



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

Compiled Members' Comments on *Consultation on ICP 12* with resolutions

Organisation	Jurisdiction	Confidential	Answer	Resolution of comments
1 - Q1 General Comment on ICP 12 (including ComFrame text)				
1. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA welcomes this opportunity to provide comments.	Noted.
2. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Proposed definition of key term – A definition of Resolution Plan should be included.	The comment is acknowledged. Definition was added to Glossary
3. Guernsey Financial Services Commission	Guernsey	No	Thank you for the opportunity to comment on this ICP. We would question the relevance and practicality of the ICP for some regimes. Such regimes may indeed include an IAIG presence but it may not be locally systemic. Even where it is systemic, the local regulator may conclude that local policyholders are best protected by not participating in a group-wide resolution; not least as such an approach would safeguard any local policy protection scheme. This would be for example through a ring-fenced local subsidiary – or even an asset-backed branch. This does not preclude routine supervisory cross-border co-operation and information sharing. It may also be in a jurisdiction that there are no systemic insurance companies – a status that in itself reinforces financial stability. In that case the national government may reasonably conclude that it is not worth its time – and related additional cost to the industry and therefore consumers – to create and maintain a local resolution regime. The government may also legitimately take the view that a resolution regime is not commensurate with a risk/probability approach – especially for general insurers or where a government-backed policyholder protection scheme operates. The paper does not recognise that some regimes might want	Some additional language on the nature of guidance is added to the ICP Introduction, not to ICP 12, as it is applicable to all ICPs.

			to adopt some, but not all, of the requirements. For example, policyholder preference could be adopted without contingency planning. The above points are in part acknowledged in some sections of the paper – for example the Introductory Guidance and 12.7 on Powers. However, generally, there is an expectation throughout the paper that all regimes should have a fully-fledged resolution regime, especially where an IAIG is involved. Were this ICP to be adopted, an expectation would be created that all (as opposed to some) regimes need a resolution regime along the lines set out in the paper. This however is not the case. The ICP therefore risks being still-born.	
4. Bank Negara Malaysia	Malaysia	No	No comments	Noted.
4.b. (ex.9) Swiss Financial Market Supervisory Authority FINMA	Swiss Financial Market Supervisory Authority FINMA	No	FINMA would like to make a general comment, applicable to the ComFrame text of this ICP but also ComFrame texts in all other ICPs: Since the start of the ComFrame project back in 2010, several of the ICPs have considerably developed and thereby contributed to a strengthening of supervisory regimes and practices. Developments occurred especially in revised ICPs 4, 5, 7, 8, 23 and part of 25 by November 2015 as well as in the current revisions of ICPs 9, 10, 12 and 25. For instance, insurance group aspects and international cooperation in supervision have been substantially expanded in the ICPs. In our view, this positive development has led to a situation where the initial existing gaps in terms of supervisory approaches have been reduced. Consequently, we would like to bring up the question if the need to address specific requirements for IAIGs still exists, or if the gap has not already been closed with the ICP revisions. FINMA was among the initiators of ComFrame. However, taking past, current and planned future developments into consideration, we see the need to review the initial justification for the	Noted.

			introduction of an additional layer of requirements. To concentrate on one strong holistic layer of requirements (ICPs) would also address the criticism by some of the IAIGs that (1) they fear to be put on competitive disadvantage to those domestic as well as international groups which do not fulfil the IAIG criteria and that (2) an additional layer of supervisory requirements is not needed. 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.	
5. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Because of the variability and complexity of insurance markets around the world, ICP 12 should reflect that resolution regimes can provide for broad regulatory authority that envisions necessary flexibility to address problems when they arise, rather than only focusing exclusively on a prescriptive statutory framework or required explicit powers.	The comment is noted, but we believe that the current text provides adequate flexibility and do not "exclusively [focus] on a prescriptive statutory framework or required explicit powers". In particular, the powers listed under ICP 12.7.4 are listed as "guidance", which means that they are not <i>prescribed</i> but only <i>recommended</i>. At the same time, IAIS felt that too vague recommendations would not be of enough help to jurisdictions which rely on ICP 12 to implement an effective resolution framework. Current proposed drafting thus aims to achieve a reasonable compromise.
2 - Q2 Comment on Introductory Guidance ICP 12.0.1				

3 - Q3 Comment on Introductory Guidance ICP 12.0.2				
4 - Q4 Comment on Introductory Guidance ICP 12.0.3				
5 - Q5 Comment on Introductory Guidance ICP 12.0.4				
6. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	In case the resolution authority and the supervisor is one single authority, appropriate measures should be taken to ensure that resolution authorities are operationally independent.	The comment is noted and will be considered. It might be further developed in a possible application paper and optionally introduced in ICP 12 when it is next revised. P
6 - Q6 Comment on Introductory Guidance ICP 12.0.5				
7. Dirección General de Seguros y Fondos de Pensiones	Spain	No	Going to the ICP 12 the exit situation seems to be linked to a voluntary decision of the insurer. Following the previous it seems appropriate to clarify the exact meaning of the last sentence of this Introductory Guidance. We move in a field where the final decision is of the insurer yet?.	The ICP states that it could be the decision of the insurer and/or due to enforcement action by the supervisor. There doesn't seem to be a lack of clarity and it is expanded upon further in the later ICP section.
7 - Q7 Comment on Introductory Guidance ICP 12.0.6				
8 - Q8 Comment on Introductory Guidance ICP 12.0.7				
9 - Q9 Comment on Introductory Guidance ICP 12.0.8				
10 - Q10 Comment on Introductory Guidance ICP 12.0.9				
11 - Q11 Comment on Introductory Guidance ICP 12.0.10				
8. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA is of the view that protection of policyholders should be emphasized by adding a reference to a last resort: "Policyholders would absorb losses as a last resort [...]" .	IAIS has reviewed the possibility of adding "last resort" for the purpose of policyholder protection, but decided that it should not be reflected on the draft. Also, we believe the language in 12.0.11 on the liquidation claims hierarchy) sufficiently addresses your concern.
10. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Please add "and as last resort" so it reads "... Policyholders should absorb losses only after all lower ranking creditors have fully absorbed losses and as a last resort...."	See response to Comment 8.
11. Dirección General de Seguros y Fondos de Pensiones	Spain	No	In relation with this number of the Introductory Guidance a particular reference needs to be made to the Standard 12.11.	We do not see a conflict between 12.0.10 and 12.11 with respect to the absorption of losses by policyholders. 12.0.10

			In accordance with the mentioned Standard it's an option for the legislation of the particular jurisdiction to decide if the insurance liabilities may be restructured and if policyholders may absorb losses Due to the sensitivity of this issue we fully agree with the focus followed by the proposed standard. Really we don't agree with the possibility of imposing on the policyholders the "obligation" of absorbing losses. The Introductory Guidance 12.0.10 is not in concordance with the mentioned Standard 12.11 when dealing with the loss absorbing capacity of the policyholders. The possible use of this tool needs to be linked to the decision of the particular legislation "option", no to an "obligation" of the particular legislation. Some adaptation in the wording of the Introductory Guidance is necessary..	provides guidance on the circumstances under which losses may be absorbed by policyholders. It does not impose an "obligation" on policyholders to absorb losses.
12 - Q12 Comment on Introductory Guidance ICP 12.0.11				
12. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	There is a need to carefully assess the application of a recovery and resolution framework to insurers which are part of a financial conglomerate. A consistent approach should be followed to avoid conflicts or contradictions between resolution frameworks.	Noted but we need to retain jurisdictional flexibility to accommodate differences in regulatory and legal regimes.
13. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	ICP 12.0.11 states that resolution may apply to "other regulated (e.g. banks) or non-regulated entities". While its application "depend[s] on the circumstances", this guidance raises issues about the powers of the resolution authority. See NAIC comments to ComFrame Guidance 12.12a.1; suggest additional clarification here could be helpful.	Obviously, some or all of the resolution powers (e.g. the removal of the management, the appointment of an administrator, the prohibition from transferring the entity's assets) may need to be exercised on entities within the group which are not insurance entities. We do not believe it appropriate to explicitly quote some of the powers that could obviously need to be exercised on non-insurance entities. However, drafting was clarified as follows: 12.0.11. Depending on the circumstances, <u>some or all of the</u> resolution measures may be applied (...).

13 - Q13 Comment on Introductory Guidance ICP 12.0.12				
14 - Q14 Comment on ICP 12.1				
14. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	We are of the view that also in cases of voluntary exit appropriate communication should also exist with all relevant authorities that might be involved.	This is already provided, implicitly under Standard 12.5 and explicitly under Guidance 12.5.2.
15 - Q15 Comment on ICP 12.1.1				
15. Dirección General de Seguros y Fondos de Pensiones	Spain	No	No very clear the distinction made between the insurer and the owners. It's our understanding that it creates some type of unnecessary confusion. This type of decision is adopted through the insurer's general meeting.	Agree. The reference to the "owners" has been deleted.
16. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	We agree that the policy holders may not be fully protected under all circumstances and the possibility of absorption of losses by policyholders may not be excluded, however they should not face larger losses than they would have suffered in normal insolvency procedures. But still we stand on the position that allocating losses to policyholders should be used only as a last resort.	See response to comment 8.
16 - Q16 Comment on ICP 12.1.2				
17 - Q17 Comment on ICP 12.1.3				
18 - Q18 Comment on ICP 12.1.4				
19 - Q19 Comment on ICP 12.2				
17. Dirección General de Seguros y Fondos de Pensiones	Spain	No	2nd bullet. Please see previous comment in relation with Q.11. If the particular legislation decides that a loss absorbing capacity is possible in relation with policyholders. It needs to be applied in a manner that respects the hierarchy of claims that would exist if the insurer was in liquidation. Some adaptation in the wording of this Standard is necessary.	Current standard 12.10 already provides that the resolution authority exercises resolution powers in a way that respects the creditor hierarchy in liquidation.
20 - Q20 Comment on ICP 12.2.1				

18. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA would propose additional remarks: “The legislation should support the objective of protecting policyholders. This however does not mean that policyholders will be fully protected under all circumstances and does not exclude the possibility that losses be absorbed by policyholders as a last resort, to the extent they are not covered by PPSs or other mechanisms.	See response to comment 8.
19. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Please add "as a last resort" so it reads "... This however does not mean that policyholders will be fully protected under all circumstances and does not exclude the possibility that losses be absorbed by policyholders as a last resort, to the extent they are not covered by PPSs or other mechanisms...."	See response to Comment 8.
20. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	The KNF is of opinion that there are some more objectives that legislation should support, and these are financial stability, protection of public funds and ensuring continuity of critical services. We would not name these objectives additional, especially in respect to financial stability. Moreover, we would rather stand on the position that the main objective of the resolution is financial stability followed by the policyholder protection. Third objection would be protection of public funds and fourth - ensuring continuity of critical services.	ICP 12.2.1 does not exclude additional resolution objectives in the legislation – see wording “such as”. The ranking of the resolution objectives should not be dictated in the ICPs. Each jurisdiction should have the discretion to rank these objectives. Besides, many insurer resolutions do not implicate financial stability concerns. The ICPs as drafted to permit jurisdictional flexibility. No edits are needed.
21. Dirección General de Seguros y Fondos de Pensiones	Spain	No	Please see previous comment (Qs. 11 and 19 above) in relation with the reference made to the possible loss absorbing capacity of policyholders.	See responses to comments 11 and 17.
21 - Q21 Comment on ICP 12.2.2				
22. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	“... In principle, any public funding used for the resolution of the insurer should be recouped from the insurance sector...” This should be clearer. Otherwise we are also talking about the general funding of the resolution authority for instance.	Disagree, the guidance text notes that any public funding to resolve an insurer (e.g., a loan to facilitate a transfer of business) should be recouped from the insurance sector. The guidance does not refer in any way to the “general funding of the resolution authority”, which would include administrative costs of operating such an entity.

23. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	Introducing resolution framework into a jurisdiction should help to minimise the reliance on public support and at the same time encourage market discipline and limit moral hazard by providing for effective resolution measures, including a clear set of a resolution objectives.	Noted.
30 - Q30 Comment on ICP 12.3				
37. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA is of the view that authorities should have flexibility, based on expert judgement and proportionality principle, to have resolution plans in place with regard to a broader scope of companies, i.e. beyond IAIG. This also applies with regard to resolvability assessment. From that point of view, we propose to include in the ICP 12.3 the approach described in CF12.3a, stressing the issue of proportionality and expert judgement. Another alternative could be adding a new guidance 12.3.4: "12.3.4. Resolution plans should be in place (...)"	The standard 12.3 has been amended and now read as "requires, as necessary".
38. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	While there is a valid concept here, the wording of the Standard could be improved. Using "contingencies" could mean a variety of things depending on the reader and "gone-concern" is not used anywhere else in this ICP. Thus suggest rewording this standard to better describe the intended outcome: "12.3 The supervisor requires insurers to evaluate their specific operations and risks in a resolution scenario and to institute process and procedures for use during a resolution to the extent appropriate."	Standard 12.3 has been amended. However, standard 12.3 does not require the development of a resolution plan per se, that term is only introduced in ComFrame for IAIGs.
31 - Q31 Comment on ICP 12.3.1				
32 - Q32 Comment on ICP 12.3.2				
33 - Q33 Comment on ICP 12.3.3				
39. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	In line with our previous comment (Q30), authorities should have flexibility to request such plans to a broader scope of	See response to comment 37.

			companies based on expert judgement and proportionality principle.	Only IAIGs are required to have resolutions plans and only in cases where the group-wide supervisor and/or resolution authority in consultation with the crisis management group of the IAIG (IAIG CMG), deems necessary (CF 12.3a). To require solo insurers and insurance groups (other than IAIGs) to have resolutions plans might be regarded as too onerous. However, ICP 12.3 provides that the supervisor must require insurers to plan for contingencies based on their specific risk in a gone-concern situation.
40. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	Resolution plans should include the potential need for resolution funding, the sources of funding, operational and practical arrangements for ensuring continuity of coverage and payment under insurance policies and other issues relevant for insurance company having regard business type that they conduct.	The comment is not applicable to ICP and was moved after Comment 41.
61 - Q61 Comment on ICP 12.4				
62 - Q62 Comment on ICP 12.4.1				
85. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	There is no one designated resolution authority for insurers in Poland. Instead the KNF together with an administrator and a court handle the resolution of insurers, and those entities act on the general resolution framework applicable for all the entities operating in Poland. We do agree with the statement concerning the need to clearly define and coordinate mandates, roles and responsibilities of the authorities in charge of insurers resolution.	Noted.
63 - Q63 Comment on ICP 12.4.2				
86. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Wouldn't that be the resolution authority?	The institutional model may vary substantially. For example, some jurisdictions may have multiple authorities involved in the resolution of an insurer or a group. Thus, identification of a lead depending upon the circumstances of the resolution seems to be necessary.

64 - Q64 Comment on ICP 12.4.3				
65 - Q65 Comment on ICP 12.5				
66 - Q66 Comment on ICP 12.5.1				
67 - Q67 Comment on ICP 12.5.2				
87. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	When an insurer voluntary exits from the market, the process is regularly part of normal supervision and is not part of a resolution. This is even more the case, if the insurer is still solvent.	Noted.
68 - Q68 Comment on ICP 12.5.3				
69 - Q69 Comment on ICP 12.5.4				
70 - Q70 Comment on ICP 12.5.5				
71 - Q71 Comment on ICP 12.5.6				
72 - Q72 Comment on ICP 12.5.7				
73 - Q73 Comment on ICP 12.6				
87.b (ex 624) Swiss Financial Market Supervisory Authority FINMA	Swiss Financial Market Supervisory Authority FINMA	No	The list of triggers seems to be somewhat arbitrary and the application of these triggers is not necessarily clear. FINMA therefore recommends having no list, maybe only mention MCR in the flow text and then develop an Application Paper about triggers for resolution.	Disagree. The list is provided in a non-mandatory guidance (ICP 12.6.1). Besides, it is explicitly stated that the list is only indicative and not limitative.
74 - Q74 Comment on ICP 12.6.1				
88. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Hard triggers are not advisable. The key element is supervisory judgment.	Because guidance is not mandatory, triggers here provided cannot be construed as “hard triggers” but only as example. Besides, it is explicitly stated that the list is only indicative and not limitative.
89. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	It is worth adding the condition for entry into resolution which would base on the public interest. A resolution action shall be necessary in the public interest meaning that the resolution	ICP 12.6.1 provides that the criteria for determining whether resolution processes should be initiated may include, but are

			objectives could be achieved to a greater extent if the insurer is put into resolution versus the situation where it is liquidated by means of regular insolvency proceedings (the so-called public interest test).	not limited to, the matters listed. Individual jurisdictions could therefore add the “public interest” criteria if they so wish.
90. Monetary Authority of Singapore (MAS)	Singapore	No	Suggest to drop the 2nd last point since it seems to be a subset of the 3rd last point	We do not appreciate that the 2 nd last point is a subset of the 3 rd last point.
75 - Q75 Comment on ICP 12.7				
91. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA is of the view that the broader the toolkit, the better, i.e. none of the powers should in principle be restricted to specific type of insurer/group. ICP 12.7.4 should be expanded to include all the powers in CF12.7a. Authorities could then decide when and under what circumstances (e.g. proportionality) should a particular power be exercised. The unification of the list of powers available should however not be more prescriptive than the current ICP 12.7.4	The comment is noted but we do not believe that the current wording restricts any power to any specific type of insurer / group. Each jurisdiction is at liberty to make the powers provided under CF 12.7.a, applicable to insurers that are not IAIGs.
76 - Q76 Comment on ICP 12.7.1				
92. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	Please see reply to Q75.	See response to comment 91.
93. Dirección General de Seguros y Fondos de Pensiones	Spain	No	The - NCWOL- principle, where appropriate, should not be an "attempt" but a "reality". Some adaptation in the wording in the previous line should be necessary.	ICP 12.7.1 has been amended
77 - Q77 Comment on ICP 12.7.2				
94. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	ICP 12.7.2 states that “Liquidation may be incompatible with some resolution powers (e.g. stay early termination rights associated with derivatives and securities financing transactions).” Suggest finding another example as this power is not listed in 12.7.4.	ICP 12.7.2 has been amended.
78 - Q78 Comment on ICP 12.7.3				

79 - Q79 Comment on ICP 12.7.4				
94.b (former 673). Swiss Financial Market Supervisory Authority FINMA	Switzerland	No	The second bullet 'prohibit the insurer from paying variable remuneration to Senior Management' may contradict with contractual obligations. As there is uncertainty about what precedes, FINMA suggests deleting this bullet.	The comment is acknowledged. However, in a resolution context, contract certainty generally no longer exists, at least not to a full extent. It is even provided that the resolution authority can restructure liabilities towards policyholders...
80 - Q80 Comment on ICP 12.7.5				
95. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Typo – change “the types of business the insurer engage in” to “the types of business the insurer is engaged in”	Edit was implemented
81 - Q81 Comment on ICP 12.7.6				
96. Dirección General de Seguros y Fondos de Pensiones	Spain	No	In the case of decisions adopted in relation with regulated entities different from the parent . This decision should be adopted in consultation and cooperation of the resolution authority with the respective resolution authority of the regulated entity if different.	12.7.6 contemplates the case where the resolution authority does not directly resolve the insurer but appoints another person (receiver, etc.), to do so. Accordingly, when ICP 12.7.6 speaks of “another person taking the control of an insurer”, this refers to an administrator / receiver appointed to manage the insurer, not to a parent entity taking a controlling participation.
82 - Q82 Comment on ICP 12.7.7				
97. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	ICP 12.7.7 states that resolution powers should be exercised in a manner that does not discriminate between creditors on the basis of their nationality, the location of their claim, or the jurisdiction where it is payable. While a policyholder protection scheme (PPS) is described as a “mechanism”, and is not listed as a resolution power in ICP 12.7.4, there is a possibility that the prohibition against discrimination could be construed to apply to a PPS; suggest clarifying accordingly.	Do not agree clarification is needed. To do so would see the IAIS extending rules into the expected operation of the PPS. If it is the case that operation of a PPS is used as part of a resolution strategy, and is substantially a ‘resolution power’ (even if not listed in ICP12.7.4), then arguably 12.7.7 should be relevant. If the PPS is independent, then this interpretation should be able to be refuted.
83 - Q83 Comment on ICP 12.7.8				
84 - Q84 Comment on ICP 12.7.9				
85 - Q85 Comment on ICP 12.7.10				

86 - Q86 Comment on ICP 12.7.11				
98. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	In line with previous comments, we propose adding the following reference:. “Consistent with the creditor hierarchy principle, insurance liabilities should be written down as a last resort, only after equity and all liabilities that rank lower than insurance liabilities have absorbed losses, and only if the resolution authority is satisfied that policyholders are no worse off than in liquidation (after compensation, where necessary).“	See response to comment 8.
87 - Q87 Comment on ICP 12.7.12				
88 - Q88 Comment on ICP 12.7.13				
89 - Q89 Comment on ICP 12.7.14				
90 - Q90 Comment on ICP 12.7.15				
91 - Q91 Comment on ICP 12.7.16				
103 - Q103 Comment on ICP 12.8				
118. Dirección General de Seguros y Fondos de Pensiones	Spain	No	In the case of a branch of a foreign insurer the reference should be to the revocation of the authorisation, no to the liquidation. (unless in some jurisdictions).	When the branch itself is unviable or insolvent (e.g. the assets do not suffice to settle the technical provisions and there is no reasonable prospect of compliance being restored), the branch authority may decide to put the branch into liquidation. Revoking the authorization would not suffice, just as revoking the authorization of an insolvent ILE would not suffice.
104 - Q104 Comment on ICP 12.8.1				
105 - Q105 Comment on ICP 12.9				
106 - Q106 Comment on ICP 12.9.1				
119. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	The IAIS glossary defines insurance legal entity as, “a legal entity, which includes its branches, that is licensed to conduct insurance, regulated and subject to supervision.” Thus it is	While it is acknowledged that the IAIS Glossary provides that the insurance legal entity (ILE) includes its branches, when an ILE has branches in foreign jurisdiction there is a need to

			not clear why the first sentence says, "...an insurance legal entity (or branch)..." as the latter is covered in the definition of the former. Is this intended to cover "a branch of a foreign insurer in its jurisdiction" as used in 12.8 and 12.8.1? Suggest either deleting "(or branch)" or use the same wording as in 12.8 for consistency and to better convey the distinction here.	deal specifically with the scenario of a resolution, because the foreign branches may be liquidated separately from the rest of the ILE and according to the creditor hierarchy of the foreign jurisdiction not of the jurisdiction of the ILE. Accordingly, text is (minimally) amended.
107 - Q107 Comment on ICP 12.9.2				
108 - Q108 Comment on ICP 12.9.3				
109 - Q109 Comment on ICP 12.10				
120. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Suggest adding guidance under this standard that a resolution action should not deprive policyholders of protection available from a PPS, and that such protection be taken into account when a resolution authority exercises resolution powers.	Disagree, there is such a wide variation of PPS that it needs to be left to the supervisor to decide how such protections interact with the resolution actions and strategy needed in any individual case. Further discussion may be provided in a future application paper.
110 - Q110 Comment on ICP 12.10.1				
111 - Q111 Comment on ICP 12.10.2				
121. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	This guidance provides an example where two categories of creditors rank pari passu, and one is covered by a PPS while the other is not. As a PPS should only pay policy claims, and non-policy claims should not be in the same class as policy claims, the example should be clarified by referring to "policy claimants" instead of "creditors": "For instance, different types of creditors could be: two categories of policy claimants ranking pari passu where one is covered by a PPS while the other is not..."	The comment is acknowledged, but "policy claimants" is not used in IAIS terminology. Accordingly, "creditors" in the text was replaced by "policyholders".
112 - Q112 Comment on ICP 12.10.3				
113 - Q113 Comment on ICP 12.10.4				
122. Monetary Authority of Singapore (MAS)	Singapore	No	Suggest to rephrase as follows for greater clarity:	Suggested edits improve the wording and were introduced in the text.

			These options could be used provided this does not infringe the NCWOL principle. For instance, Figure 2 illustrates the insurance liabilities (ILs) of an insurance legal entity consisting of two portfolios (A and B), where the total assets amount only to 120 but the ILs of each portfolio amount to 100. Assuming that these two portfolios rank pari passu, each policyholder would receive 60% of their credit in liquidation. The resolution authority could reduce the ILs of A to 80 and the ILs of B to 70 (for instance, in the event where a sound insurer or sound insurers accepted to fund part of but not the whole shortfall). However, if the resolution authority reduces the ILs of B to 40, the resolution authority will need to provide compensation to policyholders of portfolio B (in the amount of 20) in order to meet the NCWOL principle. This simplified example does not take account of potential PPSs which could pay some claims.	
123. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	There are examples illustrating the NCWOL principle, which do not take payments by a PPS into account. As PPS protection is a significant topic in ICP 12, it would be helpful to provide guidance to illustrate how the safeguards would apply where a PPS exists.	Agree that PPSs play an important role, where available. However, to establish examples how the NCWOL principle will work with one or several PPS in place goes beyond ICP guidance. Additionally, different funding capabilities of PPSs may need to be taken into consideration. Further discussion may be provided in a future application paper.
114 - Q114 Comment on ICP 12.10.5				
124. Monetary Authority of Singapore (MAS)	Singapore	No	Suggest to rephrase as follows for greater clarity: The resolution authority could take actions which could worsen the position of some creditors. Figure 3 illustrates an example of this approach – it would be beneficial to policyholders in portfolio B to have their policies transferred, but the portfolio transfer worsens the position of policyholders in portfolio A. Policyholders in portfolio A should therefore receive appropriate compensation to ensure that they are not worse off compared to under a liquidation scenario prior to the portfolio transfer. This example does not take account of potential PPSs which could pay some claims.	Suggested edits do improve the wording and were introduced in the text, except the second part of the 1st sentence, “provided that said creditors receive compensation sufficient to meet the NCWOL”, which was maintained in the draft.

125. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	There are examples illustrating the NCWOL principle, which do not take payments by a PPS into account. As PPS protection is a significant topic in ICP 12, it would be helpful to provide guidance to illustrate how the safeguards would apply where a PPS exists. Additionally, in the hypothetical situation illustrating the “no creditor worse off than in liquidation” principle, the resolution authority departs from pari passu treatment of claims. The unequal treatment results in a creditor being worse off than in liquidation, and the creditor has a right to receive “appropriate compensation”. However, there is no discussion of how compensation would be provided. A PPS could be a source of funding for compensation, but the example states that it “does not take account of potential PPSs which could pay some claims”. Suggest clarification here would be helpful.	See response to comment 123.
115 - Q115 Comment on ICP 12.11				
126. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	In line with previous comments, we are of the opinion that policyholder protection has to be strengthened in the wording. We propose to add «as a last resort»: “Legislation provides whether insurance liabilities may be restructured and whether policyholders may absorb losses as a last resort”.	See response to Comment 8
116 - Q116 Comment on ICP 12.11.1				
127. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	The KNF does not exercise resolution powers, because the authority in charge of insurers resolution is a resolution court operating on an application of the KNF or an insurer (debtor). However policyholders are protected by the NCWOL principle. Legislation does not provide whether insurance liabilities may be restructured and whether policyholders may absorb losses	Noted.
117 - Q117 Comment on ICP 12.11.2				

128. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	Same comment as Q115. “[...] and the extent that policyholders may be forced to absorb losses as a last resort”.	See response to Comment 8.
129. Monetary Authority of Singapore (MAS)	Singapore	No	It's not clear if this provision refers to ex ante communication (i.e. to inform stakeholders that resolution regime allows for potential restructuring of insurance liabilities) or ex post communication (i.e. to inform only when the actual need to restructure has materialised).	Generally speaking, the laws are public —see also ICP 2.6— so ICP 12.11.2, implicitly but necessarily, refers to “ex-post communication”. A future application paper can further develop these issues.
118 - Q118 Comment on ICP 12.12				
130. Dirección General de Seguros y Fondos de Pensiones	Spain	No	Please explain the exacy meaning of the reference made through this Standard “.... mechanisms in place through which the head of the insurance group is able to be resolved”.	Further guidance has been provided.
119 - Q119 ICP 12.12 This Standard has been created on the grounds that the revised ICP 12 addresses not only legal entity issues but also group issues like other ICPs and resolution of insurance legal entities can be complex where they belong to a group. The IAIS acknowledges that liquidation will take place in most cases on a legal entity basis. On the other hand, there might be cases where resolution actions on one entity can impact other entities within the group (e.g. resolution of the head of the insurance group can impact insurance legal entities in the group). The IAIS acknowledges that guidance needs to be provided under this Standard to help ensure appropriate implementation of the Standard. Please provide your thoughts on what guidance can help implementation of this Standard. Concrete ideas with supporting rationale are welcome.				
131. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA may agree with the proposed standard 12.12. But, further to this, EIOPA is of the view that ICP 12 may benefit from an additional standard that addresses group issues in a wider context and not only in the case when the head of the group and an entity are located in the same jurisdiction. Naturally, any additional guidance would be welcome and would reinforce the added value of the standard.	Further guidance has been provided, however no new standard has been introduced. Although your comment is welcomed, this may be addressed at the next revision of this ICP.
133. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	We agree that guidance needs to be provided	Further guidance has been provided.
134. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	It is not clear what outcome this Standard aims to achieve or why it necessary. The ICPs use “insurer” to cover both insurance legal entities and insurance groups. Based on this	Further guidance has been provided to clarify Standard 12.12.

			approach, the other Standards of ICP 12 adequately address what “mechanisms” should be in place to resolve the head of an insurance group and guidance should be provided to describe what would be unique in a group situation (such as Guidance 12.7.14 to .16) if need be. The text of 12.12 could be made into guidance where most appropriate; otherwise it should be deleted.	
123 - Q123 Comment on ICP 12.13				
124 - Q124 Comment on ICP 12.13.1				
139. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	In Polish framework the resolution court has the authority to resolve branch of a foreign insurer located in its jurisdiction, however this authority is limited to branches of insurers with their head office in a Member State of the European Union or in an EFTA Member State.	Noted.
125 - Q125 Comment on ICP 12.13.2				
126 - Q126 Comment on ICP 12.13.3				
127 - Q127 Comment on ICP 12.13.4				
128 - Q128 Comment on Appendix				
140. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	The Appendix includes a definition of « recovery plan », which is a term not used in ICP 12. However, it does not include a definition of « resolution plan » which is widely used across the ICP and the integrated CF. A definition of « resolution plan » may be included in the glossary.	Definition was added to Glossary
141. Dirección General de Seguros y Fondos de Pensiones	Spain	No	Liquidation: please see previous comment on Q 103 in relation with the liquidation of foreign branches. Recovery plans: It seems that the reference should be to pre-emptive recovery plans. On the other hand this aspect is dealt through ICP 10.	Liquidation: see response to previous comment on Q103. Recovery plans: agree that this is dealt with under ICP 10; definition of recovery plan is deleted from the Appendix under ICP 12.