INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS

Insurance Core Principles, Standards, Guidance and Assessment Methodology

Draft Revised ICP 6 (Change of Control and Portfolio Transfers) for public consultation

29 June 2018

ICP 6 Change of Control and Portfolio Transfers

The supervisor assesses and decides on proposals:

- **to acquire significant ownership of, or an interest in, an insurer that results in a person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer; and**
- **for portfolio transfers.**

Introductory Guidance

6.0.1 The supervision of change of control and portfolio transfers supports supervisory objectives, in particular:

- licensing regimes are not undermined by control being obtained or retained by those who would not get a licence ordinarily; and
- insurers should continue to be held in corporate or other arrangements that allow them to be effectively supervised.

6.0.2 To assist in understanding the content of this ICP, it is emphasised that:

- change of control extends beyond the immediate controlling interest, such as the ownership of equity in an insurer, and includes other actions that have the potential to change the exercise of control over the insurer;
- change of control may take place in a variety of forms, such as mergers, acquisitions or (de)mutualisations;
- control includes the exercise of influence over decisions including, but not limited to, decisions on strategic, operating, investing, and financing policies of an insurer. It may also include the power to appoint or remove members, or otherwise influence the composition of, the Board or of Board committees;
- control may be exercised by a person individually, or acting in concert with associates or others, and directly or indirectly through corporate structures or other mechanisms; and
- significant owners and the transactions that determine or change control may be outside of a jurisdiction, but the impact on the ultimate control of the insurer in that jurisdiction means that they remain relevant to effective supervision of control.

6.0.3 Supervisory requirements and practices regarding change of control and portfolio transfers may vary, taking into account the nature, scale and complexity of the transactions and the risk posed to achievement of supervisory objectives. For example, portfolio transfers between reinsurers, internal restructuring transactions within a group that does not change the ultimate beneficial ownership of the entity, and demutualisation, are different types of transactions. Their nature may warrant different supervisory approaches and/or different levels of intensity of supervision.

6.0.4 Change of control is relevant, both at the insurance legal entity and intermediate and ultimate beneficial owner levels.

Change of Control

6.1 Legislation addresses change of control of insurers, including:

- **having a definition of control; and**
- **oversight and enforcement of requirements related to change of control.**

6.1.1 The definition of "control" should address, at least:

- holding of a defined number or percentage of issued shares or financial instruments above a designated threshold in an insurer or its intermediate or ultimate beneficial owner or the head of the insurance group or head of the financial conglomerate as may be the case; and/or
- having a defined percentage of voting rights attached to shares or financial instruments.

6.1.2 Financial instruments other than shares that should be of interest to the supervisor are those that have the potential to impact the levels of control over an insurer including those that may convert in the future into an interest that leads to a change of control through that conversion.

6.1.3 The definition of a threshold for control is not necessarily the same as the definition that may apply for accounting consolidation or other purposes.

6.2 The supervisor requires the insurer to provide notification of a proposed change of control of the insurer. The supervisor assesses and decides on proposals for change of control.

Notification

6.2.1 The supervisor should require notification of proposals that would lead to increased or decreased control.

6.2.2 The supervisor should establish thresholds for notification. The supervisor may thereby improve transparency and compliance with related requirements while avoiding immaterial notifications. Established thresholds typically range between 5 and 10 percent for initial notification of acquiring control, and a higher percentage for approval and for increased control also requiring approval.

6.2.3 The supervisor may also want to review notifications made to other authorities such as corporate law supervisors or under rules for publicly traded companies.

6.2.4 Notifications should be submitted to the supervisor in a reasonable time. Changes that arise because of actions of the insurer should be subject to advance notification. Actions of others are usually made "subject to" relevant approvals so are not effective until approved.

Assessment

6.2.5 The supervisor should assess both actions that lead to new controlling interests and those that lead to material increases in existing controlling interests. Material increases may arise, for example, when existing significant owners increase their interest, when associates increase their interest, or when a significant owner acquires a new associate who has a plan to acquire an interest (directly or indirectly) in the insurer.

6.2.6 The supervisor should obtain the information necessary to assess the change of control. The supervisor may seek such information from the insurer, its significant owners, shareholders or other relevant persons. The information required should be proportionate to the complexity of the change of control. Regardless, the supervisor should have sufficient information to understand the impact of the change of control on the insurer and be able to identify the ultimate beneficial owner.

6.2.7 When considering whether to approve a change of control that leads to a new significant owner, the supervisor should check that the approval would not lead to a control arrangement that would not have been approved as part of the jurisdiction's licensing requirements in similar circumstances (see ICP 4 Licensing).

6.2.8 The supervisor should assess whether new significant owners are suitable to fulfil their roles (see ICP 5 Suitability of Persons).

6.2.9 The supervisor should deny a change of control when, for example, it would be prejudicial to the interests of policyholders, the ability to supervise the insurer would be compromised, or the ultimate beneficial owner cannot be identified.

Cross-border considerations

6.2.10 There may be cases where a change of control, and the intermediate or ultimate beneficial owner(s) of an insurer, is (are) outside the jurisdiction where the insurer is incorporated. In such cases, the supervisor should coordinate and exchange information with the corresponding supervisors of those entities and in jurisdictions where the potential new significant owners are domiciled (see ICP 3 Information Exchange and Confidentiality Requirements and ICP 25 Supervisory Cooperation and Coordination).

(De)Mutualisation

6.3 A change of a mutual company to a stock company, or vice versa, is subject to the supervisor's approval.

6.3.1 In jurisdictions where mutual ownership of insurers is possible, legislation should provide a process for mutual insurers to demutualise at their own discretion or if directed to do so by the supervisor.

6.3.2 The process for (de)mutualisation may vary by jurisdiction. For example, the ultimate approval may be provided by authorities other than the supervisor, such as courts or votes of member policyholders. Regardless, the supervisor should be consulted and should have the right to object to a (de)mutualisation..

6.3.3 In assessing a (de)mutualisation, the supervisor should consider the impact on the financial condition of the insurer and the ongoing expectations of policyholders, including those that will continue as participating policyholders. The supervisor should also assess whether the new governing organisational document of the company adequately protects current and future policyholders.

Portfolio Transfer

6.4 The supervisor assesses and decides on the transfer of all or a part of an insurer's business taking into account at least the financial condition of the transferee and the transferor and whether the interests of the policyholders of both the transferee and transferor will be protected.

6.4.1 Insurance policies are legal contracts between an insurer and its policyholders. As such, an insurer should not be able unilaterally to alter the terms of a contract by merging with another insurer, (de)mutualising, or transferring some of its policy liabilities to another insurer.

6.4.2 In order to safeguard the financial condition of the insurers involved and to protect the interests of policyholders, legislation should restrict the ability of insurers to transfer their policy liabilities. Policyholders' benefit expectations and existing policy values should not normally be lessened as a result of liability transfer. When assessing a transfer, the supervisor should consider the impact on the transferring policyholders, as well as on those that are not transferring, and those that are current policyholders of the company to which the policyholders are being transferred. This should apply whether the transfer involves a single policy or a portfolio, or the transaction is considered a part of normal business, a merger or part of a resolution where the insurer is no longer viable (see ICP 12 Exit from the Market and Resolution).

SUGGESTED ADDITION TO THE IAIS GLOSSARY

Control: The ability to exercise significant influence over an insurer by the holding of either:

- more than a defined percentage of shares or financial instruments in the insurer or the insurer's holding company, where relevant; or
- a right to exercise more than a defined percentage of voting rights in either the insurer or the insurer's holding company, where relevant; or
- such amount of shares, financial instruments or voting power in the insurer or the insurer's holding company, where relevant, to be able to exercise significant influence over the management of the insurer.