	Comments Template on EIOPA-CP-11/006 **Response to Call for Advice on the review of Directive 2003/41/EC: second consultation**	**Deadline** **02.01.2012** **18:00 CET**
Company name:	**Rio Tinto plc**	
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 left and by inserting the word **Confidential**.*	Public
	The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006). **Please follow the instructions for filling in the template:** ⇨ Do **not** change the numbering in column "Question". ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below. ○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies. ○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	**Comment**	
General comment	Rio Tinto is a leading international mining group, combining Rio Tinto plc, a London listed public company headquartered in the UK, and Rio Tinto Limited, which is listed on the Australian Stock Exchange, with executive offices in Melbourne. The two companies are joined in a dual listed	

companies (DLC) structure as a single economic entity, called the Rio Tinto Group.

Rio Tinto sponsors a number of pension plans in the European Union with defined benefit assets of approximately €3 billion. The largest plans are in the UK.

The principal point that we wish to communicate in this response is that we believe that **the application of a Solvency II type regime to occupation pension plans is fundamentally flawed**. Pension plans are offered by employers, generally on a voluntary basis, as part of the employment contract. They are therefore a part of the social and labour environment in which companies operate, with significant differences existing from one country to another. This is very different from the circumstances applying to insurance products, which are financial products generally purchased voluntarily by individuals or companies. In our view the consultation should first of all address the question of whether the application of Solvency II to pension plans is appropriate, whereas in fact the consultation appears to leap straight to the question of how to apply Solvency II to pensions.

We believe that the application of a Solvency II approach to pensions could have a number of detrimental effects, including some which are contrary to the Commission's stated aims. Applying Solvency II funding requirements to pension plans would discourage employers from offering defined benefit pension arrangements. Furthermore, applying certain elements of the regime to defined contribution plans would also discourage employers from offering those arrangements. **The end result would be a reduction of employer-sponsored retirement provision**.

We also believe that introducing additional regulation would not encourage the use of cross-border plans. In our view the primary reason for the relatively small number of cross-border plans is that the existing regulation is already too complex; **further regulation will not encourage the use of cross-border plans**.

We are also extremely concerned about the potential financial impact of a Solvency II regime on pension plan sponsors. Our own calculations suggest that applying Solvency II to our pension plans would result in deficits of at least 250% of the current deficits (based on our technical provisions

	basis). This alone represents a very significant amount of cash. If higher funding requirements were combined with shorter deficit recovery periods then the impact would be even more significant. Our view is that **the application of Solvency II to pensions would result in companies being forced to reduce their investments in projects that result in growth and employment**. The proposed "holistic balance sheet" approach will require companies and pension institutions to obtain expensive advice. We believe that the Commission should aim to quantify the additional cost burden that this will place upon businesses. The Solvency II regime, if applied to pension plans, is likely to lead pension plans to invest more heavily in "risk free" assets such as sovereign debt and to reduce their investments in equities and corporate bonds. We believe that **this will lead to an increase in the cost of capital for businesses, which will be detrimental to the level of investment in growth projects**. Finally, we wish to note that we have not responded to the 96 detailed questions. This should not be taken to mean that we agree with the proposals, but rather as an indication that we believe Solvency II should not be applied to pension plans.	
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