Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation		Deadline 02.01.2012 18:00 CET
Company name:	**BRITISH PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION**	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public

The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006).

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions.
- ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
  - o If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
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Question	Comment	
General comment	**The imposition of new Solvency II standards to pension funds are unnecessary, a hindrance to economic growth at the worst possible time and a breach of the EU's subsidiarity principle** The BVCA welcomes the opportunity to respond to EIOPA's final consultation on the Call for Advice (CfA) on the review of the Directive 2003/41/EC. The British Private Equity & Venture Capital Association (BVCA) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. The BVCA Membership comprises over 230 private equity, midmarket and venture capital firms with an accumulated total of approximately £32 billion funds under management; as well as over 220 professional advisory firms, including legal, accounting, regulatory and tax advisers, corporate financiers, due diligence professionals, environmental advisers, transaction services providers, and placement agents. Additional members include international investors and funds-of-funds, secondary purchasers, university teams and academics and fellow national private equity and venture capital associations globally. The BVCA's position remains that the application of a Solvency II-type standards to IORPs is unnecessary and would hamper economic growth. In the main, we have confined our comments to making this case rather than addressing those concerning application and implementation. We look forward to the impact assessment that will be carried out next year and would view that as a key litmus test for the decision to proceed. In the wake of the Financial Crisis, we do understand the need to pass certain regulations in the name of restoring stability to our financial system. However, in the case of pension provision, we are considering long-term liabilities with appropriate investment strategies. As a response to the current economic and financial turbulence, these provisions are wholly inappropriate. Rather than shoring up the stability and functionality of the European economy, these aims could actually be placed in jeopardy.	

UK Private Equity

Private equity is medium to long-term finance provided in return for an equity stake in potentially high growth companies, which are usually, but not always, unquoted. Generally speaking, regardless of whether a private equity fund is listed or not, their activities are similar. Investment opportunities are sourced and screened by private equity firms in order to arrive at a valuation. The transaction will be financed using equity provided by fund investors (notably pension funds), and in some cases debt raised from banks. The private equity firm will then actively manage the investment for the holding period (typically five to ten years), seeking to generate operational improvements in order to increase the value of the company. In many private equity transactions, the managers at the portfolio companies will be retained and offered an equity stake in the company, in order to align the interests of both parties. Returns are realised for investors through exiting the deal; this can be through floating the company on a public stock exchange (IPO - initial public offering), a trade sale, or a secondary buyout, whereby the portfolio company is sold to another private equity firm.

Private equity funds managed in the UK currently back around 4,700 companies, employing around 1.6m people on a full-time equivalent basis (FTEs) across the world. Of these, around 810,000 FTEs are employed in the UK.

- In 2010, 1,073 companies, employing around 313,000 FTEs, were invested in by private equity funds managed in the UK. Of these, 823 were in the UK, employing around 158,000 FTEs.
- Of the companies invested in during 2010, around 65% were small companies, with around a further 20% being medium-sized companies.
- In 2010, 18 companies experiencing trading difficulties were rescued by BVCA member firms,

helping safeguard 6,400 jobs

Over the medium to longer term, the industry continued to outperform other asset classes. Over the past three years, one of the most challenging periods for the financial services industry, private equity produced an annual return of 6.7%, compared with 2.4% for Total UK Pension Fund Assets and 1.4% for FTSE All-Share. Over a ten-year period, this outperformance is more marked, with returns of 14.6% per annum for private equity, while Total UK Pension Fund Assets and FTSE All-Share generated 4.5% and 3.7%, respectively.

The Importance of Pension Funds

Pension funds are vital contributors to the European economy. They own 20% of UK equities. They are key investors in private equity funds.

UK private equity and venture capital raise money from a variety of sources with a view to investing in companies for an extended period of time, before exiting and realising a gain for those investors. The source of our funds is set out below but pension funds represent our most significant investors. In 2008 they made 35% of our funds for a total of £8.4bn. If the pension funds industry decided that solvency requirements were too great and pulled back from private equity, the economic consequences would be extremely damaging to the European economy.

Table 18. **Funds Raised by Source**

Type of source		Amount raised (£m)			% of amount raised		
		2010	2009	2008	2010	2009	2008
Pension Funds	UK	495	271	1,456	8	9	6
	Overseas	1,134	280	6,958	17	9	29
	Total	1,630	550	8,414	25	18	35
Insurance Companies	UK	276	130	148	4	4	1
	Overseas	163	150	711	2	5	3
	Total	440	280	859	7	9	4
Corporate Investors	UK	175	146	169	3	5	1
	Overseas	673	252	1,644	10	8	7
	Total	848	398	1,813	13	13	8
Banks	UK	29	90	378	-	3	2
	Overseas	84	100	598	1	3	3
	Total	113	190	976	2	6	5
Family Offices	UK	1,046	27	n/a	16	1	n/a
	Overseas	115	34	n/a	2	1	n/a
	Total	1,161	60	n/a	18	2	n/a
Funds of Funds	UK	179	175	1,105	3	6	5
	Overseas	552	355	2,843	8	12	12
	Total	731	531	3,948	11	18	17
Government Agencies	UK	212	163	334	3	5	1
	Overseas	208	27	806	3	1	3
	Total	420	191	1,140	6	6	4
Academic Institutions	UK	22	12	11	-	-	-
	Overseas	151	54	794	2	2	3
	Total	172	66	805	3	2	3
Private Individuals	UK	275	138	1,394	4	5	6
	Overseas	26	15	862	-	-	4
	Total	300	153	2,256	5	5	10
Capital Markets	UK	65	5	n/a	1	-	n/a
	Overseas	0	0	n/a	0	0	n/a
	Total	65	5	n/a	1	-	n/a
Sovereign Wealth Funds	UK	0	0	n/a	0	0	n/a
	Overseas	36	180		1	6	
	Total	36	180	n/a	1	6	n/a
Others	UK	108	156	652	2	5	3
	Overseas	570	227	2,276	9	8	10
	Total	678	383	2,928	10	13	13
Total UK		2,882	1,312	5,647	100	44	25
Total Overseas		3,712	1,674	17,492	100	56	74
Grand Total		6,594	2,987	23,139	100	100	100

1. - indicates a value greater than 0 but less than 0.5

It is important to note that the capital raised is deployed right across Europe, not just the UK. As a global centre for private equity, UK funds are able to raise money internationally but invariably invest it regionally and locally. As can be seen from the table below, nearly half of the capital raised is deployed in the rest of Europe.

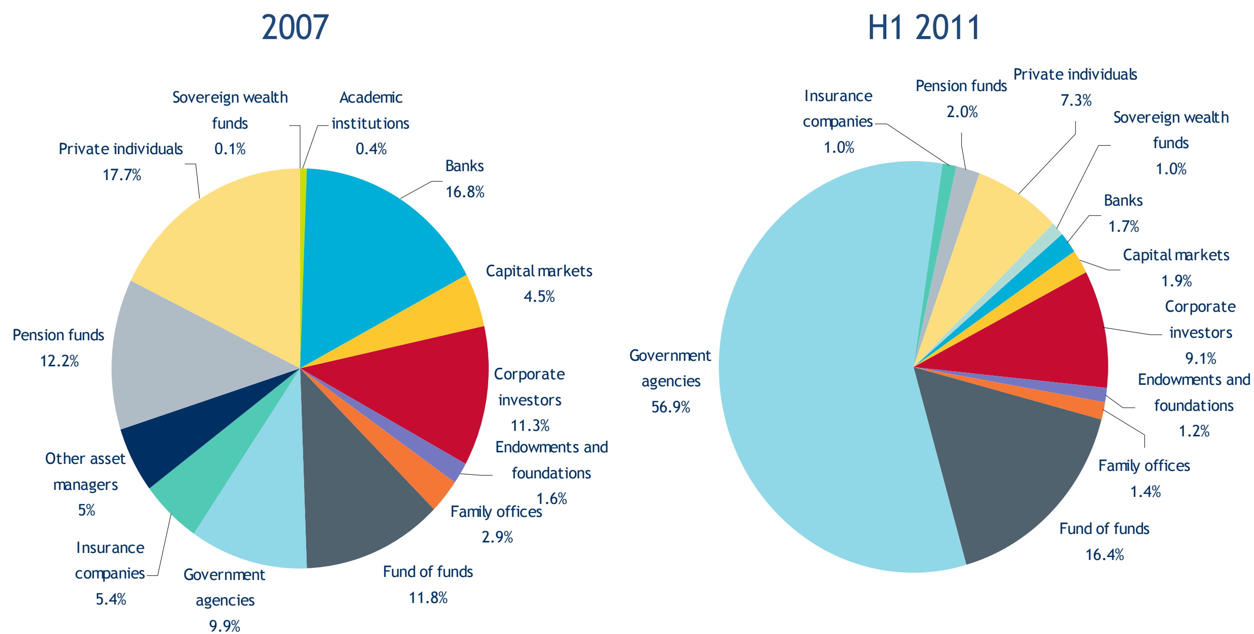
Table 2a. **Investment by Country**

Country	Number of companies			% of companies			Amount invested (£m)			% of amount invested		
	2010	2009	2008	2010	2009	2008	2010	2009	2008	2010	2009	2008
UK	823	791	1,278	77	81	76	8,237	4,790	8,556	40	38	42
US	49	50	150	5	5	9	2,038	3,541	1,741	10	28	9
Europe	175	120	214	16	12	13	8,778	4,087	8,206	43	32	41
Rest of World	26	15	30	2	2	2	1,394	211	1,522	7	2	8
Total	1,073	976	1,672	100	100	100	20,447	12,629	20,025	100	100	100

Taking away this key source of investment would have a chilling effect on the European economy. As can be seen from the table above, the fund raising climate is already difficult with a significant drop off in funding in 2009 followed by a slight recovery. If we consider venture capital the picture is bleaker still.

It is important to state that we welcome the Commission's focus on European venture capital. In particular, we note the recent regulation on designated 'European Venture Capital Funds' which will better enable cross-boarder fundraising and investment for funds committed to investing in SMEs. Furthermore, the recent MOU signed by the European Fund Investors Network committing themselves to developing proposals for a new European venture fund of funds is a welcome development. But if such initiatives are to bear fruit, more capital is needed. We must ensure the fundraising climate is not rendered more difficulty by EIOPA-CP-11/006. As can be seen from the chart below, fundraising from all sources but notably from pension funds is in decline for European venture capital. As a sector it is now over reliant on Government agencies. The BVCA and its European partners are working with Government on ways to encourage institutional investors to look again at venture capital. Because of historically poor returns, this

	will likely prove impossible if Solvency II standards are imposed on pension funds. This will mean the 'venture passport' and the new fund of funds will likely be moribund.	



Source: EVCA/PEREP_Analytics

1.	**<u>The BVCA believes that the scope of the Directive should not be extended</u>** Pensions provide social benefits rather than simply being financial products and, as such, provision is deeply ingrained in national social protection law. This means that the degree of homogeneity found in the financial services industry across Member States is lacking in IORPs due to their adaptation to specific national necessities according to the social nature of their role. Pensions legislation throughout Europe is currently a combination of European and domestic legislation. This lack of harmonisation therefore means that new or updated legislation will impact existing laws differently depending on the relevant jurisdiction The BVCA agrees that pension provision across Europe should be properly regulated but notes that this provision is diverse as is the way it is regulated and capitalised. Any attempt to impose a one size fits all approach will run immediately into this difficulty. The proposed changes to the IORP will directly impact the way in which pension funds are managed and invested, and therefore how returns can be provided to beneficiaries. Across the EU, the general objective of all Member States' regulatory provisions is the safeguarding of pension beneficiaries' claims at reasonable cost. How this is achieved, however, differs widely across national regimes. Indeed, national social and labour law may determine the content of the pension promise, set minimum governance requirements, determine the level of sponsor commitment and provide insolvency protection. This is the right approach, as Member States should be given sufficient flexibility to put in place appropriate retirement systems that are reactive to the socio-economic circumstances, needs and desires of their citizenry as well as the employers that fund those schemes.	

	For example, the UK has an unusually large number of defined benefit pension schemes under which employers have significant funding obligations. Employers' funding obligations under scheme rules and overriding legislation are monitored and enforced by trustees who have fiduciary duties towards scheme members. There is legislation to require employers to make up funding deficits. The Pensions Regulator has strong and real powers to require employers and associated companies and persons to make payments to the scheme if the employer's obligations are not met and member's benefits are at risk. Ultimately, the Pension Protection Fund (funded by a levy on defined benefit schemes) exists as a "lifeboat" fund in the event that the aforementioned measures have failed adequately to protect scheme members. Such systems are not directly replicated in other Member States so a 'one size fits all' approach for IORPs would be wholly inappropriate.	
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10.	**The BVCA believes that the subsidiarity principle applies to pensions legislation**	

	It is the primary responsibility of member states to regulate retirement saving in a way that works best for their citizens. As set out above, pension arrangements differ substantially from one member state to another. Different weights are given to contributions from states, employers, and the individual in different member states. It would be problematic to deploy legislative judgement on the validity of the respective weights currently given to each of these by different member states.	
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52.	**<u>The BVCA would view the application of Solvency II type standards to IORPs as being pro-cyclical</u>** It is imperative that we avoid creating pro-cyclicality with respect to pension fund investments. The long–term nature of pension liabilities and private equity assets mean that IORPs are able to focus on long-term investment returns rather than short-term liquidity. Because of the long-term nature of their activity they are less vulnerable to short-term market volatility and therefore can act as stabilisers in financial markets. The regime being proposed by the European Commission does away with the long-term investor nature of IORPs by forcing them to focus on short-term liquidity despite this being unnecessary to cover their liabilities.	
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