



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

Compiled Members' Comments on *Consultation on ICP 10* with resolutions

Organisation	Jurisdiction	Confidential	Answer	Resolution of comments
131 - Q131 General Comment on ICP 10				
Bank Negara Malaysia	Malaysia	No	Our comments relate specifically to Standard ICP 10.2, Standard ICP 10.3 and Guidance ICP 10.4.5. We have no comments on other portions of the ICP.	Noted.
Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	"FINMA would like to make a comment on the treatment of the financial stability objective in all ICPs and ComFrame texts: Reading through the ICPs and the ComFrame text included, the objective of financial stability seems to be treated differently. In some ICPs, it could be understood that the financial stability objective has priority over the policyholder protection objective. FINMA is of the opinion that the objective in the ICPs should stick to the one in the IAIS bye-laws where it states 'contribute to financial stability', and as also reflected in ICP introduction, paragraph 2, or maybe mention it as an additional objective aside of policyholder protection as in consultation draft ICP 12.2.1."	Noted. See also revised draft standard ICP 1.2.
133 - Q133 Comment on Introductory Guidance ICP 10.0.1				
134 - Q134 Comment on Introductory Guidance ICP 10.0.2				
135 - Q135 Comment on Introductory Guidance ICP 10.0.3				
Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	Yes	Please add: "This framework is not necessarily documented in a Single Rule Book." so it reads: "As part of the supervisory framework (see ICP9 Supervisory Review and Reporting), supervisors should consider in advance how to use preventive and corrective measures, enforcement of those measures, and the imposition of sanctions. A supervisory framework should be documented to assist in the delivery of consistent supervision over time. This framework is not necessarily documented in a Single Rule Book. It is crucial ...".	The text does not suggest that a "Single Rule Book" should, or must, be used. Adding the suggested text would increase confusion rather than clarity.

Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	According to the Directive of Solvency II the publication of reorganisation measures applies to the case in which an appeal in the home Member State is possible by parties other than the insurance undertaking itself. That is publication of a reorganisation measure is required where it affects rights of third parties (Article 271(1) of Solvency II). However, when reorganisation measures affect exclusively the rights of shareholders, members or employees of the insurance undertaking, the competent authorities determine the manner in which the affected parties are informed in accordance with relevant legislation (Article 271(4) of Solvency II). Moreover, the definition of reorganisation measures (Article 268(1)(c) of the Solvency II) covers any dedicated reorganisation measure, which affects pre-existing rights of third parties. The list of measures referred to in the definition is an exemplification. It is important to identify the holders of the rights, which are affected by the reorganisation measures and depending on that identification apply either Articles 271(1)-(3) or Article 271(4) of Solvency II.	Nothing in the guidance prevents this from happening.
136 - Q136 Comment on Introductory Guidance ICP 10.0.4				
137 - Q137 Comment on Introductory Guidance ICP 10.0.5				
138 - Q138 Comment on Introductory Guidance ICP 10.0.6				
139 - Q139 Comment on Introductory Guidance ICP 10.0.7				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	We suggest amending to "may inform" or "...should consider informing.." to permit discretion and flexibility. This is important because information disclosed to another supervisor may be limited for good reason or otherwise dictated by a memorandum of understanding and applicable legislation and regulation.	We think the presumption should be that supervisors would inform their peers of supervisory measures or of material/relevant sanctions in relation to a group entity. As this is Guidance, it is not a requirement, so if some constraint prevents the supervisor disclosing this information, that is permissible.
161 - Q161 Comment on Standard ICP 10.1				
162 - Q162 Comment on Guidance ICP 10.1.1				

163 - Q163 Comment on Guidance ICP 10.1.2
164 - Q164 Comment on Standard ICP 10.2

Bank Negara Malaysia	Malaysia	No	The current Standard ICP 10.2 requires supervisors to have tools in place to take corrective and preventive measures if an insurer "fails to operate in a manner that is inconsistent with sound business practices or regulatory requirements". We note that this requirement is now covered in the proposed Standard ICPs 10.2 and 10.3. However the proposed standards specifically remove "sound business practices" from consideration. We are of the view that an insurer should also be expected to operate in a manner which is consistent with sound business practices. This may not necessarily be read the same as being consistent with regulatory requirements. as regulatory requirements may be narrower in nature. However, if it is the intent for "regulatory requirements" mentioned in the standard to encompass sound business practices, perhaps further clarity may be given in the form of guidance.	We don't think including "sound business practices" in the Standard is appropriate, as we are not sure what the supervisor's response should be if there is no issue with compliance with regulatory requirements. The supervisor would only raise concerns, or take action, if the insurer is breaching, or heading towards breaching, a regulatory requirement. Regulatory material, including things such as guidance on best practice distributed by supervisors, should cover 'sound business practices' to the extent that this concept is relevant to the regulator's task.
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165 - Q165 Comment on Guidance ICP 10.2.1
166 - Q166 Comment on Guidance ICP 10.2.2
167 - Q167 Comment on Guidance ICP 10.2.3
168 - Q168 Comment on Guidance ICP 10.2.4
169 - Q169 Comment on Guidance ICP 10.2.5

European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	Under «other directions», that the supervisor should have the power to issue, the following additional example is proposed: «Imposing additional reporting requirements to enable improved monitoring of the insurer concerned».	This suggestion was considered during the pre-consultation and not taken up. ICP 9 covers this issue.
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170 - Q170 Comment on Guidance ICP 10.2.6
171 - Q171 Comment on Guidance ICP 10.2.7

172 - Q172 Comment on Guidance ICP 10.2.8
182 - Q182 Comment on Standard ICP 10.3

The March 2017 consultation version of ICP 10 included three paragraphs of guidance on recovery plans (10. 3.3 to 10.3.5) which are closely tied and provide a link to the ComFrame material on recovery plans, which is still under revision. To ensure this material is aligned, these paragraphs have been removed in order to be revised as part of this process. The consultation comments received on this material are being taken into account as part of this process but given this ongoing work, resolutions to these comments will also be provided later.

European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	We understand that the standard does not refer to (pre-emptive) recovery plans, but to corrective measures. Only the guideline refers to "recovery plans". Therefore, we recommend including a reference along the following lines: "The supervisor requires pre-emptive recovery plans on a proportionate way as well as corrective measures if (...)". As a preferred alternative, splitting corrective measures and preventive recovery plans into two different standards could be considered. Furthermore, it could also be considered that the guidance which suggests that supervisors may require a recovery plan to be produced is moved under standard 10.2 as being more of a preventive measure than a corrective measure. It refers to a plan to be developed in advance, even if the execution will take place when company is in trouble.	This standard on corrective measures (and the one on preventive measures) is intended to be sufficiently broad to cover a variety of measures and should not mention one particular measure. As regards recovery plans: see text above.
Bank Negara Malaysia	Malaysia	No	The current Standard ICP 10.2 requires supervisors to have tools in place to take corrective and preventive measures if an insurer "fails to operate in a manner that is inconsistent with sound business practices or regulatory requirements". We note that this requirement is now covered in the proposed Standard ICPs 10.2 and 10.3. However the proposed standards specifically remove "sound business practices" from consideration. We are of the view that an insurer should also be expected to operate in a manner which is consistent with sound business practices. This may not necessarily be read the same as being consistent with regulatory requirements. as regulatory requirements may be narrower in nature. However, if it is the intent for "regulatory	See response to comment on Q164.

			requirements" mentioned in the standard to encompass sound business practices, perhaps further clarity may be given in the form of guidance.	
183 - Q183 Comment on Guidance ICP 10.3.1				
184 - Q184 Comment on Guidance ICP 10.3.2				
185 - Q185 Comment on Guidance ICP 10.3.3				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	Firms (not supervisors) decide when to activate their recovery plans.	
European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	We propose a change along the following lines: "The supervisor may require an insurer to produce a recovery plan that identifies in advance options to restore financial strength and viability, and apply the recovery plan as a corrective measure if the insurer comes under severe stress. Recovery plans should be requested on a proportionate way, taking into account, for example complexity, systemic importance and/or different risk profile or business model compared to other insurers." Furthermore, the idea of proportionality could be further developed by adding a paragraph along the following lines: "In order to avoid excessive burdens for insurers, supervisors should be able to apply simplified obligations relating to the content and detail of the recovery plans and the frequency for updating the plans. Additionally, supervisors should have the power to waive the requirement entirely for certain insurers".	
Monetary Authority of Singapore (MAS)	Singapore	No	We do not think that an insurer which is complex or has a different risk profile, but not systemically important, should warrant recovery planning requirements. We suggest that this guidance be re-worded as: "It may be appropriate for the supervisor to require a recovery plan of an insurer that is, for example, systemically important, the failure of which can cause instability to the economy or markets."	

National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	The concept of recovery plans needs additional clarification and explanation. The expectations on when/why the supervisor would require a recovery plan are unclear - would the insurer have a recovery plan at all times (and for multiple situations) or only when needed (which would be more risk-based)? Additionally, there is potential duplication with the type of planning that insurers may do as part of risk management, in particular the ORSA process. As work on revising ICP 16 is in progress, the IAIS should consider whether the material on recovery plans is more suited to that ICP rather than being included in ICP 10 as a "done in advance" corrective measure.	
185 - Q185 Comment on Guidance ICP 10.3.3				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	Suggested edits as follows: The insurer's Senior Management should submit the recovery plan and provide information to the supervisor to enable the supervisor to assess the robustness and credibility of the recovery plan. Comment - it could be helpful to add that this review is done from a supervisory perspective (e.g., risk assessment).	
European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	We propose the following addition: "The insurer's Board and Senior Management responsible for the recovery plan. They should provide to the supervisor the necessary input to enable it to assess the robustness and credibility of the recovery plan. In case the supervisor identifies material deficiencies in the plan or impediments in its implementation, the insurer should amend the recovery plan accordingly."	
187 - Q187 Comment on Guidance ICP 10.3.5				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	Suggested edits ; Recovery plans should be reviewed and updated at least annually, or more frequently if there are material changes to the insurer's strategy, business, operations, structure or any other change that could have a material impact on the recovery plan.	
European Insurance and Occupational Pensions	EIOPA	No	ICP 10.3.3 states that supervisory authorities may request a (pre-emptive) recovery plan to any undertaking (irrespective of its nature	

Authority (EIOPA)			and size). An annual review is definitely a good practice and should probably be a requirement for systemic insurers but it seems to be disproportionate for very small insurers. For those small insurers, having a recovery plan that is reviewed every 2 to 3 years would be better than not having a recovery plan at all. The wording "regularly" instead of "annually", would allow some flexibility to supervisors.	
211 - Q211 Comment on Standard ICP 10.4				
212 - Q212 Comment on Guidance ICP 10.4.1				
213 - Q213 Comment on Guidance ICP 10.4.2				
214 - Q214 Comment on Guidance ICP 10.4.3				
215 - Q215 Comment on Guidance ICP 10.4.4				
216 - Q216 Comment on Guidance ICP 10.4.5				
Bank Negara Malaysia	Malaysia	No	We would like to highlight that this is a repetition of Standard ICP 10.5 (i.e. both address the need for the escalation of measures if concerns are not addressed by the insurer). As such, Guidance ICP 10.4.5 may not be necessary.	Agreed, deleted.
217 - Q217 Comment on Standard ICP 10.5				
218 - Q218 Comment on Guidance ICP 10.5.1				
219 - Q219 Comment on Guidance ICP 10.5.2				
220 - Q220 Comment on Guidance ICP 10.5.3				
223 - Q233 Comment on Standard ICP 10.6				
234 - Q234 Comment on Guidance ICP 10.6.1				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	wording "may need to act in conjunction with other authorities" suggests that a supervisor has direct involvement with the investigator/prosecutor. Propose more general language - i.e., "this may be the role and responsibility of other authorities."	Agree with idea. Last sentence of 10.6.1 is amended as follows: <i>It is recognised that supervisors will not always be able to take a full range of legally binding actions</i>

				<i>themselves and may need to act in conjunction with, or refer matters to, other authorities, in particular, in the case of criminal penalties.</i>
235 - Q235 Comment on Guidance ICP 10.6.2				
236 - Q236 Comment on Guidance ICP 10.6.3				
237 - Q237 Comment on Guidance ICP 10.6.4				
Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	Wording "be sufficiently punitive to dissuade the insurer, or other insurers" - Suggest deleting "be sufficiently punitive" as this introduces an additional element of subjectivity and sanctions need not be "punitive" to be effective. Also suggest deleting "or other insurers" as a sanction need not be made public to be effective, and also because what may be effective and appropriate for one insurer may not be in the case of another. As an alternative, could this clause say that the Supervisor can reflect (i) the desire to deter a specific insurer from committing a similar breach in the future, (especially on a second offence, for example; and (ii) if appropriate, to be tailored to act as a general deterrence for insurers (i.e., in the case of repeated and/or industry-wide non-compliance). How will this requirement be evaluated or measured?	Last sentence of 10.6.4 is amended as follows: <i>The sanction imposed should be sufficiently dissuasive so that the insurer, or other insurers, do not commit a similar breach in the future.</i> Do not agree with deleting "other insurers". IAIS agreed that publicity was desirable for sanctions and there are options in the guidance (10.6.10) to address situations where disclosure is not appropriate. This is guidance so it does not need to be measured or evaluated. However, if you were to assess it, it could really only be done in the negative, i.e., whether similar breaches have, in fact, been committed.
238 - Q238 Comment on Guidance ICP 10.6.5				
239 - Q239 Comment on Guidance ICP 10.6.6				
240 - Q240 Comment on Guidance ICP 10.6.7				
241 - Q241 Comment on Guidance ICP 10.6.8				
242 - Q242 Comment on Guidance ICP 10.6.9				
243 - Q243 Comment on Guidance ICP 10.6.10				