what could be an exhaustive and resource-hungry examination of the distribution of assets, very probably followed by a further need for legal advice, as is suggested in paragraph 1.19.	
Guideline 4 - 1.17	As suggested in our response to 1.16, there may be more simple and direct means by which an undertaking can satisfy the host supervisor that branch policyholder claims will be met fairly. The preparation of a legal opinion by the undertaking is likely to be extremely costly and, moreover, may well not meet all the expectations of the supervisor. Dialogue between the host supervisor and the undertaking could well be a more efficient process and lead to commitment to arrangements on the part of the undertaking that would satisfy the regulator.	
Guideline 4 - 1.18	Please see our responses to 1.16 and 1.17.	
Guideline 5 - 1.19	Please see our responses to 1.16, 1.17 and 1.18.	
Guideline 6 - 1.20		
Guideline 7 - 1.21		
Guideline 7 - 1.22	Please see our responses to 1.16, 1.17, 1.18 and 1.19.	
Guideline 7 - 1.23		
Guideline 8 - 1.24		
Guideline 9 - 1.25	Please see our responses to 1.16 and 1.17.	
Guideline 10 - 1.26	We suggest that other aspects of supervision could be similarly delegated by one jurisdiction to another for the sake of efficiency, following application from the branches.	
Guideline 11 - 1.27		
Guideline 12 - 1.28		
Guideline 13 - 1.29		
Guideline 14 - 1.30		
Guideline 15 - 1.31		

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Guideline 16 - 1.32		
Guideline 16 - 1.33		
Guideline 17 - 1.34		
Guideline 17 - 1.35		
Guideline 18 - 1.36		
Guideline 18 - 1.37	Please see our responses to 1.16 and 1.17.	
Guideline 18 - 1.38		
Guideline 19 - 1.39		
Guideline 20 - 1.40		
Guideline 20 - 1.41	Please see our responses to 1.16 and 1.17.	
Guideline 21 - 1.42		
Guideline 22 - 1.43		
Guideline 23 - 1.44		
Guideline 24 - 1.45		
Guideline 25 - 1.46		
Guideline 26 - 1.47	Please see our responses to 1.16 and 1.17.	
Guideline 27 - 1.48	Please see our responses to 1.16 and 1.17.	
Guideline 28 - 1.49		
Guideline 29 - 1.50		
Guideline 30 - 1.51		
Guideline 31 - 1.52		
Guideline 32 - 1.53		
Guideline 33 - 1.54	When the person subject to the fit and proper assessment does not live in the country or, indeed, on the continent in which the branch is located, national supervisors need to bear in mind that direct access to the person will not always be practical or reasonable, so face-to-face interviews should be required only exceptionally and arranged on mutually acceptable dates.	

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Guideline 34 - 1.55		
Guideline 35 - 1.56	The inclusion of all material risks could be construed as a requirement to report on every detailed aspect of the business of the whole undertaking. In our view, there should be included only major risks to the whole group that could have a significant effect on the branch.	
Guideline 36 - 1.57	Please see our responses to 1.16 and 1.17.	
Guideline 37 - 1.58		
Guideline 38 - 1.59	With regard to (e), the definition of "significant concerns" could be interpreted very widely. In our view, there should be included only major concerns for whole group that could have a significant effect on the branch.	
Guideline 38 - 1.60		
Guideline 38 - 1.61		
Guideline 39 - 1.62		
Guideline 39 - 1.63		
Guideline 40 - 1.64		
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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 47 - 1.77		
Guideline 47 - 1.78		
Guideline 47 - 1.79		
Guideline 48 - 1.80	Guideline 48 appears very sensible. It will relieve both firms and regulators of unnecessary effort and increase efficiency accordingly.	
Guideline 49 - 1.81		
Guideline 50 - 1.82		
Guideline 51 - 1.83		
Guideline 52 - 1.84		
Guideline 53 - 1.85		
Guideline 54 - 1.86		
Guideline 55 - 1.87		
Guideline 56 - 1.88		
Guideline 57 - 1.89		
Guideline 58 - 1.90		
Guideline 58 - 1.91		
Guideline 59 - 1.92		
Guideline 60 - 1.93	The transitional arrangements will be very helpful, but for some firms, operating under different financial years from their competitors, anomalies could still arise where they might find themselves reporting many months in advance of other companies. We suggest that national supervisors should be expected to be flexible when such cases are brought to their attention.	
Guideline 61 - 1.94		
Guideline 62 - 1.95		
TA I (1)		
TA I (2)		
TA I (3)		

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TA I (9)		
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TA I (55)		
TA I (56)		
TA I (57)		
TA I (58)		
TA I (59)		
TA I (60)		
TA II	We note that in Annex II, the top half of the balance sheet only includes assets "subject to rights in rem" and "branch assets subject to trust/security/collateral arrangements in favour of creditors with branch insurance claims". It does not include assets that meet the test in Guidelines 7 and 26. Thus, it appears that the Annex is establishing a requirement that is not justified elsewhere in the Directive or in the Guidelines. (It is only at the bottom half of the balance sheet that unsecured assets are allowed to be counted - against reinsurance claims and non-insurance claims). In our view, the new requirement should be removed.	
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		
TA III - S.02.01		
TA III - S.02.03		
TA III - S.06.02		
TA III - S.23.01		
TA III - S.23.03		

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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		