

Compiled Public Consultation Comments on draft Application Paper on Proactive Supervision of Corporate Governance

08-Nov-18 to 17-Dec-18

Organisation	Jurisdiction	Confidential	Answer	Resolution of comments
Q1 General comments on the Application Paper				
1. Association of Bermuda Insurers and Reinsurers	Bermuda	No	The Association of Bermuda Insurers and Reinsurers ("ABIR") represents the public policy interests of Bermuda's international insurers and reinsurers that protect consumers around the world. ABIR kindly thanks the International Association of Insurance Supervisors ("IAIS") for the opportunity to comment on the Draft Application Paper on the Proactive Supervision of Corporate Governance. Overall, ABIR supports the IAIS in the development of guidance for supervisors to improve the effectiveness of their supervision of Corporate Governance. ABIR commends the IAIS promotion of proportionate supervision to the issues identified using a customized approach determined by the circumstances. ABIR does however request consideration of the following recommendations.	Noted.
2. Global Federation of Insurance Associations	Global	No	GFIA appreciates the opportunity to comment on this application paper. Here are some general comments: Before, during and after the financial crisis, the vast majority of (re)insurers engaged and engage in good governance, without the need for more intrusive supervision. This paper includes increased mandates that would be costly to implement, overly intrusive and potentially even blur the line between the supervisor and the private company, to the detriment of both. While intended as guidance, there are provisions that are unclear, subjective and overly broad. GFIA asks for the addition of a feedback loop between the supervisor and the supervised company. It is our view that the quality of a company's governance is best judged by the actual past performance of the company, not its compliance with new governance reporting.	Noted.

			Unfortunately, employee turn over may reduce the supervisor's knowledge of prior performance so steps should be taken to prevent that loss of knowledge from occurring within the regulatory agency. It is uncertain as to whether the solvency regulatory staff actually have the expertise to review a compensation programme. GFIA supports references to proportionality. More focus should be provided on appropriate limitations of the use of "yellow/red flags".	
3. Institute of International Finance	Global	No	The Institute of International Finance (IIF) and its insurance members appreciate the opportunity to comment on the International Association of Insurance Supervisors's (IAIS) Draft Application Paper on Proactive Supervision of Corporate Governance (the Corporate Governance Application Paper) issued on November 8, 2018. The IIF and its members have commented on related materials, including our August 13, 2018 comments on the IAIS Draft Application Paper on the Composition and the Role of the Board, our January 31, 2018 comments on the IAIS Consultation on Revised ICPs 8, 15 and 16, and Related ComFrame material, our June 1, 2017 comments on the Consultation on ComFrame Material Integrated with ICPs 5, 7 and 8, our June 1, 2017 comments on the Consultation on ICPs 3 and 25 and ComFrame Material Integrated with ICP 25, and our May 31, 2017 comments on the Consultation on ICP Introduction and Assessment Methodology and ComFrame Introduction. We appreciate the additional opportunity to address further corporate governance issues, particularly as they relate to the role of supervisors in promoting sound corporate governance. Overarching Comments on Application Papers in General In line with previous IIF comments, we have an overarching comment regarding the objectives of an IAIS Application Paper and how those objectives would not be met by the release of an Application Paper prior to a full consultation on, and finalization of, the primary supervisory material that the Application Paper is designed to help elaborate. According to the IAIS: "Application Papers provide additional material related to one or more ICPs, ComFrame or G-SII policy measures, including actual examples or case studies	Noted.

		that help practical application of supervisory material." With a number of the ICPs and ComFrame subject to further amendment, and the Holistic Framework for Systemic Risk (Holistic Framework) under development until November 2019, the premature adoption of Application Papers relevant to these primary supervisory materials does not meet the stated objective of Application Papers (i.e. to help practical application of primary supervisory material) and risks creating inconsistencies between the primary supervisory materials and the Application Papers, which would give rise to significant confusion and differences of interpretation among members and stakeholders. Accordingly, we suggest postponing the development of additional supporting materials, including Application Papers, until the ICPs, ComFrame, the Holistic Framework, or other any other primary supervisory materials are finalized and adopted. To do otherwise simply is not a proper and efficient phasing of the work. Moreover, the Corporate Governance Application Paper sets new supervisory expectations, which is not the objective of an Application Paper. The Corporate Governance Application Paper raises supervisory expectations through the use of the word "should," which implies a limited scope of acceptable supervisory practices and exceeds the stated objective of providing "actual examples or case studies that help practical application." We believe the Application Papers would better serve the stated purpose of providing implementation examples or case studies to help the practical application of the supervisory material if the word "should" was replaced with "could" or "may." Overarching Comments on the Corporate Governance Application Paper The IIF and its members appreciate the careful consideration of our comments on the Draft Application Paper on the Composition and Role of the Board. We applaud the shift in focus away from supervisory involvement in the composition, governance and functioning of the board that was evident in that paper and the move towards a more proportional and flexible approach to corporate governance in the Corporate Governance Application Paper. We endorse the IAIS's statement in the Corporate Governance Application Paper that there is no one-size-fits-all approach to proactive supervision and that proactive supervision should be carried out proportionately to the issues identified, using an approach customized to the circumstances, including relevant supervisory objectives, laws and regulations. The	Not agreed that the adoption of the Application Paper before finalising ComFrame and the Holistic Framework will create inconsistencies between the Application Paper and the IAIS supervisory material. "Should" is commonly used across IAIS materials as an indication of guidance – not a requirement. Its use in the Application Paper indicates a good practice. This is already addressed sufficiently in paragraph 6 of the Application Paper.
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		Application Paper should state clearly that proactive supervision should be carried out in a manner that reflects the insurer's corporate structure, board structure and governance, business strategy, risk appetite and risk tolerance, and the lines of business or activities in which the insurer is engaged. However, we continue to perceive a lack of recognition in the Application Paper of different board structures and governance processes among insurers. This is a point that we have raised previously (see e.g. our August 13, 2018 letter) and we strongly believe the recognition of different board structures (e.g. a single versus a tiered board structure) and governance processes among insurers needs to be reflected in a properly balanced Corporate Governance Application Paper. A failure to recognize different board structures and governance processes runs counter to the stated goal of avoiding a one-size-fits-all approach and may also run counter to jurisdictional requirements, including those of the public company authorities. In particular, the recognition of differences in board structure and governance processes needs to be reflected in any effort to encourage peer grouping exercises that are intended to facilitate supervisory comparisons of companies and/or benchmarking (see Paragraph 22 of the Corporate Governance Application Paper), in order to avoid comparisons that fail to acknowledge the broad range of practices that are consistent with sound corporate governance and/or that practices that well suit one insurer may be inappropriate for another. Similarly, the Corporate Governance Application Paper should acknowledge that corporate culture may differ among insurers, reflecting different business models, management styles and jurisdictional norms, and that diversity in corporate cultures should not be perceived negatively by supervisors. To these points, we continue to advocate for revisions to the sections of the Corporate Governance Application Paper that direct supervisors to involve themselves in aspects of governance that are the responsibility of the insurer's board or management. Specifically, we would encourage the IAIS to preface the material in Section 1.4, Willingness to act, with language that reflects the need to balance proactive supervision with a careful consideration of whether supervisory action or intervention is warranted. This balancing language should state that corporate governance is the responsibility of the insurer's board and senior management, not the supervisor and, that absent a compelling concern that the manner in which the company is being governed is likely to lead to material and	See response to comment 18. See response to comment 17.
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		significant risk to the insurer or its policyholders, the supervisor should not intervene. Further, the Corporate Governance Application Paper should acknowledge that it is not the role of the supervisor to supersede corporate decision-making or direct the insurer about an appropriate business strategy or risk appetite. Indeed, excessive supervisory involvement in corporate governance could have a deleterious impact on board functioning, stifling active discussion and debate in favor of acquiescence to supervisory views and priorities, a result directly inapposite to what is intended. Additionally, in line with the comments we made in the Draft Application Paper on the Composition and the Role of the Board (June 2018), we would like to reiterate that proactive supervision should not be expanded to include subjective aspects of governance, including informal interpersonal relationships and aspects of individual and group psychology. The involvement of supervisors in subjective aspects of governance is not necessary to achieve supervisory objectives, exceeds the core competencies of supervisors, and involves supervisors inappropriately in corporate governance and the roles and responsibilities of the board and senior management. Specific Comments on the Corporate Governance Application Paper In addition to the overarching points noted above, we have specific concerns with several Paragraphs and Sections of the Corporate Governance Application Paper. The approach to discussing corporate governance with firms through mechanisms such as the feedback loops and support structures with special investigation or intervention units, as outlined in Paragraphs 19 and 26, would be counterproductive and would place firms in an inappropriately defensive posture vis-à-vis their supervisors, thereby impeding the necessary and appropriate dialogue between insurers and their supervisors. We recommend deletion of the final bullet in Paragraph 19. A more appropriate and balanced approach to addressing these issues is provided in the third bullet of this Paragraph, which includes as remedies for any "blind spots" dedicated corporate governance experts who can identify, and help staff address, emerging governance issues. We would recommend a corresponding deletion of the second bullet of Paragraph 26. The establishment of a formal "early warning system" outlined in Paragraphs 32 through 36 also raises concerns as it could lead to premature and unnecessary	The paper focuses on a stage of identifying and analysing the corporate governance problems. It may happen that there might be issues related to a business strategy or risk appetite that require supervisory attention. It is not clear why those aspects should be excluded from the scope of supervision. See response to comment 16. See response to comment 31.
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			supervisory action. The yellow and red flags described in the Corporate Governance Application Paper could be helpful to supervisors in designing training programs for staff and in highlighting potential sources of corporate governance concerns but the presence of a flag at an insurer should not automatically translate to supervisory action. Rather, the presence of a flag should be evaluated in light of the totality of the circumstances and the materiality of the risks posed to the insurer and its policyholders. For example, a flag may arise from the turnover of board members, senior managers or key persons in control functions but the reason for that turnover may be a realignment of the insurer's business strategies or business plan. A rigorous and literal application of the yellow and red flags is likely to result in excessively intrusive and over-zealous supervision of well managed insurers. We understand the need, as expressed in Paragraph 28, for the supervisor to have relevant and timely information to proactively identify potential corporate governance-related issues and to carry out proactive supervision. However, the Corporate Governance Application Paper would benefit from a caution against duplicative requests to insurers for meetings, supplemental reporting or other information, which is especially a concern when an insurer is part of an insurance group or has operations in multiple jurisdictions. Proactive supervisory practices should be efficient and effective (for example, through use of the supervisory college mechanism) but not overly burdensome on insurers. We appreciate the range of approaches for gathering relevant information set forth in Paragraph 30 but believe that this Paragraph should contain an explicit acknowledgement of the need to properly balance the interests of supervisors with burden on companies. In Paragraph 30, we would also point out that, in many jurisdictions, non-public information may not be obtained directly from other supervisors, but must be requested via the lead or group-wide supervisor, and there may be limitations on the ability of the lead or group-wide supervisor to share that information. We therefore propose that the IAIS amend the text of the third bullet of Paragraph 30 to include at the end of that bullet the wording, "provided and to the extent that information sharing is permissible under applicable laws and regulations." Moreover, in many jurisdictions external auditors are not at liberty to provide the supervisor with information obtained in the course of their regular assurance work. We therefore suggest that the IAIS delete the reference to external auditors in the sixth bullet of Paragraph 30 or further qualify this statement by adding at the end of the first sentence of that bullet the wording, "subject to laws	See response to comment 28. See response to comment 32.
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			and regulations governing the ability of external auditors to share information with the supervisor." The Corporate Governance Application Paper should acknowledge that supervisors have different philosophies, mandates and legislative or regulatory authority, which will impact their ability and willingness to utilize the various tools described in the paper. The IAIS should provide for flexibility in supervisors' use of supervisory tools or techniques and recognize that different aspects of corporate governance may be emphasized across IAIS member jurisdictions. In Section 1.2, we appreciate the IAIS's recommendation to supervisors to equip their staff with the appropriate analytical and technical skills needed to analyze corporate governance information from insurers and draw appropriate conclusions. We believe this section should be enhanced with an outline of the particular supervisory skills that are needed. Finally, as we have expressed in the past and noted above, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." For example, we ask the IAIS to insert the word "may" in the lead in to the bulleted text under Paragraph 19 ("Methods to remedy or minimize such blind spots may include:..."). Similarly, the first sentences of Paragraphs 14, 26 and 27 and the second sentence of Paragraph 22 should be rephrased to use the word "may" instead of "should." The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate. We appreciate the IAIS's consideration of our comments and the dialogue between the IIF and the IAIS on these important topics. We stand ready to provide further input and engage in dialogue with IAIS members to advance policy initiatives related to corporate governance.	See response to comment 13. "Should" is commonly used across IAIS materials as an indication of guidance – not a requirement. Its use in the Application Paper indicates a good practice.
4. AIA Group	Hong Kong	No	AIA is pleased to provide comments on the draft Application Paper. We look forward to the compiled comments on the consultation and participating in any further consultations or discussions. While proactive supervision may help identify issues whereby supervisors take corrective actions before such issues become material (and thereby safeguarding	Agreed. This is already addressed in the Application Paper (no need for further changes). As stated in paragraph 2 of the Application Paper, proactive

			the reputation of the industry), we suggest supervisors only take such steps as necessary (considering the nature, scale and complexity of the insurer) and that all actions should be rationally justified. The impacted insurer(s) should have an appropriate amount of opportunity to present their case to the supervisor if they have any differences with the proposed actions and a right to appeal, preferably to a party independent from the supervisor, should the impacted insurer have reason to object to such corrective actions.	supervision requires a supervisor to be forward-looking, to identify issues early, and to act quickly and constructively to address circumstances that are not yet critical but could lead to corporate governance-related problems, adverse outcomes to policyholders or to violations of local requirements or laws. At the same time, there is no one-size-fits-all approach to proactive supervision. There are different steps that supervisors may decide to take. Whichever steps are taken, proactive supervision should be carried out proportionately to the issues identified (see paragraph 6 of the Application Paper).
5. Financial Sector Conduct Authority (FSCA)	South Africa	No	In general the application paper is clear, simple and practical and the suggestions of red and yellow flags were well received by the supervisory departments within the FSCA.	Noted.
6. American Council of Life Insurers	USA	No	The American Council of Life Insurers (ACLI) and the Property Casualty Insurers Association of America (PCIAA) support the comments that were submitted by the Global Federation of Insurance Associations (GFIA). In addition, ACLI and PCIAA have additional comments with regard to Paragraphs 28 and 35 and are contained in this submission.	Noted.
Q2 General comments on Introduction				
Q3 Comment on Paragraph 1				
Q4 Comment on Paragraph 2				
Q5 Comment on Paragraph 3				
Q6 Comment on Paragraph 4				

Q7 Comment on Paragraph 5				
Q8 Comment on Paragraph 6				
7. Global Federation of Insurance Associations	Global	No	GFIA generally supports the principle of proportionality and appreciates the reference here.	Noted.
Q9 Comment on Paragraph 7				
Q10 Comment on Paragraph 8				
Q11 General comments on Section 1: Supervisory organisation, culture and processes				
8. Institute of International Finance	Global	No	The IIF and its members appreciate the careful consideration of our comments on the Draft Application Paper on the Composition and Role of the Board. We applaud the shift in focus away from supervisory involvement in the composition, governance and functioning of the board that was evident in that paper and the move towards a more proportional and flexible approach to corporate governance in the Corporate Governance Application Paper. We endorse the IAIS's statement in the Corporate Governance Application Paper that there is no one-size-fits-all approach to proactive supervision and that proactive supervision should be carried out proportionately to the issues identified, using an approach customized to the circumstances, including relevant supervisory objectives, laws and regulations. The Application Paper should state clearly that proactive supervision should be carried out in a manner that reflects the insurer's corporate structure, board structure and governance, business strategy, risk appetite and risk tolerance, and the lines of business or activities in which the insurer is engaged. However, we continue to perceive a lack of recognition in the Application Paper of different board structures and governance processes among insurers. This is a point that we have raised previously (see e.g. our August 13, 2018 letter) and we strongly believe the recognition of different board structures (e.g. a single versus a tiered board structure) and governance processes among insurers needs to be reflected in a properly balanced Corporate Governance Application Paper. A failure to recognize different board structures and governance processes runs counter to the stated goal of avoiding a one-size-fits-all approach and may also run counter to	See response to comment 3.

			jurisdictional requirements, including those of the public company authorities. In particular, the recognition of differences in board structure and governance processes needs to be reflected in any effort to encourage peer grouping exercises that are intended to facilitate supervisory comparisons of companies and/or benchmarking (see Paragraph 22 of the Corporate Governance Application Paper), in order to avoid comparisons that fail to acknowledge the broad range of practices that are consistent with sound corporate governance and/or that practices that well suit one insurer may be inappropriate for another. Similarly, the Corporate Governance Application Paper should acknowledge that corporate culture may differ among insurers, reflecting different business models, management styles and jurisdictional norms, and that diversity in corporate cultures should not be perceived negatively by supervisors. To these points, we continue to advocate for revisions to the sections of the Corporate Governance Application Paper that direct supervisors to involve themselves in aspects of governance that are the responsibility of the insurer's board or management. Specifically, we would encourage the IAIS to preface the material in Section 1.4, Willingness to act, with language that reflects the need to balance proactive supervision with a careful consideration of whether supervisory action or intervention is warranted. This balancing language should state that corporate governance is the responsibility of the insurer's board and senior management, not the supervisor and, that absent a compelling concern that the manner in which the company is being governed is likely to lead to material and significant risk to the insurer or its policyholders, the supervisor should not intervene. Further, the Corporate Governance Application Paper should acknowledge that it is not the role of the supervisor to supersede corporate decision-making or direct the insurer about an appropriate business strategy or risk appetite. Indeed, excessive supervisory involvement in corporate governance could have a deleterious impact on board functioning, stifling active discussion and debate in favor of acquiescence to supervisory views and priorities, a result directly inapposite to what is intended. Additionally, in line with the comments we made in the Draft Application Paper on the Composition and the Role of the Board (June 2018), we would like to reiterate that proactive supervision should not be expanded to include subjective aspects of governance, including informal interpersonal relationships and aspects of individual	
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			and group psychology. The involvement of supervisors in subjective aspects of governance is not necessary to achieve supervisory objectives, exceeds the core competencies of supervisors, and involves supervisors inappropriately in corporate governance and the roles and responsibilities of the board and senior management.	
9. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	While discussion in paragraphs 9-11 of "supervisory forbearance" is beneficial, equally important in applying corporate governance assessment are "professional skepticism" (not just believing whatever the company tells you) and avoiding "regulatory capture". Consider adding these concepts as they commonly lead to supervisory forbearance and would be helpful to discuss as well.	Agreed. See changes in para. 9 and 15.
Q12 Comment on Paragraph 9				
Q13 Comment on Paragraph 10				
Q14 Comment on Paragraph 11				
Q15 Comment on Paragraph 12				
Q16 Comment on Paragraph 13				
Q17 Comment on Paragraph 14				
10. Institute of International Finance	Global	No	As we have expressed in the past and noted above, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." For example, the first sentences of Paragraphs 14 should be rephrased to use the word "may" instead of "should." The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate.	"Should" is commonly used across IAIS materials as an indication of guidance – not a requirement. Its use in the Application Paper indicates a good practice.
11. Financial Sector Conduct Authority (FSCA)	South Africa	No	Statement under the second bullet in Paragraph 14: This statement presumes that there is one supervisor for these entities. In South Africa there can be a number of sector supervisors depending on the activity performed by the entity. For example, a bank may have a banking, insurance and credit provider license. There should be a concerted efforts from all supervisors to formulate one risk rating of the entity as financial and governance risks would be common to and would have the potential to	The paragraph focuses on organisation of supervision within a particular supervisor. However, cooperation with other relevant supervisors should always take

			negatively impact consumers across all those licenses. Suggested rewording "... diversity of opinions within and across the supervisors of the entity..."	place, where relevant (see also para. 29).
12. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Regular, in-depth review of corporate governance practices should be conducted regardless of financial condition as part of the normal, cyclical review/exam process. Suggest adding this as part of or as a sub-bullet to the first bullet.	Agreed to add a new sentence to para. 13.
Q18 Comment on Paragraph 15				
13. Institute of International Finance	Global	No	The Corporate Governance Application Paper should acknowledge that supervisors have different philosophies, mandates and legislative or regulatory authority, which will impact their ability and willingness to utilize the various tools described in the paper. The IAIS should provide for flexibility in supervisors' use of supervisory tools or techniques and recognize that different aspects of corporate governance may be emphasized across IAIS member jurisdictions. In Section 1.2, we appreciate the IAIS's recommendation to supervisors to equip their staff with the appropriate analytical and technical skills needed to analyze corporate governance information from insurers and draw appropriate conclusions. We believe this section should be enhanced with an outline of the particular supervisory skills that are needed.	The current wording is flexible enough to capture different possible needs in terms of particular supervisory skills.
14. Financial Sector Conduct Authority (FSCA)	South Africa	No	We agree with this, but it is also important that communication from the top down happens within a Supervisor. The high level strategic discussions are often important to the first line of defense to understand the thinking behind decisions/actions/principles etc.	Agreed. But this is already covered by para. 27. No need for change.
Q19 Comment on Paragraph 16				
Q20 Comment on Paragraph 17				
Q21 Comment on Paragraph 18				
Q22 Comment on Paragraph 19				
15. Association of Bermuda	Bermuda	No	The concept of periodic rotation of supervisors to prevent the continuous supervision of the same insurer creating a "blind spot" is supported. However,	Agreed. But this is implicit (no need for change).

Insurers and Reinsurers			supervisors should consider ensuring a certain level of continuity within the supervisory team to ensure that insurer is not unduly penalized due to the team's lack of familiarity with the entity or group's operations.	
16. Institute of International Finance	Global	No	The approach to discussing corporate governance with firms through mechanisms such as the feedback loops and support structures with special investigation or intervention units, as outlined in Paragraphs 19 and 26, would be counterproductive and would place firms in an inappropriately defensive posture vis-à-vis their supervisors, thereby impeding the necessary and appropriate dialogue between insurers and their supervisors. We recommend deletion of the final bullet in Paragraph 19. A more appropriate and balanced approach to addressing these issues is provided in the third bullet of this Paragraph, which includes as remedies for any "blind spots" dedicated corporate governance experts who can identify, and help staff address, emerging governance issues. We would recommend a corresponding deletion of the second bullet of Paragraph 26. Additionally, in line with our comments on Q17, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." For example, we ask the IAIS to insert the word "may" in the lead in to the bulleted text under Paragraph 19 ("Methods to remedy or minimize such blind spots may include:..."). The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate.	Not agreed. Feedback loops with other supervisory units (such as special investigation or intervention units) may be a useful tool in identifying corporate governance problems. "Should" is commonly used across IAIS materials as an indication of guidance – not a requirement. Its use in the Application Paper indicates a good practice.
Q23 Comment on Paragraph 20				
17. Institute of International Finance	Global	No	We continue to advocate for revisions to the sections of the Corporate Governance Application Paper that direct supervisors to involve themselves in aspects of governance that are the responsibility of the insurer's board or management. Specifically, we would encourage the IAIS to preface the material in Section 1.4, Willingness to act, with language that reflects the need to balance proactive supervision with a careful consideration of whether supervisory action or intervention is warranted. This balancing language should state that corporate governance is the responsibility of the insurer's board and senior management, not the supervisor and, that absent a compelling concern that the manner in which the	This section (and the Application Paper in general) refers to taking early supervisory steps by the staff within the supervisor, so it can be considered early enough, and an informed decision can be made whether it is necessary to take a supervisory measure towards an insurer. See additional explanation in para. 7.

			company is being governed is likely to lead to material and significant risk to the insurer or its policyholders, the supervisor should not intervene.	
Q24 Comment on Paragraph 21 (deleted)				
Q25 Comment on Paragraph 21 (previously Paragraph 22)				
18. Institute of International Finance	Global	No	In line with our general comments in Q1, we continue to perceive a lack of recognition in the Application Paper of different board structures and governance processes among insurers. This is a point that we have raised previously (see e.g. our August 13, 2018 letter) and we strongly believe the recognition of different board structures (e.g. a single versus a tiered board structure) and governance processes among insurers needs to be reflected in a properly balanced Corporate Governance Application Paper. A failure to recognize different board structures and governance processes runs counter to the stated goal of avoiding a one-size-fits-all approach and may also run counter to jurisdictional requirements, including those of the public company authorities. In particular, the recognition of differences in board structure and governance processes needs to be reflected in any effort to encourage peer grouping exercises that are intended to facilitate supervisory comparisons of companies and/or benchmarking, in order to avoid comparisons that fail to acknowledge the broad range of practices that are consistent with sound corporate governance and/or that practices that well suit one insurer may be inappropriate for another. Similarly, the Corporate Governance Application Paper should acknowledge that corporate culture may differ among insurers, reflecting different business models, management styles and jurisdictional norms, and that diversity in corporate cultures should not be perceived negatively by supervisors. Additionally, in line with our comments on Q17, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." The second sentence of Paragraph 22 should be rephrased	The Application Paper does not refer to any specific model of corporate governance, neither do relevant ICPs. This has been reflected in para. 6. Supervisory practices described in the Application Paper should be applied in consideration of a corporate governance model adopted in a particular jurisdiction. It is also not clear why recognition of different governance arrangement is necessary for the purpose of this Application Paper. The purpose of paragraph 22 is to address situations where staff are reluctant to act upon their findings or conclusions on corporate-governance related problems and escalate an issue. The objective is not to align corporate governance practices across the industry. Such differences should be taken into consideration in every case. This is already reflected for example in paragraph 6 of the Paper. "Should" is commonly used across IAIS materials as an indication of guidance – not a requirement.

			to use the word "may" instead of "should." The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate.	Its use in the Application Paper indicates a good practice.
Q26 Comment on Paragraph 22 (previously Paragraph 23)				
19. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Beyond the supervisor's senior management having an open door policy, not wanting to "manage the insurer" could be addressed more directly by having a wider range of potential actions to take when addressing a concern - for example, requesting additional information or recommending the Board take steps to address the issue. Suggest mentioning some additional steps would be helpful here.	This paragraph is related more to the internal relationship between the staff and the management team of the supervisor.
Q27 Comment on Paragraph 23 (previously Paragraph 24)				
20. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	While staff may fear repercussions if a supervisory investigation does not yield findings, it may be helpful for this paragraph to also address not holding a lack of findings against the staff member triggering the review as well as what should be done to guard against findings that are not legitimate (false positives). As the paper discusses the pressure to identify findings, it should address both sides of this issue to make it clear that staff coming up with trumped-up findings is not acceptable.	This is already covered by para. 24. No need for change.
Q28 Comment on Paragraph 24 (previously Paragraph 25)				
21. Financial Sector Conduct Authority (FSCA)	South Africa	No	Two other matters that may be considered organisational impediment for supervisors: 1. Not being adequately resourced (e.g. not having enough staff to ensure pro-active supervision). Pro-active supervision goes hand in hand with having people that are not overwhelmed by the volume of work that only reactive action can be taken; 2. Having appropriate systems that allows for good quality data also assists greatly in acting proactively	Point 1: Agreed. But the issue of resources is already addressed by ICP 2, in particular ICP 2.10. Point 2: This is addressed by para. 27, in particular 2nd bullet. No need for change.
Q29 Comment on Paragraph 25 (previously Paragraph 26)				
22. Institute of International Finance	Global	No	See our comments on Q22. The approach to discussing corporate governance with firms through mechanisms	See response to comment 16.

			such as the feedback loops and support structures with special investigation or intervention units, as outlined in Paragraphs 19 and 26, would be counterproductive and would place firms in an inappropriately defensive posture vis-à-vis their supervisors, thereby impeding the necessary and appropriate dialogue between insurers and their supervisors. We recommend deletion of the final bullet in Paragraph 19. A more appropriate and balanced approach to addressing these issues is provided in the third bullet of this Paragraph, which includes as remedies for any "blind spots" dedicated corporate governance experts who can identify, and help staff address, emerging governance issues. We would recommend a corresponding deletion of the second bullet of Paragraph 26. Additionally, in line with our comments on Q17, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." The first sentences of Paragraph 26 should be rephrased to use the word "may" instead of "should." The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate.	
Q30 Comment on Paragraph 26 (previously Paragraph 27)				
23. Association of Bermuda Insurers and Reinsurers	Bermuda	No	Supervisors should ensure the appropriate level of delegation of authority in "instituting internal processes that promote taking early supervisory steps", considering the potential impact of certain supervisory actions (e.g. SEC disclosures).	Already covered by the first bullet, but also by para. 25.
24. Institute of International Finance	Global	No	In line with our comments on Q17, we would encourage the IAIS to avoid excessive prescriptiveness in the language used in the Corporate Governance Application Paper by avoiding the use of the word "should" and instead using the word "may." The first sentences of Paragraph 27 should be rephrased to use the word "may" instead of "should." The purpose of an Application Paper is to discuss a range of good practices, which may or may not be appropriate for adoption in a particular jurisdiction, rather than to set forth an expectation or a standard and, as such, the use of the word "may" is more appropriate.	"Should" is commonly used across IAIS materials as an indication of guidance – not a requirement. Its use in the Application Paper indicates a good practice.

25. Financial Sector Conduct Authority (FSCA)	South Africa	No	In addition to the bullets under paragraph 27, it is also suggested that a specific timeline for early supervisory steps should be mapped out by the supervisor. E.g a two year period from the time that a new license is issued to conduct a "soft review" of the insurer in the first year and then a full onsite review within the second year of the license being issued. Further there should also be agreed timeline for ongoing supervisory steps. For example, if an insurer is on uninterrupted monthly reporting from a conduct or solvency perspective then there should be agreed further steps that should be taken by the regulators and at which stage.	Not agreed. Mapping out a specific timeline would be too prescriptive. It usually depends on the situation and the timelines would vary depending on the specific circumstances.
26. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	It is not clear what the second bullet is saying when it refers to different supervisory teams - suggest clarifying or deleting. The second to last bullet seems to presume that the supervisor has an internal audit function, which may not be the case for all supervisors; suggest saying: "Requesting internal audit or other forms of review focus on the escalation process within the supervisor."	The second bullet slightly redrafted to clarify the meaning. Agreed.
Q31 General comments on Section 2: Information				
Q32 Comment on Paragraph 27 (previously Paragraph 28)				
27. Global Federation of Insurance Associations	Global	No	This paragraph should be more balanced by explaining that companies do have the right to complain and even seek judicial and/or other review of regulatory demands where appropriate, but that in general supervisors should have access to relevant and material information necessary for regulation.	The first sentence has been deleted.
28. Institute of International Finance	Global	No	We understand the need, as expressed in Paragraph 28, for the supervisor to have relevant and timely information to proactively identify potential corporate governance-related issues and to carry out proactive supervision. However, the Corporate Governance Application Paper would benefit from a caution against duplicative requests to insurers for meetings, supplemental reporting or other information, which is especially a concern when an insurer is part of an insurance group or has operations in multiple jurisdictions. Proactive supervisory practices should be efficient and effective (for example, through use of the supervisory college mechanism) but not overly burdensome on insurers.	Agreed, but the Paper does not encourage supervisors to make duplicating requests or making unnecessary requests.

29. American Council of Life Insurers	USA	No	The phrase "resistance from an insurer in providing adequate information in a timely manner or" implies that this is an industry-wide problem which we do not believe is the case. Accordingly, we request that this phrase be deleted.	The first sentence has been deleted.
Q33 Comment on Paragraph 28 (previously Paragraph 29)				
Q34 Comment on Paragraph 29 (previously Paragraph 30)				
30. Association of Bermuda Insurers and Reinsurers	Bermuda	No	The paper should clarify that any communications between supervisors and external auditors should be made only with the permission of the company. Although this may be the intent of the current requirement, the text is not explicit and may suggest that any supervisory regime that does not allow for this power may be deficient.	Such permission is not necessary. This is consistent with ICPs. See ICP 7.8.5 and ICP 9.4.9.
31. Global Federation of Insurance Associations	Global	No	Proposed information sharing between regulators does not address confidentiality concerns.	This is already addressed in ICP 3 and does not have to be repeated in the Application Paper.
32. Institute of International Finance	Global	No	We appreciate the range of approaches for gathering relevant information set forth in Paragraph 30 but believe that this Paragraph should contain an explicit acknowledgement of the need to properly balance the interests of supervisors with burden on companies. In Paragraph 30, we would also point out that, in many jurisdictions, non-public information may not be obtained directly from other supervisors, but must be requested via the lead or group-wide supervisor, and there may be limitations on the ability of the lead or group-wide supervisor to share that information. We therefore propose that the IAIS amend the text of the third bullet of Paragraph 30 to include at the end of that bullet the wording, "provided and to the extent that information sharing is permissible under applicable laws and regulations." Moreover, in many jurisdictions external auditors are not at liberty to provide the supervisor with information obtained in the course of their regular assurance work. We therefore suggest that the IAIS delete the reference to external auditors in the sixth bullet of Paragraph 30 or further qualify this statement by adding at the end of the first sentence of that bullet the wording, "subject to laws and regulations governing the ability of external auditors to share information with the supervisor."	The Application Paper is addressed to supervisors, which should always act in accordance with the laws and regulations of their jurisdiction (the Application Paper does not suggest otherwise).

33. Financial Sector Conduct Authority (FSCA)	South Africa	No	In addition to the 3rd bullet under paragraph 30 that deals with obtaining information from other supervisors, consideration should be given to adding obtaining trends analysis done through various ombudsman systems. If an effective ombud system is in place, the volume of complaints can be dealt with and adjudicated by the relevant ombudsmen. If the Ombudsmen report trends analyses to the supervisor, the supervisor can focus on identifying measures that need to be implemented to mitigate the risks to consumers.	Agreed. References to trends and to an ombudsman have been added.
Q35 Comment on Paragraph 30 (previously Paragraph 31)				
34. Global Federation of Insurance Associations	Global	No	The third bullet is too broad in scope in that it suggests that the supervisor, not the company and the market, should determine whether the Board and Senior Management exercise adequate oversight of the insurer's business practices.	The content of the third bullet in line with ICP 7 Corporate Governance (see in particular ICP 7.2 and 7.10).
35. Financial Sector Conduct Authority (FSCA)	South Africa	No	Regarding the 1st bullet under paragraph 30, there is a suggestion that examples can be provided from various jurisdictions on how corporate culture is evaluated by the supervisors: For example, in South Africa from a conduct perspective we test for consistency in messaging across the areas of the insurer; We test how the insurer deals with complaints to determine the process is client centric; We assess whether the insurer constantly finds opportunities to obtain feedback from its consumers and uses this feedback to help improve its product design and distribution; We also sample the governance meeting minutes to determine whether client needs are central to the decision-making process of the insurer.	Agreed, but this is beyond the scope of the Application Paper. No need for change.
36. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	The bullets under this paragraph bring up some good considerations, but their value is limited if there are no possible answers to these questions provided. Consider outlining some procedures that could be performed to help the supervisor assess the insurer's practices in these areas. For example, meetings and interviews with senior management and board members on a regular basis, reviewing board and committee meeting minutes and materials, reviewing the insurer's written policies and procedures, etc.	This is already covered by the first bullet of para. 30. No need for change.
Q36 General comments on Section 3: Yellow and red flags				

37. AIA Group	Hong Kong	No	It is important to stress that yellow and red flags do not necessarily mean that there is a problem. Any action taken by a supervisor on an insurer should be rationally justified with appropriate evidence that a problem with an insurer exists and made in accordance with applicable laws and regulations.	Para. 33 has been reworded to reflect this point. This is also already reflected in the wording of paragraphs 33 and 34, according to which: – The supervisor's response to a yellow or red flag should take into account all available information and be determined on a case-by-case basis; – Identification of a yellow or red flag may indicate a broader corporate governance-related issue and the supervisor should endeavour to identify and assess the underlying issue.
Q37 Comment on Paragraph 31 (previously Paragraph 32)				
38. Institute of International Finance	Global	No	The establishment of a formal "early warning system" outlined in Paragraphs 32 through 36 also raises concerns as it could lead to premature and unnecessary supervisory action. The yellow and red flags described in the Corporate Governance Application Paper could be helpful to supervisors in designing training programs for staff and in highlighting potential sources of corporate governance concerns but the presence of a flag at an insurer should not automatically translate to supervisory action. Rather, the presence of a flag should be evaluated in light of the totality of the circumstances and the materiality of the risks posed to the insurer and its policyholders. For example, a flag may arise from the turnover of board members, senior managers or key persons in control functions but the reason for that turnover may be a realignment of the insurer's business strategies or business plan. A rigorous and literal application of the yellow and red flags is likely to result in excessively intrusive and over-zealous supervision of well managed insurers.	See response to comment 37.
Q38 Comment on Paragraph 32 (previously Paragraph 33)				
Q39 Comment on Paragraph 33 (previously Paragraph 34)				

Q40 Comment on Paragraph 34 (previously Paragraph 35)				
39. Association of Bermuda Insurers and Reinsurers	Bermuda	No	ABIR recommends the phrase "may indicate" be softened to ensure that supervisors do not rely on the non-exhaustive yellow and red flag list as an automatic indicator of deficiencies on a company's governance structure.	Paragraph 33 has been amended to reflect this point.
40. Global Federation of Insurance Associations	Global	No	Many of the sub points are unclear or are overly intrusive, as indicated by the following examples: Under Policies and procedures: What disciplinary actions are intended under the third and fourth policies? What is meant by inadequate response to disciplinary actions? What is the meaning of the next to the last policy and procedure that relates to the "information flow within the insurer" and are supervisors really qualified to determine the sufficiency of that flow? What lack of cooperation with supervisors is intended as a flag—and in whose opinion and based on what standard of reasonableness? Under Board committees: The supervisor should not be given the authority to determine composition of committees. Under Control functions: It is totally unclear as to what "adequately resourced" means. GFIA takes the view that this entire section needs to be redrafted to avoid overly broad, intrusive and subjective elements.	Not agreed. Some of the wording seems to be clear enough, e.g. disciplinary actions. In other cases, the wording is flexible to allow supervisors to accommodate particular flags to specificities of, or regulatory requirements applicable in, a particular jurisdiction. Supervisors should apply suggested yellow and red flags as needed and relevant, considering the above-mentioned factors. As regards "adequately resourced", please see ICP 8.3 and relevant guidance (ICP 8.3.13 – 8.3.15).
41. Financial Sector Conduct Authority (FSCA)	South Africa	No	Suggestion to under Yellow and Red flags, specifically under "Control functions", to add that a lack of effective reporting lines by the control functions can also be considered a flag. Under "Other indicators", under the bullet relating to "Undue interference of an owner or another person in the insurer's operations" an example can be provided of where there has been practical instances where the reinsurers have undue influence over the claims decisions of insurers. This could be an indicator either that the insurer lacks the necessary expertise or that the fair treatment of customers is not central to the insurer's culture.	Agreed. Addressed in a new bullet. Agreed. An example added to this bullet.

42. American Council of Life Insurers	USA	No	The first sub-bullet under "Board, Senior Management and Key Persons in Control Functions" relates to the "necessary suitability" of such individuals. It should be noted that in certain jurisdictions, supervisors do not have, nor should they be given, the authority to determine the suitability of such individuals. We suggest that such a notation be added to this sub-bullet.	This bullet reflects the requirements as provided for in ICP 5.
43. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Under Board, Senior Management and Key Persons in Control Functions: - 6th bullet, it is unclear what is meant by "The Board or Senior Management do not use available information when making decisions." Does this mean they are not aware of the information, they are ignoring it, they are rejecting it, all of the above? - 11th bullet, for readability and consistency, suggest: "Failure to escalate issues to Senior Management and/or the Board." Under Control functions, fifth bullet, an "s" should be added on to "internal audit" to make it plural. Under Other Indicators, second bullet, suggest deleting "or supervisors" and add a new bullet: "Findings and ongoing investigations of other supervisors and/or jurisdictions".	Agreed. As regards the phrase "and supervisors", it has been kept. Recurring findings observed by the supervisor on relatively minor issues may be an indicator of more serious problems.
Q41 Comment on Paragraph 35 (previously Paragraph 36)				
44. Institute of International Finance	Global	No	See our comments on Q37. The establishment of a formal "early warning system" outlined in Paragraphs 32 through 36 also raises concerns as it could lead to premature and unnecessary supervisory action. The yellow and red flags described in the Corporate Governance Application Paper could be helpful to supervisors in designing training programs for staff and in highlighting potential sources of corporate governance concerns but the presence of a flag at an insurer should not automatically translate to supervisory action. Rather, the presence of a flag should be evaluated in light of the totality of the circumstances and the materiality of the risks posed to the insurer and its policyholders. For example, a flag may arise from the turnover of board members, senior managers or key persons in control functions but the reason for that turnover may be a realignment of the insurer's business strategies or business plan. A rigorous and literal application of the yellow and red flags is likely to result in excessively intrusive and over-zealous supervision of well managed insurers.	See response to comment 37.
Q42 General comments on Section 4: Communication				

45. Association of Bermuda Insurers and Reinsurers	Bermuda	No	ABIR supports the IAIS in its recommendation that supervisors are transparent with insurers and the public regarding the objectives, strategy of supervision, and principles underlying their supervisory approach, in that this better understanding could facilitate the insurer providing more relevant information to the supervisor.	Noted.
46. Financial Sector Conduct Authority (FSCA)	South Africa	No	We note that this section predominantly relates to communication by supervisors to the industry. It should be noted that communication to the general public is also of importance. Consumer education empowers consumers to know what their rights are. This will allow consumers approach the Supervisors sooner should the insurer's actions be lacking. Investigations into concerns can then happen earlier rather than later.	Agreed. But this is already addressed in paragraph 36.
47. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	While communication with insurers and the wider public is important, there are times when findings/concerns would be communicated to the insurer on a confidential basis. Thus in addition to the public communications discussed, it may be helpful to add text somewhere in this section to recognize the role of confidential communication between the supervisor and the insurer as a beneficial tool to use in addressing corporate governance concerns.	Agreed. But this is addressed already in other parts of this Application Paper. There is no need to highlight this issue in this section.
Q43 Comment on Paragraph 36 (previously Paragraph 37)				
Q44 Comment on Paragraph 37 (previously Paragraph 38)				
Q45 Comment on Paragraph 38 (previously Paragraph 39)				
Q46 General comments on Section 5: Conclusions				
Q47 Comment on Paragraph 39 (previously Paragraph 40)				
Q48 Comment on Paragraph 40 (previously Paragraph 41)				
Q49 Comment on Paragraph 41 (previously Paragraph 42)				
48. Global Federation of Insurance Associations	Global	No	GFIA is generally in accord with this paragraph.	Noted.