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|  | **MEMBERS AND OTHERS** |
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| Compiled Comments on Consultation: Application Paper on Regulation & Supervision of Captive Insurers01-Jul-15 to 04-Aug-15 Basis of Compilation: The comments are in the the sequential order of the "questions", i.e. general questions then comments to Modules and Elements. If a question received more than one comment, these comments are in the alphabetical order of "respondent", i.e. jurisdiction and organisation as stated in the submission. | |
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| **Jurisdiction Organisation** | | **Question** | | **Comments** |
| **1. General Comment on Introduction:** | | | | | |
| 1 | Delaware Department of Insurance | | 1. General Comment on Introduction: | The purpose of this letter is to submit the Delaware Insurance Department's comments regarding the above referenced Paper. Delaware's introductory comment is that this Paper is important because it is the only written regulatory framework drafted specifically for captive insurance. This Paper's release is timely because presently there is continuous growth not only in the number of captive insurers, but more importantly for purposes of this Paper, growth in the number of captive insurance domiciles. However, the growth in experienced captive insurance regulators has not kept pace and therefore experienced regulators are in short supply. While this Paper will assist the experienced regulator, it will be even more important for the new captive regulator because it will provide a blueprint for effective regulation. |  |
| 2 | **Global** Willis Global Captive Management, Willis Group | | 1. General Comment on Introduction: | Willis Global Captive Practice ("Willis") is delighted to have the opportunity to submit comments in respect of the above paper. We strongly support all efforts to explain captive business to all stakeholders and we view release of this paper as another positive step in demystifying and promoting a better understanding of the role and value of captives. The document builds on the educational foundation of the previous IAIS Captive Issues Paper.  However the primary aim of the document is to assist supervisory bodies worldwide regulate captives in a consistent and appropriate manner which reflects the risk profile and characteristics of captive business. We note this is an application paper which is designed to provide "actual examples or case studies…. and can provide…. illustrations, recommendations or examples of good practice….". As such we believe it will provide invaluable guidance to supervisors in jurisdictions that are, or wish to become, new entrants into the regulation of captives. However we see even greater value in the paper moving beyond "supervisors should consider" recommendations to stating what is international best practice. This will provide clearer guidance and facilitate closer alignment of regulatory regimes. There is a wealth of experience on the Captive Insurance Task Force and Willis (and we imagine, other captive practitioners) would be pleased to offer its knowledge to aid this exercise.  Overall we find the paper to be constructive, sensible and comprehensive. As such we have little to offer in respect of drafting other than to complement the authors for producing such a quality product. We do note the comments in section 35 but we do not believe the supervisor can absolve complete responsibility to assess suitability of captives owners based on the insurance manager providing the insurance expertise. In many cases the captive owner will possess a risk management and insurance function holder so will be able to demonstrate competency. Furthermore, a captive manager usually provides generalist insurance expertise and may not be experienced in certain specialist risk covers .We suggest it makes more sense for the supervisor's assessment to encompass the competency in the captive owner and the other captive stakeholders (e.g. insurance brokers ,reinsurance markets) as well as the outsourced captive manager.  We note the emphasis of the following issues; - Proportionality of regulation. We strongly support a pragmatic adoption of this principle. We look to the success of jurisdictions that have embraced this regulatory approach and that recognise the difference of risks in the regulation of a captive and a commercial carrier - Emphasis on proper governance (in the broadest sense) of the captive. We support the emphasis on the board of directors to set and implement strategy, put in place suitable risk management and monitor progress. Our research into captive failures shows the primary cause is the lack of proper systems of governance being in place resulting in the captive being unable to withstand a shock event. These could have been avoided, or greatly mitigated, through adoption of best practice corporate governance. Whist we recognise that captive business plans can change dramatically at renewal of (re)insurance policies, we would support the captive board of directors taking as long a time horizon as possible when assessing the strategic direction and viability of the captive - Recognition as to the importance of the role of the outsourced captive manager. Whilst it is not the only management model it is one that most captives adopt. As such we would like to see a recommendation in the paper that outsourced captive managers should be regulated. This is the regulatory model that is adopted successfully in established domiciles and we believe it would benefit emerging captive domiciles too. Our reasons for this recommendation are; o Ensures fit and proper persons involved in the management of the regulated entity o Ensures robust and resilience operating infrastructure in place o Ensures fraud, AML and CFT procedures in place o Ensures adequate financial resources and insurance coverage in place o Facilitates better communication between captive board of directors, regulator and captive manager o Broad experience and bench strength available to the captive's board of directors o Prompt identification, and notification of, regulatory breeches  o Reputation of the jurisdiction maintained We see this recommendation of being of particular benefit to supervisors who are new entrants to the captive world and can draw upon the accumulated experience of the captive management industry  We were interested to learn of the concentration risk analysis as described in section 142. If appropriate we are sure the local captive industry would be keen to see the output of such an exercise. Should you wish to discuss further any of the above, please contact Malcolm Cutts-Watson (cuttswm@willis.com). We thank you for considering our representations.   Paul Owens CEO, Willis Global Captive Management July 2015 |  |
| 3 | **Guernsey** Guernsey Financial Services Commission | | 1. General Comment on Introduction: | ON BEHALF OF GROUP OF INTERNATIONAL INSURANCE SUPERVISORS (GIICS)  GIICS supports the publication of the Captive Application Paper which demonstrates that captive insurers are legitimate insurance or reinsurance vehicles. It is important that such vehicles are subject to appropriate levels of regulation and supervision and this paper will be of assistance to supervisors in applying the IAIS Insurance Core Principles in a proportionate and effective manner. The section on Capital Adequacy is particularly useful in explaining how the supervisor might address the calibration of the PCR for captives in a manner which is not unduly complex.  Jeremy Quick |  |
| 4 | **Guernsey** Guernsey Financial Services Commission | | 1. General Comment on Introduction: | The Guernsey Financial Services Commission endorses the support for the Captive Application Paper issued by GIICS (Group of International Insurance Centre Supervisors). |  |
| 5 | **Switzerland** Zurich Insurance Company Ltd. | | 1. General Comment on Introduction: | The paper is heavily dependent on the ICPs. Considering that in particular ICPs 5, 7 and 8 are in revision (consultation) it is difficult to definitively assess the content of the document. |  |
| 6 | **USA** American International Group | | 1. General Comment on Introduction: | American International Group Inc. (AIG) is pleased to have the opportunity to review and comment upon the "Application Paper on the Regulation and Supervision of Captive Insurers", which was exposed for consultation on July 1, 2015.   AIG is a leading global insurance organization serving customers in more than 100 countries and jurisdictions. AIG companies serve commercial, institutional, and individual customers through one of the most extensive worldwide property-casualty networks of any insurer. In addition, AIG companies are leading providers of life insurance and retirement services in the United States. |  |
| 7 | **various** ECIROA (European Captive Insurance and Reinsurance Owners` Association) | | 1. General Comment on Introduction: | Dear IAIS Secretariat, as the European Captive Insurance and Reinsurance Owners`Association (ECIROA) we are much interested in the proposed content and wording of the "Application Paper on the Regulation and Supervision of Captive Insurers". We have diligently studied the draft and we appreciate this proposal in its entirety. It is a very balanced and fair proposal; it is principle based and can help as standard for the implementation of local supervisory insurance regulation of all types of captives. In our view it will very well fit into the collection of ICPs as a complementary and consistent standard. We recognize that all minimum requirements which are needed from a local supervisor`s perspective as a common denominator have been respected. The adequacy of applied systems, controls and reporting is guaranteed when using the proportionality principle, bearing in mind the nature, scale and complexity of the insurer's business and risk. We recommend -after IAIS internal scrutiny- to approve this paper to be used for local supervisory consideration and implementation to increase the level of standardization in the field of captive supervision. Best regards Guenter Droese Chairman ECIROA (European Captive Insurance and Reinsurance Owners` Association) July, 30rd 2015 |  |
| 8 | Delaware Department of Insurance | | 2. General Comment of Scope of Paper: | The next comment concerns what is not contained, but should be in the Paper.  Regulators Must Consider the Consequences for Consumers and Whether Their Decisions Promote Societal Good.  The Paper should address circumstances when a regulator's actions regarding a captive insurer may have negative financial consequences for third-party insurance purchasers, otherwise known as consumers. In such a case, the regulator must diligently ascertain the financial consequences upon the consumer and consider taking a regulatory action with the least consequences for the consumer. An unfortunate example of not considering the consequences on the consumer is being shown by the actions of the National Association of Insurance Commissioners regarding the use of life reinsurance captive insurers by U.S. life insurance companies. These captive insurers reinsure the risks of their parents which are life insurance companies. The risks being reinsured are certain life insurance products sold to consumers by the life insurance company. These products are typically term life insurance, universal life insurance with secondary guarantees, variable annuities, and long-term care insurance.  Within the United States there is a lively debate about the use of these life reinsurance captives. The National Association of Insurance Commissioners has imposed and is considering imposing additional mandates upon these types of captive insurers. The end result of these mandates is that the captive insurer must increase the amount of its capital. While increasing capital is generally considered good, the need to do so must be weighed against whether doing so lessens the risk of insolvency, or is doing so an exercise that provides little if any benefit. In the context of captive insurers that reinsure term life and universal life insurance with secondary guarantees, no regulatory body has found either an individual or systemic risk of insolvency relating to the use of these captive insurers. Despite the absence of these risks, a majority of the NAIC's membership has voted in favor of imposing new regulatory mandates. These mandates will dictate an increase of capital at the captive insurer level and the source of that capital will be the life insurance company. It is a rational conclusion that when a life insurance company's cost of doing business increases, it may have to raise prices or discontinue the sale of certain products.  While the NAIC is congratulating itself for imposing these new mandates(1), it has done so without even making the slightest effort to answer two critically important questions. First, "Do these mandates increase the cost of life insurance and make it less affordable for the consumer?" Second, "Do these mandates decrease the availability of life insurance products because life insurance companies may no longer sell the product due to the cost of complying with the mandate?" Of the 54 members of the NAIC, only Delaware has repeatedly raised these questions before various NAIC committees. Delaware has also consistently voted against imposing these mandates.   At a time when fewer Americans own life insurance compared to the ownership rates 50 years ago (2) and in a period when governmental social safety nets are under financial strain, the NAIC should not impose mandates that can result in families placing their financial future in jeopardy by not buying life insurance. The NAIC has never asked itself, "Are my actions good for society?" The Paper should consider adding a section about societal good and regulatory consistency. To illustrate, on the one hand the NAIC promotes financial planning for future contingencies via its InsureUonline program, while on the other hand it never considers whether the mandates that it adopts make the very products needed for such financial planning more costly and less available.   The Delaware Insurance Department believes that when a regulator faces a circumstance like that occurring in the U.S. regarding life reinsurance captive insurers, there must be a diligent effort made to determine the impact upon the consumer. If that impact results in making insurance less affordable or less available, without any material reduction in the risk of insolvency or other benefit, the regulators should consider the least harmful course of action. The Paper should adopt the approach that regulators be diligent, deliberative, and mindful of the consequences of their actions when making decisions like those under consideration by the NAIC.  I thank you for considering these comments.   (1) "NAIC Committee Adopts Proposed Revisions Related to Captives, Financial Summit Underway" accessed May 28, 2015, http://www.naic.org/Releases/2015\_docs/committee\_adopts\_revisions\_related\_to\_captives\_and\_financial\_summit\_underway.htm  (2) Sandra Block, "Households with Life Insurance Hits Lowest Level in 50 Years" USAToday, December 3, 2010, accessed December 3, 2010, http://usatoday30.usatoday.com/money/perfi/insurance/2010-12-03-1Alifeinsurance03\_ST\_N.htm |  |
| 9 | **USA** American International Group | | 2. General Comment of Scope of Paper: | AIG respectfully submits these comments on behalf of (i) its insurance company subsidiaries which provide global fronting programs to their clients/insureds and their captive insurers and reinsurers; (ii) its Captive Management unit, which provides management and advisory services to its clients' captive insurance companies; and (iii) its Bermuda Segregated Accounts Company and Vermont sponsored captive insurance company.  Overall, this application paper provides some good examples to assist supervisors in the application of supervisory standards related to insurance captives. Highlighted below are sections in the paper that, we feel, would benefit from further clarification or refinement. |  |
| 10 | **USA** National Association of Insurance Commissioners | | 2. General Comment of Scope of Paper: | Supervisors in jurisdictions with captives should have the authority to address, as necessary and appropriate, the Insurance Core Principles and Standards outlined in the IAIS paper. However, jurisdictions must maintain discretionary authority to supervise each captive as appropriate for that captive's particular situation (i.e., apply proportionality). The action that is appropriate for one captive may not be appropriate for another.   The first sentence of paragraph 6 correctly recognizes that risk inherent in a captive insurer can vary substantially. However, we find that this important point does not carry through the rest of the paper and the entire paper should be reconsidered with this in mind. Specifically, we believe the rest of the paper does not develop supervisory approaches that match the inherent risk of the varying risks of the captives to the marketplace, but rather treats all captives the same.   Most captives in the U.S. primarily insure the risks of their owner and/or their affiliates. Therefore, these captives represent the lowest level of regulatory risk and would not require the broad regulation discussed in the paper. Additionally, most captives insure risks that the owners and/or their affiliates are already self-insuring. It does not make sense to impose a burdensome supervisory scheme on these captives when the captives' insureds can otherwise self-insure for these risks without any regulatory authority being imposed on them.  We recognize that this is an Application Paper and is intended to help supervisors develop appropriate approaches to captive supervision, however it is important that such a paper better reflect the variety of captives and approaches to supervision with more examples and/or a better explanation in the Introduction or Scope of the variety of captives and that the guidance provided is general and should be considered with the nature, scale and complexity of individual captives. Otherwise, there can be a tendency for some readers to take this material much more literal than intended.  In light of the above, the information contained in this paper requires modification to reflect that the regulation of captives must vary from captive to captive. More could be done to better clarify the expectations and distinctions amongst captives, and at a minimum reconsider or modify relevant section of the paper to specifically exclude all captives that are not part of a traditional insurance group. A number of our comments aim to show examples of this overarching issue throughout the paper.  Additionally, as this is an IAIS Application Paper, performing an overall review of the use of "should" (versus "may" for example) and how bulleted lists are used would be very helpful as this may inadvertently be causing parts of the paper to read more prescriptive or one-size-fits-all than intended. Applications papers provide examples that help with practical application of supervisory material so it is important that material does not come across as establishing new requirements which can sometimes be the case in using "should." A number of lists are provided throughout the paper (e.g., paragraphs 25, 48, 67-69, 88, 91, 144), however it is not clear if the bulleted lists are intended as examples or intended as specific points. If it is the former, it would be helpful to use language like, "such as" or "for example," etc. to make these seem less prescriptive.   Additionally, suggest performing an overall review of the use of "ensure," as it may unintentionally end up describing an overly high burden or an inappropriate role. This is especially true when used in conjunction with something that the supervisor should do (e.g., paragraphs 22, 55, 56, 88, 106, 156, 162) - it is not the role of the supervisor to ensure that a captive has done something, but rather to assess whether it has been done.    We hope this helps result in a more balanced revised paper that is useful to all captive supervisors. |  |
| 11 | **Vermont, USA** Vermont Captive Insurance Association | | 2. General Comment of Scope of Paper: | The Vermont Captive Insurance Association (VCIA) is the largest captive trade association in the world, representing over 450 member organizations that include captive owners and service providers, based in 46 states in the United States as well as many countries. The VCIA generally supports the comments by the National Association of Insurance Commissioners (NAIC) regarding Review of Application Paper on the Regulation and Supervision of Captive Insurers by the IAIS. As the NAIC correctly points out, most captives in the U.S. primarily insure the risks of their owner and/or their affiliates and represent the lowest level of regulatory risk. We believe that U.S. licensed captives do not require the broad regulation discussed in the paper. Additionally, as pointed out by the NAIC, most captives insure risks that the owners and/or their affiliates are already self-insuring, and therefore it does not make sense to impose a burdensome supervisory scheme on these captives when the captives' insureds can otherwise self-insure for these risks without any regulatory authority being imposed on them. Overall, we agree with the NAIC that supervisors in jurisdictions with captives have the authority to address, as necessary and appropriate, the Insurance Core Principles and Standards outlined in the paper. We don't believe the ICPs should always apply equally to captives, and we believe some should not apply at all, but our interpretation of the paper is that it does allow flexibility and discretion in applying the ICPs to captives.  In the application of specific ICPs and standards, we found that many are presently being utilized by our captive regulator, either in the internal annual review or periodic financial examination. However, in several instances, some of the aspects of the ICPs were inappropriate or too rigorous for captive insurers. Therefore, the jurisdictions must maintain discretionary authority to supervise each captive as appropriate for that captive's particular situation (i.e., apply proportionality). The action that is appropriate for one captive may not be appropriate for another.  The paper initially recognizes that risk inherent in a captive insurer can vary substantially. However, this important point does not carry through the rest of the paper and the entire paper should be reconsidered with this in mind. Specifically, the VCIA believes the rest of the paper does not develop supervisory approaches that match the inherent risk of the varying risks of the captives to the marketplace, but rather treats all captives the same.  VCIA substantially agrees with the comments filed by the NAIC, and we hope the IAIS will modify the paper to reflect that the regulation of captives must vary from captive to captive. The VCIA will provide comments on a few specific sections of the paper where we have a difference with the NAIC or where we would like to emphasize a point. We hope this results in a more balanced revised paper that is useful to all captive supervisors. |  |
| 12 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 4. Comment on paragraph 4: | Going to the Glossary the following reference is included when dealing with the so classified " diversified captives" - "... Some jurisdictions consider that an insurance company writing any unrelated party business cannot be classified as a captive". The same reference has been included in the Issues Paper on the Regulation and Supervision of Captive insurance Companies- October 2006, in its number 32/page 8. Following what is said in the Introduction of this Draft - - This paper is intended to provide guidance to insurerance supervisors on the application of aspects of regulation and supervision that are specifically relevant to captive insurers or reinsurers ( " captives")- it seems appropriate to include the same reference in the number 4 of this Draft when dealing with the " diversified captives". |  |
| 13 | **Switzerland** Zurich Insurance Company Ltd. | | 5. Comment on paragraph 5: | Where rent-a-captive facilities are provided by a LICENSED insurance or reinsurance company without the use of a separate legal entity, such facilities should also be excluded from the scope of the paper. |  |
| 14 | **USA** National Association of Insurance Commissioners | | 5. Comment on paragraph 5: | This paragraph notes vehicles that fall outside the traditional definition of a captive but then Footnote 2 says that some should be treated as captives after all - this is somewhat confusing. Suggest the distinction between what classifies as internal reinsurance and insuring internal operational risk needs to be clearer. |  |
| 15 | **Delaware Department of Insurance** | | 6. Comment on paragraph 6: | Delaware concurs with the conclusion that pure captives present the lowest level of regulatory risk. However, the Paper must further recognize the category of risk known as "controlled unaffiliated business" which is unrelated third-party business. Throughout the Paper, references are made to unrelated business, but there is no discussion of the risk. If there is another draft of this Paper, it should devote time to discussing the parameters of controlled unaffiliated business. |  |
| 16 | **Switzerland** Zurich Insurance Company Ltd. | | 6. Comment on paragraph 6: | The paragraph recognizes that "the regulatory risk inherent in a captive insurer can vary substantially". However the paragraph and the rest of the paper are generally not consistent with the premise that lower regulatory risks should translate into less invasive supervision, with the exception of 44. |  |
| 17 | **Switzerland** Zurich Insurance Company Ltd. | | 15. General Comment of Structure of paper: | Kindly refer to Zurich's comments on 6 (repeated below) in regard of proportionality and how it should apply to captives.  The paragraph recognizes that "the regulatory risk inherent in a captive insurer can vary substantially". However the paragraph and the rest of the paper are not consistent with the premise that lower regulatory risks should actually translate into less invasive supervision. |  |
| 18 | **USA** National Association of Insurance Commissioners | | 15. General Comment of Structure of paper: | This paragraph is concerning, because it indicates that ICPs and the associated Standards apply equally to captives and commercial insurers, therefore diverging against the principle in paragraph 6 which suggested captives vary substantially from one to another in terms of their inherent risk. This paragraph indicates that the nature, scale and complexity of the insurer would be considered; however, as noted in our comment on scope, more should be done within this paper to distinguish amongst the nature, scale and complexity of captives themselves. Suggest revising this to: "This paper considers the application of the ICPs and IAIS standards to captives and where appropriate provides additional guidance and elaboration to reflect the nature, scale and complexity of various forms of captives. There are separate sections on issues relating to cell company structures and insurance managers." |  |
| 19 | **Switzerland** Zurich Insurance Company Ltd. | | 17. Comment on paragraph 16: | NOTE: Consultation tool / From this comment box onwards the question number (17) is out of sync with the paragraph reference (16). |  |
| 20 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 20. Comment on paragraph 19: | DIMA wholly supports the proposal for appropriate cooperation between supervisors in sharing relevant information with counterparts in other jurisdictions. |  |
| 21 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 20. Comment on paragraph 19: | It´s not very clear for us the reference included in the beginning of this number 19- " Where appropriate...". It´s our understanding that this paragrph should be initiated as follows: Subject to confidentiality and use considerations, supervisors of captives should cooperate fully in sharing information with other supervisors.... |  |
| 22 | **USA** National Association of Insurance Commissioners | | 20. Comment on paragraph 19: | This paragraph begins with the important recognition that supervisors have discretion to determine when communication is appropriate or not. However the rest of the paragraph and paragraph 20 are drafted in a manner where one could read this point as not applying in the scenarios provided. Suggest starting the paragraph with this recognition and then provide the other material (risk transfer, reviewing directors/controllers, captives migrating) as examples in bullets: "Where appropriate, and subject to confidentiality and use considerations, supervisors of captives should cooperate fully in sharing information with other supervisors, such as:" |  |
| 23 | **Switzerland** Zurich Insurance Company Ltd. | | 22. Comment on paragraph 21: | 21-30.  If rent-a-captive facilities provided by licensed insurance or reinsurance companies are not excluded from the scope of the paper (refer to Zurich's comments on 5), it should at a minimum be clarified in this section that no additional license is required. |  |
| 24 | **USA** National Association of Insurance Commissioners | | 22. Comment on paragraph 21: | ICP 4 itself notes that jurisdictions may decide to exclude some activities from in the definition of insurance activities subject to licensing. A jurisdiction may decide that a certain form of captive would be excluded, however this paragraph implies ICP 4 applies to all captives. This is an example of where the paper does not reflect proportionality, and in this case, is contrary to what is provided in the ICPs. |  |
| 25 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 26. Comment on paragraph 25: | DIMA believes that a business plan addressing the matters as detailed in this paragraph should be an industry baseline standard rather than selectively applied on a jurisdictional basis. |  |
| 26 | **USA** National Association of Insurance Commissioners | | 26. Comment on paragraph 25: | One item in the list of concern is the "confirmation that the legislation of the jurisdiction where the insurance risks are located supports and is consistent with the captive's business plan." The supervisor of the captive may not necessarily be concerned about the legislation of the jurisdiction where the insurance risks are located and whether such legislation is consistent with the captive's business plan. This would vary from captive to captive - this is an example of where starting the list with "such as" would make this list prescriptive sounding.    Additionally, the list of items that should be included in the business plan could also include: rating and pricing methodologies; claims management process; loss prevention programs of insureds; prior loss experience; and feasibility study (actuarial opinion and analysis) to support risk assumptions and financial projections. |  |
| 27 | Delaware Department of Insurance | | 27. Comment on paragraph 26: | Delaware disagrees with the conclusion that captive insurance management must reside in the same jurisdiction as the captive insurer. The profession of captive insurance management is a cross border profession that relies upon technology. Many captive managers effectively operate in different jurisdictions. While a physical presence may have at one time been necessary, it is no longer necessary today. |  |
| 28 | **Switzerland** Zurich Insurance Company Ltd. | | 27. Comment on paragraph 26: | The language appears to suggest that supervisors should be satisfied that captives' operations are sufficient to demonstrate that management and control resides within their jurisdiction. Such a requirement is excessive.  It should be clarified that the requirement does not further limit the ability to use foreign service providers as set out in 36. |  |
| 29 | **USA** National Association of Insurance Commissioners | | 27. Comment on paragraph 26: | This paragraph states that the supervisors should be satisfied that the captives' operations are sufficient to demonstrate that management and control resides within their jurisdiction. This seems to state that the persons managing and controlling a captive must reside in the domicile of the captive. This would often not be a reasonable requirement for certain types of captive or its management. |  |
| 30 | Delaware Department of Insurance | | 28. Comment on paragraph 27: | The Paper does not consider circumstances for when a conditional or provisional license may be issued by a captive regulator. The nature of these licenses is that before the regulator conducts a comprehensive review of the captive insurer, there may be appropriate circumstances when a conditional or provisional license is issued. Under this circumstance, the captive may operate on a limited basis pending a final review and determination of its licensing status. |  |
| 31 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 28. Comment on paragraph 27: | Many global organisations have captives one or more jurisdictions outside the parent company's location to most efficiently address the risk management challenges of their exposures. Thus it is important that information is efficiently and appropriately exchanged between authorities in the parent company's jurisdiction and that/those where the captive(s) is/are located in order to ensure proper understanding of aspects such as incorporation and capitalisation before a license is issued. |  |
| 32 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 29. Comment on paragraph 28: | DIMA agrees that it is important that supervisors have the authority to impose additional requirements where appropriate. The decision about the appropriateness of the requirements should always be informed by the nature, scale and complexity of the operation in question, rather than the subject of an arbitrary decision, and have a strong stated rationale supporting the requirements. |  |
| 33 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 33. Comment on paragraph 32: | DIMA agrees that the financial soundness and integrity of captive owners are important factors in assessing the suitability of companies to establish captives. The "extent judged necessary by the supervisor" provision should be appropriately calibrated rather than an arbitrary measure. |  |
| 34 | **USA** National Association of Insurance Commissioners | | 33. Comment on paragraph 32: | The level of assessment of a captive's owners and its affiliates will vary significantly based on the type and risks of the captive. |  |
| 35 | **USA** National Association of Insurance Commissioners | | 34. Comment on paragraph 33: | If this paragraph is addressing a physical location requirement, it may not be practical or economically efficient for a captive's representative or manager to be physically located in the jurisdiction in which the captive is licensed. In the U.S., generally each jurisdiction has a process in place in which it approves captive managers before allowing them to operate in that jurisdiction. |  |
| 36 | **USA** American International Group | | 36. Comment on paragraph 35: | Paragraph 35 states that expertise is usually provided by a captive manager. In our estimation this is an oversimplification as many captives are stand-alone and actually have their own employees. |  |
| 37 | **USA** National Association of Insurance Commissioners | | 37. Comment on paragraph 36: | The board of the captive should be able to rely upon a captive manager for assistance in assessing service providers. If a captive manager is approved in a jurisdiction, then the jurisdiction will expect that that captive manager has the appropriate level of knowledge to manage a captive in that jurisdiction. Additionally, other service providers are considered by the supervisor during the licensing process. |  |
| 38 | **USA** National Association of Insurance Commissioners | | 40. Comment on paragraph 39: | As with other provisions of the paper, this is another area where the degree of supervisory involvement will differ depending on the circumstances. The supervisor's review of an inward migration (redomestication to a jurisdiction), although subject to licensing criteria, will likely be different from a review of a new captive formation given the captive is already in existence and a current business plan. |  |
| 39 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 41. Comment on paragraph 40: | DIMA is unclear about the basis of the structure as described in this paragraph. If a captive entity is sold to a new owner which is an unrelated party, in order to remain a captive it would be required to write risk solely related to the new owner, otherwise it would be regulated as a re/insurance company. Presumably in-force policies at the time of sale would be dealt with through an appropriate mechanism, which may require it to be regulated as non-captive business. |  |
| 40 | Delaware Department of Insurance | | 44. Comment on paragraph 43: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 41 | **USA** National Association of Insurance Commissioners | | 44. Comment on paragraph 43: | Delete the extra period at the end of the paragraph. |  |
| 42 | Delaware Department of Insurance | | 45. Comment on paragraph 44: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 43 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 45. Comment on paragraph 44: | DIMA agrees that reporting for captives is as important an aspect of regulation as for re/insurance companies. Reporting requirements, including frequency, should be applied against a background of nature, scale and complexity, and should also reflect from a confidentiality perspective that information of a business-sensitive nature for the parent company should be treated appropriately. |  |
| 44 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 45. Comment on paragraph 44: | In its line 3 the reference should be made to the reception by the supervisor of sufficient and timely reporting for monitorig solvency, assess compliance... |  |
| 45 | **USA** National Association of Insurance Commissioners | | 45. Comment on paragraph 44: | Given the context, suggest the second sentence would read better as, "Whilst captives typically pose reduced risk…" |  |
| 46 | Delaware Department of Insurance | | 46. Comment on paragraph 45: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 47 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 46. Comment on paragraph 45: | DIMA agrees that reporting for captives is as important an aspect of regulation as for re/insurance companies. Reporting requirements, including frequency, should be applied against a background of nature, scale and complexity, and should also reflect from a confidentiality perspective that information of a business-sensitive nature for the parent company should be treated appropriately. |  |
| 48 | **USA** National Association of Insurance Commissioners | | 46. Comment on paragraph 45: | Given the current ICP revision project, suggest just referring simply to ICP 9 rather than specifically to 9.4 as the numbering and contents of standards may soon change. |  |
| 49 | Delaware Department of Insurance | | 47. Comment on paragraph 46: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 50 | Delaware Department of Insurance | | 48. Comment on paragraph 47: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 51 | Delaware Department of Insurance | | 49. Comment on paragraph 48: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 52 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 49. Comment on paragraph 48: | DIMA agrees it is important for supervisors to address core issues as the focus of on-site inspections. Of particular importance are governance and control, in particular board oversight and the demonstration of such, as well as demonstrating substance and control in the jurisdiction. |  |
| 53 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 49. Comment on paragraph 48: | A reference to the solvency aspects should not be left aside in the relation of items mentioned in this number. |  |
| 54 | Delaware Department of Insurance | | 50. Comment on paragraph 49: | The Paper must prescribe time periods for on and off-site monitoring and inspections. A regulator's ability to monitor and inspect is one of the most fundamental tools of regulation and in order to effectively use this tool, it must be employed with regular frequency. A recommended frequency is to monitor, inspect, or examine a captive insurer on a three to five year examination cycle. The paper should state that regulators must conduct monitoring and inspections with frequency. |  |
| 55 | **USA** National Association of Insurance Commissioners | | 50. Comment on paragraph 49: | As with other provisions of the paper, this is another area where the degree of supervisory involvement will differ depending on the circumstances - inspections of a captive manager during an on-site inspection of a captive may or may not be necessary. |  |
| 56 | **USA** National Association of Insurance Commissioners | | 54. Comment on paragraph 53: | Attempting group supervision in the circumstances described may be more than a matter of feasibility - supervisors in some jurisdictions may not have the authority to supervise such a group, but rather just the captive itself. Suggest: "Supervisors may not find it practical or have the authority to undertake supervision of the group in those circumstances." |  |
| 57 | **Singapore** Monetary Authority of Singapore | | 56. Comment on paragraph 55: | We are of the view that the financial standing of the fronting insurer of a captive does not affect the reinsurance of the captive and therefore, we propose to remove the reference to the fronting insurer.  In addition, we are of the view that the requirement to obtain full details of the reinsurance programme is more onerous than ICP 13.2.1 which states that: "Supervisors should require that cedants make available to them all information about the reinsurance programme that the supervisor requires in order to form a judgement about risk management and the prudential ramifications of the reinsurance programme and the associated risks. This need not entail an inspection of all individual contracts."  Hence, we propose that supervisors should have the flexibility to decide what information it requires relating to a captive's reinsurance programme which is proportionate to the nature, scale and complexity of the captive. |  |
| 58 | **USA** National Association of Insurance Commissioners | | 56. Comment on paragraph 55: | In some cases, the reinsurer (such as a pooling facility) may not have obtained a rating so there are other factors that may be considered, such as the domicile of the reinsurer and the effectiveness of the domiciliary supervisor as well as the reinsurer's financial position as determined through the review of the reinsurer's financial information (annual reports, audit reports, examination reports, actuarial opinions). |  |
| 59 | **USA** National Association of Insurance Commissioners | | 57. Comment on paragraph 56: | The board should also be able to rely on the insurance expertise of its captive manager to monitor reinsurance programs and counterparty exposure. |  |
| 60 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 61. Comment on paragraph 60: | DIMA agrees with this paragraph, on the provision that there are adequate conduct of business rules applied if the captive has consumer clients. |  |
| 61 | **USA** National Association of Insurance Commissioners | | 61. Comment on paragraph 60: | Suggest using "sophisticated customer" rather than "professional customer" as the former is the term used in the ICPs. Footnote 4 would need revising accordingly. |  |
| 62 | **USA** National Association of Insurance Commissioners | | 62. Comment on paragraph 61: | The board should also be able to rely on the insurance expertise of its captive manager to help monitor consumer protection requirements applying in a jurisdiction. |  |
| 63 | **USA** National Association of Insurance Commissioners | | 64. Comment on paragraph 63: | Suggest deleting paragraphs 63 and 64 - given the subheading and other paragraphs, they are not necessary; additionally, "corporate governance framework" will be a defined term under the glossary terms currently out for consultation and is different from what is stated in 64. Suggest paragraph 65 state, "The principles of corporate governance, as outlined in ICP 7, apply…" |  |
| 64 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 66. Comment on paragraph 65: | DIMA agrees that it is vital in all aspects of captive supervision that size, nature and complexity are taken into account and applied appropriately. |  |
| 65 | **Switzerland** Zurich Insurance Company Ltd. | | 69. Comment on paragraph 68: | The language appears to suggest that supervisors should be satisfied that captives' operations are sufficient to demonstrate that management and control resides within their jurisdiction. Such a requirement is excessive.  It should be clarified that the requirement does not further limit the ability to use foreign service providers as set out in 36. |  |
| 66 | **USA** National Association of Insurance Commissioners | | 69. Comment on paragraph 68: | Corporate governance is essential to sound business practice and is a component of regulating commercial insurers as well as captives. However, the level of supervisory review dictated in paragraphs 68 and 69 may not be necessary or appropriate for all types of captives. These paragraphs are examples of being overly prescriptive and not reflecting proportionality.  Additionally, operational control need not necessarily be the jurisdiction of the supervisor as long as the supervisor can access the captive's books and records within its jurisdiction. For some captives, the location of senior management and clerical/administrative processes is irrelevant. |  |
| 67 | **Switzerland** Zurich Insurance Company Ltd. | | 71. Comment on paragraph 70: | Since the purpose of this paper is to provide guidance to supervisors, the text would benefit from a revision that better addresses the target group. Any specific obligations imposed on directors need a legislative basis under applicable law. |  |
| 68 | **USA** National Association of Insurance Commissioners | | 72. Comment on paragraph 71: | Given the subheading and other paragraphs, 71 is not necessary and could be deleted; suggest paragraph 72 start with, "According to ICP 8, effective systems of risk management and internal controls…" |  |
| 69 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 74. Comment on paragraph 73: | The risk of the failure of a fronting insurer should be appropriately taken into account by the captive supervisor, taking aspects such as the strength, expertise, rating, etc of the fronter. The risk of lack of risk diversification/retention needs to assessed against the background of the unique structure of captives, where generally there is no issue of systemic risk or exposure in the event of a captive failure. The risk of high claims volatility should be viewed proportionally by supervisors in the context of the very low systemic impact of captives. The risk of high liquidity risk should be viewed proportionally by supervisors. The risk of dependency on the financial strength of the parent should be appropriately applied by supervisors, and advised by the captive structure, e.g. this risk is different for pure captives than group captives. |  |
| 70 | **Singapore** Monetary Authority of Singapore | | 74. Comment on paragraph 73: | We are of the view that the failure of a fronting insurer would adversely impact the insured rather than the captive, which is acting as the reinsurer. In the example cited, the captive will not be liable for any claims if the premiums were not passed on from the fronting insurer to the captive. Hence, we propose to remove this point. |  |
| 71 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 74. Comment on paragraph 73: | Concentration of assets. We consider appropriate that the supervisor monitors, manages and and mitigates asset concentration risk and and credit risk in any case. A different thing is that in particular if the captive faces the situations described by the Draft the relevance of the actions mentioned from the side of the supervisr increases.. In accordance with the previous some amendments in relation with the wording proposed by this number should be appropriate. |  |
| 72 | **Switzerland** Zurich Insurance Company Ltd. | | 74. Comment on paragraph 73: | 73-74 The presentation of risks (16 in 73) faced by captives and commercial insurers and the respective mitigation measures (2 in 74) do not appear to be balanced. The readability of 73 could benefit from some shortening without losing the intent and guidance. Many of the listed risks are common place in insurance business and do not call for a development. For example, the bullet (#6) addressing the failure of a fronting insurer does not add value considering that fronting entities are themselves supervised/regulated and captives in that set-up are owned by fronting insuer's customers. If maintained, the language appropriately proposed for other bullets ought to be reused in bullets ##6 and 14. For example: "SUPERVISORS SHOULD BE AWARE THAT the failure of a fronting insurer could adversely impact a captive if (...)". |  |
| 73 | **USA** National Association of Insurance Commissioners | | 74. Comment on paragraph 73: | The detailed list of risks may apply to a greater extent to captives than to commercial insurers, but may likewise apply to a lesser extent. Supervisors should to take into account the parent's resources when considering these items. |  |
| 74 | **Switzerland** Zurich Insurance Company Ltd. | | 75. Comment on paragraph 75: | NOTE: Consultation tool / The reference (74) and the label (75) are out of sync. |  |
| 75 | **USA** National Association of Insurance Commissioners | | 75. Comment on paragraph 75: | It is unclear who should confirm that legal advice has been obtained - the supervisor? the captive? |  |
| 76 | **Switzerland** Zurich Insurance Company Ltd. | | 77. Comment on paragraph 76: | Since the purpose of this paper is to provide guidance to supervisors, the text would benefit from a revision that better addresses the target group. Any specific obligations imposed on directors need a legislative basis under applicable law. |  |
| 77 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 78. Comment on paragraph 77: | When referring to the compliance function, the economies of scale referred to are irrelevant to the application paper since they are solely an issue between the captive owner and outsource service provider.  Referring to the internal audit function, the captive owner is more likely to provide the internal audit function than an outsource service provider in a regulatory context. |  |
| 78 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 78. Comment on paragraph 77: | Compliance function. We understand that the sharing of the costs of the compliance function amongst all of the captives clients of the insurance manager should follow a proportional criteria linked for example to the importance of the business activity of the captives under management. |  |
| 79 | **USA** National Association of Insurance Commissioners | | 78. Comment on paragraph 77: | The square brackets around the last sentence could be removed and a period needs to be added. |  |
| 80 | **USA** National Association of Insurance Commissioners | | 79. Comment on paragraph 78: | Suggest deleting - given the subheading and other paragraphs, it is not necessary. |  |
| 81 | **USA** National Association of Insurance Commissioners | | 80. Comment on paragraph 79: | Suggest deleting - given the subheading and other paragraphs, it is not necessary. |  |
| 82 | **USA** National Association of Insurance Commissioners | | 85. Comment on paragraph 84: | The acronyms IBNR and IBNER should be spelled out. |  |
| 83 | **USA** National Association of Insurance Commissioners | | 86. Comment on paragraph 85: | Given the subheading and other paragraphs, 85 is not necessary and could be deleted; should combine 86 and 87 into one paragraph. |  |
| 84 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 89. Comment on paragraph 88: | The fifth bullet point in this paragraph should be reworded to clarify that it is the captive's responsibility to make active decision about the extent of any mismatch of assets and liabilities. |  |
| 85 | **USA** National Association of Insurance Commissioners | | 93. Comment on paragraph 92: | Given the context, "treasury department" is probably not the best term here - suggest "finance department" or another more suitable term. |  |
| 86 | **USA** National Association of Insurance Commissioners | | 94. Comment on paragraph 93: | Given the subheading and other paragraphs, 93 is not necessary and could be deleted; suggest paragraph 94 start with, "ICP 16 requires the supervisor to establish…" |  |
| 87 | **Vermont, USA** Vermont Captive Insurance Association | | 94. Comment on paragraph 93: | With the exception of a few large group concerns, captives operate as an integral part of the parent's risk management program. We agree that the ERM framework is established by the parent organization, and much of section 4.6 should not apply directly to the captive. A requirement for all captives to perform their own risk and solvency assessment (ORSA) in order to determine economic capital requirement may be onerous and unnecessary for certain types of captives. This is an example of being overly prescriptive and not reflecting proportionality. |  |
| 88 | **USA** National Association of Insurance Commissioners | | 97. Comment on paragraph 96: | Captives often operate as an integral part of the parent's ERM framework. However, requiring an ERM for smaller captives in many instances would be unnecessary and onerous. It would be helpful to better clarify the expectations for ERM with respect to captives here, recognizing the variety of captives. |  |
| 89 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 99. Comment on paragraph 98: | It should be noted that some captives are more complex and diversified. |  |
| 90 | **Switzerland** Zurich Insurance Company Ltd. | | 100. Comment on paragraph 99: | Since the purpose of this paper is to provide guidance to supervisors, the text would benefit from a revision that better addresses the target group. Any specific obligations imposed on directors need a legislative basis under applicable law. |  |
| 91 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 102. Comment on paragraph 101: | This paragraph should be reworded to clarify that the captive is required to perform its own ORSA. |  |
| 92 | **Singapore** Monetary Authority of Singapore | | 102. Comment on paragraph 101: | We are of the view that supervisors should have the flexibility to set ORSA requirements that are proportionate to the nature, scale and complexity of the captives. |  |
| 93 | **USA** National Association of Insurance Commissioners | | 102. Comment on paragraph 101: | A requirement for all captives to perform their own risk and solvency assessment (ORSA) in order to determine economic capital requirement may be onerous and unnecessary for certain types of captives. This is an example of being overly prescriptive and not reflecting proportionality. |  |
| 94 | **Singapore** Monetary Authority of Singapore | | 103. Comment on paragraph 102: | We are of the view that supervisors should have the flexibility to set ORSA requirements that are proportionate to the nature, scale and complexity of the captives. |  |
| 95 | **Singapore** Monetary Authority of Singapore | | 104. Comment on paragraph 103: | We are of the view that supervisors should have the flexibility to set ORSA requirements that are proportionate to the nature, scale and complexity of the captives. |  |
| 96 | **USA** National Association of Insurance Commissioners | | 105. Comment on paragraph 104: | Given the subheading and other paragraphs, 104 is not necessary and could be deleted; suggest paragraph 105 start with, "The capital adequacy requirements for solvency purposes under ICP 17 are intended …" |  |
| 97 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 108. Comment on paragraph 107: | It is appropriate that the risk tolerance for captives generally is different to that for commercial insurers due to the varying nature of their businesses, thus it is appropriate that the intervention requirements are triggered at different solvency control levels calibrated appropriately for the nature, scale and complexity of the business. |  |
| 98 | **Spain** Direcci󮠇eneral de Seguros y Fondos de Pensiones | | 108. Comment on paragraph 107: | In this number 107 it should seem that the decisions to be adopted should be linked to the risk situation of the captive no to the risk tolerance of the supervisor. |  |
| 99 | **USA** National Association of Insurance Commissioners | | 108. Comment on paragraph 107: | This paragraph reads as if solvency "triggers" are necessary for all types of captives, however this may be impractical for certain captives due to their nature. |  |
| 100 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 109. Comment on paragraph 108: | It is appropriate that the MCR is set at a baseline monetary level for simplicity's sake. The PCR can reflect the risk profile of the captive and therefore be closer and more appropriately calibrated. |  |
| 101 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 110. Comment on paragraph 109: | There should be a general public statement on solvency requirements for captives, but this should not disclose directly or indirectly the solvency requirements for an individual captive, which is confidential and sensitive information. |  |
| 102 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 112. Comment on paragraph 111: | It is important that nature, scale and complexity are applied to all aspects identified in this paragraph. |  |
| 103 | **Singapore** Monetary Authority of Singapore | | 112. Comment on paragraph 111: | We are of the view that it should be made clear that para 111 only applies in the case where the standardised approach is used. In the case where the MCR is set by a simple formula or an absolute monetary amount (as allowed in paragraph 108), the supervisor will not be addressing all relevant and material categories of risk, including at a minimum, underwriting risk, credit risk, market risk and operational risk when setting the regulatory capital requirements. |  |
| 104 | **USA** National Association of Insurance Commissioners | | 114. Comment on paragraph 113: | Given the subheading and other paragraphs, 113 is not necessary and could be deleted; suggest paragraph 114 start with, "ICP 17 also addresses the establishment …" |  |
| 105 | **USA** National Association of Insurance Commissioners | | 116. Comment on paragraph 115: | Need a period at the end. |  |
| 106 | **USA** National Association of Insurance Commissioners | | 117. Comment on paragraph 116: | Jurisdictions should have laws in place that provide for the quality and suitability of capital resources, however, the capital resources provisions in paragraph 116 regarding resources for MCR vs. PCR vs. economic capital required to be established in ORSA may not be applicable to certain types of captives. |  |
| 107 | **USA** National Association of Insurance Commissioners | | 119. Comment on paragraph 118: | Additional information on why this is something for supervisors to consider may be helpful. Suggest adding at the end: "The captive owner often considers these taxation issues when selecting a domicile, as prior approval of any dividend is typically required." |  |
| 108 | **USA** American International Group | | 121. Comment on paragraph 120: | We have reservations about the wording in Section 4.9 (paragraphs 121-129) and whether it adequately protects against disclosures to competitors. Confidentiality and disclosure relates to the "timely and relevant disclosure of information to policyholders and market participants." While this section places discretion in the hands of supervisors to decide not to allow public disclosures, the potential for disclosure to market participants and/or competitors of, for example, the risks underwritten, operative legal documents, etc. could disclose proprietary details of the client's insurance program, the fronting company's pricing methodology and/or the captive manager's operations to competitors. |  |
| 109 | **USA** American International Group | | 122. Comment on paragraph 121: | We have reservations about the wording in Section 4.9 (paragraphs 121-129) and whether it adequately protects against disclosures to competitors. Confidentiality and disclosure relates to the "timely and relevant disclosure of information to policyholders and market participants." While this section places discretion in the hands of supervisors to decide not to allow public disclosures, the potential for disclosure to market participants and/or competitors of, for example, the risks underwritten, operative legal documents, etc. could disclose proprietary details of the client's insurance program, the fronting company's pricing methodology and/or the captive manager's operations to competitors. |  |
| 110 | **USA** National Association of Insurance Commissioners | | 122. Comment on paragraph 121: | Given the subheading and other paragraphs, 121 is not necessary and could be deleted. |  |
| 111 | **Vermont, USA** Vermont Captive Insurance Association | | 122. Comment on paragraph 121: | We have reservations about the wording in this section and whether it adequately protects against disclosures to competitors. Confidentiality and disclosure relates to the "timely and relevant disclosure of information to policyholders and market participants." While this section places discretion in the hands of supervisors to decide not to allow public disclosures, the potential for disclosure to market participants and/or competitors of, for example, the risks underwritten, operative legal documents, etc. could disclose proprietary details of the client's insurance program, the fronting company's pricing methodology and/or the captive manager's operations to competitors. |  |
| 112 | **USA** National Association of Insurance Commissioners | | 124. Comment on paragraph 123: | While supervisors can decide not to apply public disclosure standards to captives in certain circumstances, they would not have discretion if such disclosure is required by law. |  |
| 113 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 128. Comment on paragraph 127: | The first bullet point in this paragraph is unclear. We suggest the bullet point is reworded to read: "Disclosure useful to decisions..." |  |
| 114 | **USA** National Association of Insurance Commissioners | | 128. Comment on paragraph 127: | Given the current ICP revision project, suggest just referring simply to ICP 20 rather than specifically to 20.1 as the numbering and contents of standards may soon change. Suggest adding to the end of this paragraph: "…and otherwise not required to do so by law." |  |
| 115 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 130. Comment on paragraph 129: | We propose the paragraph is reworded to read: "Supervisors should appropriately consider the needs..." |  |
| 116 | **USA** National Association of Insurance Commissioners | | 131. Comment on paragraph 130: | Given the subheadings and other paragraphs, 130 is not necessary and could be deleted. |  |
| 117 | **USA** National Association of Insurance Commissioners | | 134. Comment on paragraph 133: | It may be helpful add to the explanation of why fraud risk is lower with captives. Suggest including: Supervisors should be concerned about intrinsic illegal activity a captive or captive owner may conduct, which may be monitored by a variety of means such as examination powers, audited and unaudited annual statement filings, and pre-approval of any parental loan activity with the captive. However, pure captives, for example, are not allowed to write unrelated, uncontrolled risk, and therefore extrinsic fraud is typically non-existent."  Footnote 5 - the paper cited is from 2005 whereas the IAIS has adopted a more recent Application paper on fraud in insurance in September, 2011. Unless there is a specific reference to the 2005 paper, suggest it may be better to provide reference to the newer paper. |  |
| 118 | **USA** National Association of Insurance Commissioners | | 135. Comment on paragraph 134: | Given the subheadings and other paragraphs, 134 is not necessary and could be deleted. |  |
| 119 | **Switzerland** Zurich Insurance Company Ltd. | | 137. Comment on paragraph 136: | The references in 134-135 to ICP 22 rightfully raise the awareness of supervisors to the risk of money laundering in the context of captives. This paragraph may then benefit from rewording, as it may currently imply that mouney laundering is the rule rather than the exception, and by stating that captive owners typically are global corporations with legitimate businesses.  For example: The likelihood of captives being used as a vehicles to launder money of illegal origin is limited, in particular when no third party risks are assumed by the captive. As the risk cannot be ruled out it needs to be addressed. Supervisors should consider the legitimacy of the source of funds used to capitalise or pay premiums to the captive. Supervisors should require that there are appropriate controls to prevent the use of a captive for money laundering or other illicit activities. |  |
| 120 | **USA** National Association of Insurance Commissioners | | 141. Comment on paragraph 140: | Given the subheading and other paragraphs, 140 is not necessary and could be deleted. |  |
| 121 | **USA** National Association of Insurance Commissioners | | 145. Comment on paragraph 144: | Need a period at the end. |  |
| 122 | **USA** American International Group | | 147. General Comments on Protected Cell Companies/Incorporated Cell Companies | This section deals with Protected Cell Companies (PCC) and paragraph 146 states that "a significant proportion" of captives are established using PCCs. Not all jurisdictions recognize PCCs and therefore we do not believe that this statement is accurate. |  |
| 123 | Delaware Department of Insurance | | 148. Comment on paragraph 146: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 124 | **USA** National Association of Insurance Commissioners | | 148. Comment on paragraph 146: | While a significant proportion of captives may be established by using PCCs, as stated in paragraph 152, PCCs are not used in all jurisdictions - a fact that should be mentioned upfront in this section. Suggest: "A significant proportion of captives are established using Protected Cell Companies (PCCs). In jurisdictions where PCCs are allowed, it is important for supervisors to consider the specific issues that arise from the use of this company structure." |  |
| 125 | Delaware Department of Insurance | | 149. Comment on paragraph 147: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 126 | Delaware Department of Insurance | | 150. Comment on paragraph 148: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 127 | Delaware Department of Insurance | | 151. Comment on paragraph 149: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 128 | Delaware Department of Insurance | | 152. Comment on paragraph 150: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 129 | Delaware Department of Insurance | | 153. Comment on paragraph 151: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 130 | Delaware Department of Insurance | | 154. Comment on paragraph 152: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
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| 132 | Delaware Department of Insurance | | 156. Comment on paragraph 154: | The Paper fails to note the growth of a different type of business organization form known as the series captive insurance company. Series are somewhat synonymous with protected cells, but there are major differences. Unlike a protected cell, which solely exists under the insurance laws of most jurisdictions, a series is the creation of state's business entity laws. In Delaware, a series can legally engage in more activities than a cell. Industries such as real estate, securities, and others use series as means to segregate assets and liabilities and enjoy the rights and benefits of business activities well known under Delaware law. Without being subject to the constraints of a cell, a series licensed as a captive insurer is free to engage in activities in accordance with Delaware's freedom of contract rules, so long as the series' activities are solely related to assuming risk as a captive insurer. As of the date of this letter, the Delaware Insurance Department has licensed 754 series as captive insurers. |  |
| 133 | **Vermont, USA** Vermont Captive Insurance Association | | 156. Comment on paragraph 154: | This section states the individual cells, in an ICC structure, and the company underlying the relevant cell, in a PIC structure, are distinct legal entities, and therefore should be supervised in the same way as any stand-alone captive. This language presumes that the cells would have separate filings, audits, etc… We disagree that each incorporated cell should be supervised in the same manner as standalone captives because the cell facility that each cell is a part of is already regulated as a licensed captive. Applying the same level of supervision to cells as is applied to standalone captives would defeat the purpose of having cell structures available and discredits the supervision, services, agreements and controls in place at the cell facility level where the license is held. Cells allow smaller entities and simple structures to access captive insurance while providing the appropriate segregation of assets and liabilities. |  |
| 134 | **USA** American International Group | | 157. General Comment on Insurance managers: | Section 6 on "Insurance Managers" assumes that captive management firms are licensed. We do not believe this to always be the case. In the State of Vermont, for example, such firms (including AIMS) are "approved" and listed as "approved" on the Vermont DFR Captive Insurance Division website. |  |
| 135 | **USA** National Association of Insurance Commissioners | | 157. General Comment on Insurance managers: | The section on Insurance Managers is somewhat confusing. The section mixes aspects of the ICPs, which may be relevant to insurance managers to the extent they serve as an outsourced function of a captive insurer, with aspects of a regulatory regime a jurisdiction may have in place specifically for insurance managers on their own. The result is that this section reads as if the ICPs apply to insurance managers beyond their role as a captive insurer's outsourced service provider - the ICPs are not written nor intended to be applied in such manner. For example, the subsection on licensing states that insurance managers are licensed, but the ICPs only require legal entities engaged in insurance activities (ICP 4) and intermediaries to be licensed (ICP 18). A jurisdiction may choose to have a regulatory regime that requires insurance managers to be licensed, but this paper should not imply such requirements are in the ICPs (see our additional comments on paragraph 156 regarding licensing). Additionally the role of insurance managers and how they should be assessed is mentioned numerous times throughout Section 4 - while some material in Section 6 is new, some of it has already been said under section 4 which creates unnecessary duplication. Thus suggest streamlining this section by moving (or deleting where duplicative) material that addresses how the ICPs would apply if the insurance manager is acting as an outsourced function of the captive insurer to Section 4 and focus Section 6 on describing a regulatory regime a jurisdiction may have in place separately for insurance managers, if they choose to do so. Additionally a better description of insurance managers and their role would be helpful earlier in the paper, such as in Section 3. |  |
| 136 | **Vermont, USA** Vermont Captive Insurance Association | | 157. General Comment on Insurance managers: | The section on Insurance Managers is somewhat confusing. Many domiciles do not license captive managers, or conduct inspections of the manager per se. The captive is regulated and examined; any aspect of the management of the captive that may be delegated to contractors is likewise subject to inspection as part of the captive's examination. Any concerns found as a result of the exam must be dealt with by the captive. As the NAIC comments point out, this section reads as if the ICPs apply to insurance managers beyond their role as a captive insurer's outsourced service provider - the ICPs are not written nor intended to be applied in such manner. A jurisdiction may choose to have a regulatory regime that requires insurance managers to be licensed, but this paper should not imply such requirements are in the ICPs. |  |
| 137 | **Switzerland** Zurich Insurance Company Ltd. | | 158. Comment on paragraph 155: | 155, 156-158 In case the insurance manager of a captive is a LICENSED insurance or reinsurance company, the section would benefit from clarifying that no additional license is required. |  |
| 138 | **USA** National Association of Insurance Commissioners | | 159. Comment on paragraph 156: | In some jurisdictions, since the captive is regulated and examined, any aspect of the management of the captive that may be delegated to contractors is likewise subject to inspection as part of the captive's examination and therefore any concerns found as a result of the exam must be dealt with by the captive. Thus in some jurisdictions, insurance managers are not formally licensed, thus this paragraph should use of the word "approved," "registered" or some equivalent in place of "license" or otherwise note that licensing is in some jurisdictions (not all). |  |
| 139 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 170. Comment on paragraph 167: | A captive manager's controls and procedures are used to perform the day to day management functions of the captive. The board-approved governance framework and policies cater for this. The board-approved conflicts of interest policy sets out the procedures to deal with conflicts that may arise from the manager performing certain functions in the company. |  |
| 140 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 173. Comment on paragraph 170: | For the sake of clarity, we suggest the final clause in this paragraph be reworded to read: "... and the supervisor should require a captive to have such functions." |  |
| 141 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 174. Comment on paragraph 171: | Typically captives use insurance managers' systems, controls and procedures for day-to-day management. The captive should have its own fully documented governance and risk management framework and policies approved by the board and subject to regular review and approval. |  |
| 142 | **Ireland** Dublin International Insurance & Management Association (DIMA) | | 175. Comment on paragraph 172: | To improve clarity, this paragraph should be reworded to read: "Supervisors should require the appointment of a compliance officer function by insurance managers." |  |
| 143 | **Singapore** Monetary Authority of Singapore | | 175. Comment on paragraph 172: | We are of the view that a separate compliance officer is not required. Instead, the compliance role can be taken up by an employee of the insurance manager, such as the finance manager. Hence, we propose to amend this para to "Supervisors should require the compliance function to be carried out by insurance managers". |  |
| 144 | **Vermont, USA** Vermont Captive Insurance Association | | 175. Comment on paragraph 172: | It is confusing what exactly the role of the compliance officer would be and how much work this would require. |  |