



June 1, 2017

Yoshihiro Kawai  
Secretary General  
International Association of Insurance Supervisors (IAIS)  
Centralbahnplatz 2  
CH-4051 Basel  
Switzerland

**Re: IAIS consultation on Revised Insurance Core Principles (ICPs) and ComFrame material integrated with ICPs**

Dear Mr. Kawai:

The Institute of International Finance (IIF) and the Geneva Association (GA) welcome the opportunity to provide comments on the consultation package dated March 3, 2017 (Consultation Package) on the Revised Insurance Core Principles (ICPs) and ComFrame material integrated with ICPs. The IIF and GA are strongly committed to continuing our constructive dialogue and cooperation with the IAIS. We appreciate the extensive work the IAIS has put into this Consultation Package. Our response provides both high-level general comments and specific answers to the questions.

As a fundamental policy framework, the principles embodied in the ICPs can serve as a basis for rules and regulations that assist in protecting policyholders, maintaining fair, safe and stable insurance markets, and contribute to the well-being of the wider economy. To achieve these objectives, proportionate, transparent and well-coordinated implementation of the framework is paramount.

Overall, we welcome the effort to improve the language of the ICPs and the integration of ComFrame. Given the extensive scope and sequential nature of the exercise, we expect there will be, and look forward to participating in, continuing opportunities to comment on the integration of ComFrame into the ICPs. In addition, because issues arising in one ICP or ComFrame section are likely to impact and/or apply equally to other ICP/ComFrame sections, we trust the IAIS will remain open to our revisiting issues as these interlinkages become apparent as we move forward. We discuss this in more detail in Key Themes below. Lastly, in order to encourage maximum contribution in the most effective and efficient way for the IAIS and participants, we suggest that future consultation opportunities on amendments to existing language clearly indicate where changes have been proposed.

Key themes arising from GA/IIF review of the current Consultation Package follow:

### **Proportionate application and implementation of the ICPs and ComFrame is crucial**

We support the integration of ComFrame into the ICPs. The elimination of duplicative language and simplified layers of standards and guidance has improved the clarity of the document. As the ICPs and ComFrame serve different objectives with different scopes of application, proportionality is a key element, and a main theme in our response. The Introduction to the ICPs and Assessment Methodology should clarify that proportionality unequivocally applies to ComFrame. Equally the Introduction and Assessment Methodology should better explain the concept of proportionality and establish that the principle is not only a guideline for the scope and degree of application of measures, but also permission not to apply a measure where a supervisor deems it unnecessary.

Similarly, we note language in the Introduction and Assessment Methodology establishing that: (...) *[proportionate application] should not go beyond what is necessary in order to achieve their purpose (paragraph 9.)*. While implicit in the concept of proportionality, we suggest that wherever ICP or ComFrame guidance recommends assessment, review and reporting by or to group-wide supervisors, that reference be made to existing best practices and standards established by industry groups or globally recognized control structures. Such references will help to establish reasonable expectations for supervisors and insurers and avoid excessive and unduly burdensome application of measures.

### **Consistency within and across ICPs and ComFrame**

We agree that revising the ICPs in tranches is an efficient approach. However, interconnections among the ICP items must be taken into account. In this letter, we will focus on the ICPs currently being consulted upon; at the same time, we urge the IAIS to take a holistic approach in evaluating the entire set of ICPs and related ComFrame items to make sure the interlinkages of different supervisory elements are well-reflected in the standards and guidance. Examples of themes where the interlinkages should be kept in mind are: protection of confidential information which is elaborated in ICP 3; as well as accountability of the supervisor to different stakeholder groups which is mentioned in ICP 2. Again, we would appreciate the opportunity for ongoing discussion with the IAIS on these issues as they come up in future consultations before the expected 2019 adoption.

Another area where we would like to see more consistency is the terminology. We have noticed that terms are sometimes used in subtly different ways without a clear definition or distinction. For example, “involved supervisors” and “relevant supervisors” are used seemingly interchangeably throughout the ICPs and ComFrame. They are not distinguished and only the term “involved supervisors” is defined in the IAIS online Glossary. Terminology should be used consistently and clearly defined in the glossary to avoid confusion.

### **Removal of key concepts and inconsistent language should be explained**

- In the Introduction and Assessment Methodology

We take note that compared with the previous version of the Assessment Methodology, some important language has been removed. Examples are language emphasizing the importance of:

- transparent and accountable operations by the supervisor;
- meaningful public consultation on the development of supervisory policies; and,
- supervisor credibility of conducts of assessments in a broadly uniform manner from jurisdiction to jurisdiction, which will contribute to ensuring that the policies are credible and take due account of the views of stakeholders and market realities.

We believe these are important messages to convey, and would like to request the IAIS to restore the language or, at a minimum, explain the removal to enable stakeholders to properly assess the impact.

- In ICP 3 - Information Sharing and Confidentiality Requirements

While the simplification of ICP 3 is welcomed, there are some instances where important points appear to have been removed from the review process. In particular, the removal of language regarding the need for confidentiality agreements prior to information exchange (previously standard 3.5) and the removal of language explicitly stating that supervisors have “legal authority and power” to exchange information (3.1 and 3.2). Since digitalization and big data are increasing the challenges for protection of sensitive and confidential data held by insurers, it is in the common interest, including of policyholders, that all parties handling such data, including supervisors, have as robust and consistent data protection practices in place as possible. Hence we urge the IAIS to restore the requirement for confidentiality agreements to ICP 3 and that ICP/ComFrame texts make it clear that the protections of ICP 3 extend to all ICPs and ComFrame sections recommending exchange of information.

In addition, we have noted the removal of previous standard 3.3 on prior notification of action by a supervisor to supervisors of the group’s entities. We would welcome an explanation for the removal of this standard, as we have some concerns that it may affect harmonization and effective coordination of group supervision.

- In ICP 25 – Supervisory Cooperation and Coordination

We note the proposed removal of standard ICP 25.1, which calls for cooperation and coordination with supervisors from other sectors and central banks and government ministries. We request that the IAIS explain the proposed removal of this standard, as we have concerns it may affect effective cooperation and coordination between group supervisors and others, such as central banks.

We have also noticed that while requirements towards insurers are formulated in direct language, the standards and guidelines on collaboration among supervisors and other resolution authorities tend to be formulated in an indirect manner. We understand that in some cases, legal obligations of authorities are well defined and may limit the degree of cooperation and coordination possible.

However, wherever possible, supervisory cooperation and coordination should be encouraged. In this respect, the IAIS should consider including the option for jurisdictions to establish ex-ante cooperation and coordination agreements for recovery and resolution to the extent permitted by law.

We understand that some ICPs will be revised at a later stage, and the removed points might be incorporated into those ICPs. If this is not the case, we strongly urge the IAIS to reconsider its decision to remove this guidance given the important messages they convey. Advice in either instance would have been helpful in assessing the impact of removal from the revised ICP or ComFrame section.

#### **Jurisdictional specificities should be recognized**

We note throughout the revised ICPs and ComFrame, a general tendency of a return to a tone that signifies “requirement” as opposed to “guidance.” We suggest a modification of tone to ensure it is clear that the ICPs and ComFrame must accommodate different practices in some 200 jurisdictions to which they may apply. Prescriptive language should be avoided, and jurisdictional specificities should be recognized.

In this context, we note the intention for the group-wide supervisor to have authority over the Head of the IAIG and would suggest that where the Head of the IAIG is a non-regulated holding company, the group-wide supervisor may not have direct authority. ComFrame should accommodate this difference.

#### **Consistent treatment of corporate governance should be adopted**

We believe that it is important to recognize the internal structure of governance of the group. For example, local boards should be allowed to take responsibility for local operating entities as it may be required by law. However, in order to improve the alignment and consistency of provisions on group corporate governance, as recommended in the 2016 report on the recognition of the interest of the group by the Informal Company Law Expert Group (ICLEG), it seems important for the IAIS to position the notion of group interest more prominently. Without prejudice to the fiduciary duties local board members owe to local subsidiaries, we propose ICP 7 (and ComFrame sections) recognize the notion of "group interest", acknowledging that directors of subsidiaries should be allowed to reasonably take the parent’s interest into account.

The notion of group interest should be meaningfully developed in the Application Paper on Group Corporate Governance.

#### **Specific issues regarding recovery and resolution**

Overall, the IIF/GA appreciate the IAIS effort to reflect many of the industry comments submitted during the “request for comments” exercise on ICP 12 and the original ComFrame M3E3. We support the changes in various areas and would like to provide the following additional input on recovery and resolution under the ICPs and ComFrame 10.3 and 12.

## Recovery

As a general comment, we have taken note that the purpose of the revision of the package of ICPs and integration of ComFrame is to improve understanding of the supervisory framework and mechanisms and, generally, improve the consistency of language and terminology across the ICPs.

However, inclusion of recovery planning in ICP/ComFrame 10 creates confusion. Specifically, CF 10.3 mixes up two concepts:

- specific action plans that may be required by supervisors in the event, for example, of a breach of an intervention ladder or other regulatory requirement, e.g. solvency requirement; and,
- the FSB concept of a forward-looking and high-level contingency plan that serves to ensure that the appropriate tools and structures are in place to help manage a potential future crisis.

The former specific action plan is a tool readily available to most (if not all) supervisors and is adequately covered in ICP 10.2 and CF 10.2a.

The latter, forward-looking, contingency plan, is correctly recognized within ICP 10 as “a part of the risk management process” (CF10.3a.7) and should in all cases be discretionary, subject to the principle of proportionality and the product of active discussion among the insurers’ management and the group-wide supervisor.

It should be clear that supervisory discretion includes the option not to require a separate recovery plan, and to accept alternative submissions in lieu of a separate, formal recovery plan to the extent such submissions collectively satisfy the standard.

Thereafter our focus is the forward-looking, contingency planning, which we refer to as “recovery plan/recovery planning.” We propose it is better housed in ICP/ComFrame sections providing guidance on enterprise risk management as a part of or complement to other elements and criteria that address risk management, such as current guidance on ORSA (see ICP 16.15.1). Integration of recovery planning elements of CF 10.3 in revisions to ICP 16 and related ComFrame provisions would allow a better alignment of current and proposed new guidance on recovery planning.

### IAIG recovery planning should be discretionary and subject to the principle of proportionality

The value of a recovery plan is its identification, in advance, of the range of options available to an insurer to restore financial strength and viability. As such, and consistent with CF 10.3a5, a recovery plan should serve as a guide for the insurer and the supervisors for crisis preparedness and crisis management, rather than a directive to take specific recovery actions upon the occurrence of specific triggers. Since actual stress events are inherently unpredictable, management must maintain wide discretion to select and utilize the appropriate recovery tools. The process of developing such a recovery plan is in and of itself a most useful exercise in that it encourages the internal management and management/supervisory conversations as to what tools are available to react to a broad range of potential threats to the financial health of the company. What levers does

management have at its disposal? What structures are in place to support their deployment if and when required?

As such, a recovery plan should be a high-level outline of plausible actions the insurer could take in a severe stress situation. Stress events and how risks materialize in a real stress event are inherently unpredictable and therefore it is critical that the insurer retain wide discretion to implement recovery measures it considers most appropriate for a particular situation, which may or may not draw upon the options laid out in the recovery plan. The value of an extensive exercise to identify and plan for all these unpredictable events is questionable and such an exercise would pose an excessive burden on both the insurer and the supervisor.

Rather than being a prescribed requirement in ComFrame, the recovery plan as described above, should only be requested on a case-by-case basis at supervisory discretion after consideration of the nature, scale and complexity of the risks associated with the IAIG. The recovery plan should be tailor-made following consultation between the company and the group-wide supervisor, subject to the principle of proportionality.

## **Resolution**

### Leverage FSB's guidance on resolution-related matters for insurers

We believe that the IAIS should appropriately leverage what has been developed in the FSB's resolution-related work, which acknowledges the need for institution-specific resolution strategies in insurance, privileging portfolio transfers and run-off instruments for the core business of insurance. The IAIS should endorse the notion of institution-specific resolution strategies in insurance, while referring to the two resolution models ("opco" and "topco") at the extreme ends of the spectrum.

In this respect, we would point out that while FSB guidance to date has focused on guidance related to insurers that could be systemically significant or critical if they fail, all insurers can and do fail. Therefore, resolution with properly tailored requirements should cover all insurers, allowing for additional objectives, powers and considerations, subject to supervisory discretion and proportional application. Indeed, we urge against establishing separate statutory resolution regimes for IAIGs versus non-IAIGs and propose instead a common regime that provides a range of options and tools to manage a diversity of circumstances as described above.

Furthermore, a supervisor or resolution authority should only be able to utilize extreme powers (e.g., establish a bridge institution, provide continuity of essential services and functions, or temporarily stay early termination rights associated with derivatives and securities financing transactions) in the extremely unlikely event that more traditional tools would not be sufficient.

As regards resolution planning we recommend the following criteria should be included as part of the considerations for an insurance supervisor or resolution authority to determine whether a resolution plan is required or not, and if so, what degree or level of resolution planning is required:

- *the IAIG's type and level of activities as well as the companies' risk mitigation mechanisms in place plus the domestic regulators' existing rules, limitations and restrictions pertaining to these activities;*
- *an analysis of the likelihood of the IAIG's vulnerability to significant financial distress;*
- *an impact assessment of the potential failure of the IAIG; and*
- *the expected benefits and outcomes of the resolution planning requirement.*

We also strongly recommend that consideration be given to the fact that contrary to many banks, insurers fail slowly, allowing time for consideration of tools such as portfolio transfer and runoff.

The starting point for a resolution planning requirement should be a comprehensive understanding of an IAIG's activities, their potential connection to risk transmission channels, all relevant risk mitigants, including extant rules, limitations and internal risk mitigation efforts, as well as costs to the IAIG of the resolution planning.

#### Role and establishment of Crisis Management Groups (CMG) should be elaborated

The IAIS should provide guidance on when a CMG is to be formed, whom it is composed of, and what the roles and responsibilities of its members are. The resolution plan should follow the establishment of the CMG and the development of a resolution strategy.

The full spectrum of group structures including the two extreme cases of "topco" and "opco" should be recognized:

- In a "topco" approach, to the extent the group-wide supervisor and/or resolution authority in consultation with the CMG of the IAIG determine a resolution plan is necessary, a single plan covering material legal entities in the IAIG (i.e., the head of the IAIG and its material insurance subsidiaries) should be developed.
- In an "opco" approach, we believe that host supervisors and/or resolution authorities, where there is a demonstrable need, may have their own resolution plans for the IAIG's insurance legal entity in their jurisdictions following consultation with the group-wide supervisor and/or resolution authority. These local resolution plans must be established in cooperation and coordination with the group-wide supervisor and/or resolution authority to ensure that the plan is as consistent as possible with the resolution plan for the IAIG.

#### Alternative mechanisms and supervisory coordination of Policyholder Protection Schemes (PPS) should be acknowledged

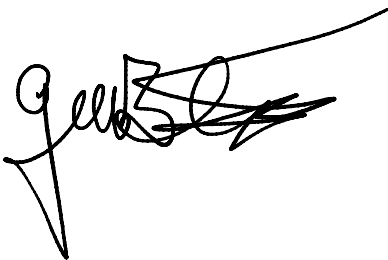
ICP 12 refers to policyholder protection schemes (PPS) in several standards and guidelines. We would like to point out that the IAIS (2013) and the OECD (2013) noted in their papers on PPS that other mechanisms, such as tied assets, play a relevant, possibly equivalent role. The existence of such alternative mechanisms should be reflected in ICP 12. We believe that ICP 12 should also capture in its language that, in the case of an IAIG, the leading resolution authority may have to coordinate with more than one PPS across various jurisdictions; i.e. while clearly valuable, PPS introduce an additional layer of complexity regarding cooperation and coordination.

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The Joint IIF/GA ICP Working Group is strongly committed to continuing the constructive dialogue and cooperation with the IAIS. Given the number of critical issues highlighted and given the interconnectedness among different ICPs and ComFrame items, we believe it is important to continue the direct dialogue with the IAIS in the on-going process of ICP/CF revisions before the 2019 adoption.

The IIF and GA stand ready to provide additional views or clarifications. Should you have any questions on the issues raised in this letter, please contact George Brady ([gbrady@iif.com](mailto:gbrady@iif.com)), Ningxin Su ([nsu@iif.com](mailto:nsu@iif.com)), Peter Skjoedt ([peter\\_skjoedt@genevaassociation.org](mailto:peter_skjoedt@genevaassociation.org)), or Dennis Noordhoek ([dennis\\_noordhoek@genevaassociation.org](mailto:dennis_noordhoek@genevaassociation.org)).

Very truly yours,

A handwritten signature in black ink, appearing to read 'George Brady', with a large, sweeping flourish extending upwards and to the right.

George Brady

A handwritten signature in black ink, appearing to read 'Anna Maria D'Hulster', with a long horizontal line extending to the right.

Anna Maria D'HULSTER