



## FCA CP26/29 – A tailored regime for captives

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### Key points

The IFoA welcomes the opportunity to provide a response to this consultation based on our members' expertise of the captive insurance market, and broader context of the UK insurance market and its global competitiveness. We would be happy to discuss the details of our response with the FCA.

The IFoA acknowledges the stakeholder engagement that has been undertaken by the PRA and FCA, prior to the consultation publication, and that the consultation has considered points raised in that engagement. We believe that the introduction of a UK captive regime is in the public interest, subject to appropriate risk management and regulatory guardrails.

The key areas of feedback in our response are as follows:

- We believe that a key aim of the finalised proposal should be to ensure appropriate outcomes for smaller companies and relevant third parties, where existing risk management systems may not sufficiently cover the risks of the new regime.
- In that context, it is important that the Captives regime appropriately protects entities and individuals who may not have the same level of understanding of the risks associated with the regime as larger corporate entities, or the wider insurance industry.

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# Detailed response

## Section 1: Introduction

This response is submitted on behalf of the IFoA. We would welcome the opportunity to discuss any of the points raised below. The IFoA agrees to the publication of its name as a respondent to this consultation, and we confirm we do not view any of our response to be confidential. For any queries, please contact Alan Marshall / Review Actuary ([alan.marshall@actuaries.org.uk](mailto:alan.marshall@actuaries.org.uk)) in the first instance.

In developing our response, we have drawn upon input from the IFoA Captives Working Party, with review and oversight from relevant subcommittees of the IFoA Life and GI Boards, and the IFoA Policy and Regulation team. This provides a wide range of technical and domain knowledge, from a public interest perspective.

Our feedback focuses on where we feel the proportionate nature of the proposed regime introduces a risk of insufficient regulatory protection for entities and individuals who may not have a full understanding of the underlying risks.

## Section 2: Responses to consultation questions

Note that we answer a subset of the consultation questions below, restricting our responses to those questions where we have a specific point to raise. We provide responses to questions 1, 3, and 5.

### **Question 1: Do you agree with the proposed scope of permitted activities and restrictions? Are there any categories we have not considered?**

Where the captive insures third-party exposures (e.g. General Liability slip-and-fall type cover, but there are other possible examples), we foresee the potential for peril to those third parties. Ultimately the parent company of the captive retains the risk, but with only thinly capitalised captive insurers providing a backstop there is a risk of parent company collapse and injured parties being left with little to no recompense unless an insurer fronted the policy. Whilst compulsory lines of business have protection through the frontier, there are other liability lines which do not that may then provide a false sense of protection to organisations or individuals (e.g. if they believe they are covered by a D&O policy written through the captive). This may in turn place additional stress on the FSCS.

### **Question 3: Do you agree with our proposals on which of our handbook rules should/should not apply to captive insurers, and the additional rules/guidance we have proposed? If not, please tell us which of our proposals you do not agree with and why.**

The proposals appear proportional to the aims of the regime. There are however aspects of the proposals where we have concerns this may leave the regime overly light touch in nature.

By not applying PROD rules to captives there is a risk that insurance contracts are insufficiently robust. This particularly applies when the captive insures third-party exposures, and hence some of the same concerns as highlighted in Question 1 exist.

We also believe there may be risks in relation to fair pricing and the concept of voluntary cover. Where non-group policyholders, such as franchisees or key suppliers, are economically dependent on the parent, captives should be required to demonstrate that pricing is fair to those policyholders and that participation is genuinely voluntary (which ICOBS would ensure for standard insurers).

**Question 5: Do you agree with our proposed approach to supervise captive insurers, including applying SUP 15 notifications instead of annual reporting? If you do not, please explain which aspect of our proposal you do not agree with, and why.**

The Monitoring and Evaluation proposals as set out in paragraphs 64-66 appear very high-level. We believe that this introduces a risk post-FCA-authorisation that individual captives may not be subject to sufficiently robust ongoing supervision.