

Response template for CP53; Corporate Governance Code for captive Insurance and captive Reinsurance Undertakings			
Name of respondent:		MARSH MANAGEMENT SERVICES (DUBLIN) LIMITED	
		Introduction	
Reference	Page no	Text	Comment
Key issues in relation to proportionality	4 - 5		
9	4 - 5	<p>Due to the unique nature of captives, based on the nature, scale and complexity of captives, the following key areas of difference arise between insurance and reinsurance undertakings and captives:</p> <p>a) The Central Bank does not consider it necessary for it to impose an obligation on captives to appoint a minimum number of Independent Non-Executive Directors (INEDs). However captives are encouraged to consider the benefits of appointing INEDs to the Board.</p>	
		<p>b) The Central Bank does not consider it necessary to insist that captives appoint an Audit Committee or Risk Committee, provided that the board discharges these functions. Further due to the nature, scale and complexity of captives we do not believe that it is necessary to have a Nomination Committee or a Remuneration Committee.</p>	
		<p>c) The Central Bank is however mindful that captives are obliged elsewhere in the law under existing legal requirements (namely by virtue of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010, (S.I. No. 220 of 2010) to both appoint an Audit Committee and to appoint at least 2 INEDs to that committee.</p>	<p>There may be exemptions for some captives under S.I. 220 of 2010. Accordingly, we suggest that the wording should state “that captives <u>may</u> be obliged elsewhere under existing”</p>
Purpose of consultation	6		

11	6	The purpose of this consultation is to: a) Obtain comments on the draft code for captives attached at Appendix 1 ; and	
		b) Obtain suggestions from industry as to the appropriate level of guidance which might be produced by the Central Bank in relation to the annual compliance statements which captives must provide pursuant to section 22 of the draft code.	Given that separate Compliance Statements are already in place for both Insurance and Reinsurance captives, we would suggest that the existing texts should remain in place and suggest the inclusion of the following additional statement: “The Board confirms that to the best of its knowledge, the Company complies in all material respects with the requirements of the Corporate Governance Code for captive Insurance and captive Reinsurance Undertakings.”
Proposed Implementation	6		
12	6	Once the final code is published by the Central Bank, captives will be given a transitional period of 6 months to implement changes to systems and structures in order to ensure compliance with the Code.	The proposed transitional period of 6 months is too limiting given the number of captives established in Ireland. As each Board would need to formally review and approve an appropriate Governance Code, a 6 month window may not allow sufficient time for all captives to be compliant with the Code. A 9 month transitional period would allow all captives to take the necessary steps to be fully compliant with the Code.
5.0 Transitional Arrangements	17		
5.1	17	The Code applies to existing boards and directors with effect from XX 2011 . The Central Bank is conscious that captives may need time to implement changes to systems and structures in order to ensure compliance with the Code. Captives will be given until 6 months from the date when the Code is issued to introduce the necessary changes so as to allow them to become	As outlined above, a 9 month implementation period would ensure that all captives can be in a position to implement the necessary procedures to ensure adherence to the Code.

		compliant with the requirements introduced by the Code.	In relation to captives which have ceased underwriting and which are in run-off, we would suggest that such captives should be exempted from the proposed Code.
7.0 Composition of the Board	20 - 22		
7.4	20	Each member of the board shall have sufficient time to devote to the role of director and associated responsibilities. The board shall indicate a time commitment expected from directors in letters of appointment. The Board shall confirm to the director on an annual basis at the beginning of each financial year the ongoing time commitment expected from that director.	As captives operate as part of their Parent's Risk Management Strategy, the day-to-day operations of captives are likewise intertwined with the function of the Parent's Risk Management Department. Consequently, there should not be a requirement for a specific time commitment to be determined for each Director. A more appropriate approach would be for each Director to confirm to the Board on an annual basis, that they have an adequate time commitment to fulfil their duties as Directors.
7.7	21	In proposing to appoint directors who otherwise have fulltime jobs, the captive is also required to take fully into account the time constraints upon the proposed director including time constraints associated with any part time or full time job held by the director.	As outline in 7.4 above, the nature of captives as part of their Parent's Group Risk Strategy would mean that in the majority of instances, all Directors are likely have fulltime roles. An annual requirement by Directors to indicate to the Board that they have the ability to fulfil their duties as Directors should be sufficient.
7.8	21	In considering and/or proposing director appointments, the board shall assess and document its consideration of possible conflicts of interest among its members, including, but not limited to personal relationships, business relationships and common directorships among its members or proposed members.	Given the nature of captives (part of Group Risk Strategy), there is the possibility that conflicts of interest (Group Risk Management v's Captive) could arise on a regular basis. A practical alternative solution would be for all Directors to make a full disclosure of their interests at

			the commencement of each Board Meeting.
7.9	22	Appointments shall not proceed where possible conflicts of interest may emerge which are significant to the overall work of the board.	See 7.8 above.
7.10	22	Directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists.	See 7.8 above.
8.0 Chairman	23 - 24		
8.1	23	There shall be a Chairman and Deputy Chairman appointed to the board of every captive. The Deputy Chairman shall assume the role of Chairman in the absence of the Chairman.	If the Chairman is unavailable to attend a particular Board meeting, we would suggest that the Chairman have the ability to nominate one of the other Directors to act as the Deputy Chair for that particular meeting. The formal appointment of the role of Deputy Chairman to one particular individual may prove too restrictive particularly in the event of the need to call a Board Meeting at short notice to address an urgent matter.
10.0 Directors	26 - 27		
10.1	26	The role of the directors, under the Chairman's leadership, is: a) To ensure that there is effective management of the captive by the captive manager;	The role of the Directors should be to ensure that there is effective management of all services providers, (brokers, consultants, Claims administrators), and not limited solely to the captive managers. Suggested Amendment: "To ensure that there is effective management of the captive by all service providers;
		b) To participate actively in constructively challenging and developing strategies proposed by the captive manager;	Similar to 10.1 (a) above, the text should be amended

			to include all service providers.
		c) To participate actively in the board's decision-making process;	
		d) To participate actively in board committees (where established);	
		e) To exercise appropriate oversight over execution by the captive manager of the agreed strategies, goals and objectives and to monitor reporting of performance.	Similar to 10.1 (a) above, the text should be amended to include all service providers.
11.0 Role of the Board	28 - 29		
11.4	29	The board shall oversee the management of all renewal processes, including signing off on inwards re/insurance and outwards reinsurance as necessary.	Suggested Amendment: The board shall oversee the <u>approval</u> of all renewal processes, including signing off on inwards
12.0 Appointments	30 - 31		
12.1	30	The board shall be responsible for appointing a captive manager with appropriate integrity and adequate knowledge, experience, skill and competence for their roles.	Similar to 10.1 (a) above, the text should be amended to include all service providers.
12.2	30	The board shall be responsible for endorsing the appointment of people who may have a material impact on the risk profile of the captive and monitoring on an ongoing basis their appropriateness for the role.	It is unclear as to the intention of this clause and to which type of parties it may refer to. By implementing the suggested change outlined in 12.1 above, this may allow for the deletion of this clause.
13.0 Risk Appetite	32 - 33		
13.1	32	The board is required to understand the risks to which the captive is exposed and shall establish a documented risk appetite for the captive. The appetite shall be expressed in qualitative terms and also include quantitative metrics to allow	Given the underlying purpose of a captive (to insure Group risks in the most cost effective and efficient manner), captives are not driven by the need to create

		tracking of performance and compliance with agreed strategy (e.g. Value at Risk, leverage ratio, range of tolerance for bad debts, acceptable stress losses, economic capital measures). It shall be subject to annual review by the board.	<p>profits for their owners or create market share. In practice, this means that captives are conservative in nature and do not represent a financial or systemic risk to the wider community.</p> <p>In recognising the nature, scale and complexity of risks underwritten by captives, the development of a Risk Appetite is not appropriate for captive entities.</p>
13.2	32	The risk appetite definition shall be comprehensive and clear to all stakeholders. The definition shall clearly define the appetite and address separately the short, medium and long term horizons.	As per 13.1 above
13.3	32	The board shall ensure that the risk management framework and internal controls reflect the risk appetite and that there are adequate arrangements in place to ensure that there is regular reporting to the board on compliance with the risk appetite.	As per 13.1 above
13.4	32	In the event of a material deviation from the defined risk appetite measure, the details of the deviation and of the appropriate action to remedy the deviation shall be communicated to the Central Bank by the board promptly in writing and no later than 5 business days of the board becoming aware of the deviation.	As per 13.1 above
13.6	33	The board shall ensure that it receives from the captive manager timely, accurate and sufficiently detailed information relating to risk and Control Functions.	Similar to 10.1 (a) above, the text should be amended to include all service providers