INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS

Resolution of Consultation Comments on Draft Revised ICP 6 (Change of Control and Portfolio Transfers)

29-Jun-18 to 29-Aug-18

Organisation	Jurisdiction	Confidential	Answer	Resolution of comments
Q1 General Comment on ICP 6				
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 proposed revisions to ICP 6. The proposed revisions are not significantly different from the current ICP 6 but have provided better structure to the guidance supporting the standard.	Noted.
2. Insurance Europe	Europe	No	Insurance Europe sees value in the restructure of the ICP and its guidance and welcomes the opportunity to comment on this revised ICP. Insurance Europe has assumed that the replacement of the word "approval" with "decision" indicates that supervisors may decide that in particular cases - eg due to proportionality considerations - an approval/rejection over a change in control or portfolio transfer (after the respective notification and assessment) may not be necessary. The clarification of this flexibility in ICP 6 is appreciated.	This change was made to have more neutral wording and to allow for possibility of declining (a change of control will not always be approved).
3. Global Federation of Insurance Associations	Global	No	GFIA welcomes the opportunity to comment on this revised ICP. GFIA has assumed that replacing the word "approval" with "decision" indicates that supervisors may decide that in particular cases - e.g. due to proportionality considerations - an approval/rejection over a change in control or portfolio transfer (after the respective notification and assessment) may not be necessary. The clarification of this flexibility in ICP 6 is appreciated.	See response to comment 2.
4. AIA Group	Hong Kong	No	AIA is pleased to provide comments on the draft ICP6. We look forward to the compiled comments on the consultation and participating in any further consultations or discussions.	Noted.
5. International Insurance Foundation	International	No	This draft is generally clear and to the point. However, since changes in control can have major implications for business strategy, risk management, corporate governance, and solvency, more elaboration would be appropriate.	Additional guidance was added to provide more elaboration than the previous version.
6. ICMIF	UK	No	Part of the benefit of mutual ownership could be seen at an industry level. Mutual and cooperative insurers bring diversity and soundness to an industry structure that	Disagree, this is not within the scope of this ICP.

			would otherwise be, as is the case in some jurisdictions, totally dominated by listed companies. Mutual and cooperative insurers provide checks and balances for pricing for cover, diversity of thinking and contribution to industry matters etc. The ultimate objective of mutual/cooperative insurers is to deliver benefits to member-policyholders as opposed to maximising returns for an investing community. We are therefore suggesting the sentence below for consideration : "The supervisor or equivalent government appointed body should consider the diversification of legal structures such as mutuals, cooperatives, etc., for the overall health of the insurance sector.'	
7. Cincinnati Insurance Company	United States of America	No	The IAIS is seeking feedback on revised ICP 6, "Change of Control and Portfolio Transfers," through public consultation. As we have stated many times in similar sets of consultation comments, our company does not believe that the world needs a set of Insurance Core Principles (ICPs) and objects to the program under which the International Monetary Fund (IMF) grades the U.S. insurance regulatory system on its compliance with the ICPs. The core principles upon which the U.S. insurance regulatory system is premised have functioned perfectly for over 150 years and do not need an overhaul by the International Association of Insurance Supervisors (IAIS) or by its ostensible parent organization, the Financial Stability Board (FSB). Therefore, we object to ICP 6, and the promulgation of any proposed revisions thereto. There is no need for the IAIS to promulgate an international insurance code on change of control and portfolio transfers, or to otherwise claim authority to regulate change of control and portfolio transfers. The U.S. and other regulatory regimes are capable of regulating change of control and portfolio transfers on their own without interference by the IAIS. Given the substance of this comment, we see no need to answer Q2 through Q28.	Noted.
Q2 Comment on Introductory Guidance ICP 6.0.1				
8. AIA Group	Hong Kong	No	We ask for clarification on the meaning of words "would not get a licence ordinarily" under paragraph 6.0.1. Reading ICP6, it would seem that paragraphs 6.2.5 to 6.2.9 set out the proposed criteria under which an assessment of new significant owners would be made. We suggest a link be made between paragraphs 6.01 and 6.2.5 to 6.2.9 and as such, would it be more clear to say "would not get a licence ordinarily if required under the criteria for assessment in paragraphs 6.2.5 to 6.2.9"?	This is introductory guidance, which is elaborated further in 6.2.7, which includes a cross-reference to ICP 4 Licencing.
9. Monetary Authority of Singapore (MAS)	Singapore	No	It is not clear why the supervisory objective "policyholders´ interests are not prejudiced" is removed. Safeguarding policyholder interests are part of the mandate	A jurisdiction may have a variety of objectives for supervision – this is addressed in ICP 1.

			of many insurance supervisors, and we recommend that this objective be re-inserted.	
Q3 Comment on Introductory Guidance ICP 6.0.2				
10. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Third bullet, delete comma after "investing".	Change made.
Q4 Comment on Introductory Guidance ICP 6.0.3				
11. Insurance Europe	Europe	No	Insurance Europe fully supports and highly appreciates the specific introduction of the principle of proportionality here and throughout the guidance added to ICP 6. The examples listed for scenarios that may warrant a different approach are accurate and could be extended to include cross-border portfolio transfers (vs portfolio transfers between entities supervised by the same supervisor).	Moved 6.2.10 to introductory guidance and expanded to cover cross-border change of control and portfolio transfer.
12. Global Federation of Insurance Associations	Global	No	GFIA fully supports and highly appreciates the specific introduction of the principle of proportionality here and throughout the guidance added to ICP 6. The examples listed for scenarios that may warrant a different approach are accurate and could be extended to include cross-border portfolio transfers (vs portfolio transfers between entities supervised by the same supervisor).	See response to comment 11.
13. AIA Group	Hong Kong	No	We appreciate the specific insertion of the principle of proportionality into this ICP.	Noted.
14. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	We support the language on proportionality in this guidance and elsewhere in ICP 6.	Noted.
Q5 Comment on Introductory Guidance ICP 6.0.4				
15. AIA Group	Hong Kong	No	We suggest that supervisors recognise that internal restructurings may occur within insurance groups from time to time and in these circumstances if the ultimate beneficial control in the insurance legal entity does not change, such requirements	This is covered in 6.0.3.

			should not necessarily automatically trigger approval requirements at any level other than the change at the local insurance legal entity level.	
Q6 Comment on Standard ICP 6.1				
16. Insurance Europe	Europe	No	It is noted that the definition of control is explicitly left to national jurisdictions under the proposed new ICP 6.1, with some minimum criteria to be considered under 6.1.1. At the same time, the IAIS does proposed a new definition to be added to the IAIS glossary. Insurance Europe understands that IAIS members will not be bound by the definition proposed in the glossary in establishing their own definition.	Correct, the definition in the Glossary is high-level to provide understanding of the concept for the ICPs. The definition that a jurisdiction's legislation should provide (e.g. reference to a defined number or percentage, a designated threshold, etc.) would be more specific.
17. Global Federation of Insurance Associations	Global	No	It is noted that the definition of control is explicitly left to national jurisdictions under the proposed new ICP 6.1, with some minimum criteria to be considered under 6.1.1.	Correct.
18. Institute of International Finance	Global	No	The suggested definition includes the broader concept of "financial instruments" that could lead to additional filings under 6.2.1 and 6.2.5. We would like to recommend that "financial instruments" be limited to more specific types of securities that actually lead to control.	6.1.2 makes it sufficiently clear how we use the term "financial instruments".
Q7 Comment on Guidance ICP 6.1.1				
Q8 Comment on Guidance ICP 6.1.2				
19. Institute of International Finance	Global	No	We would like to point out that as long as the acutal conversion is subject to change of control requirements, issuance of instruments that could convert to ownershop, such as warrants should not be of concern to supervisors.	The supervisor may have an interest in potential future changes in control.
20. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Add a comma after "insurer".	Change made.

Q9 Comment on Guidance ICP 6.1.3				
Q10 Comment on Standard ICP 6.2				
21. Institute of International Finance	Global	No	We would just note that in practice, we've observed that some jurisdictions have rules that allow a transaction to happen but reserve the right to review (not only pre-closing but) post-closing and force an unwind if the review results are against the new owner. Bermuda (BMA) requires post-closing notification for certain changes of control (where the acquirer is a public company). The pre-closing clearance is required if the new owner is a private entity. BMA has the right to object post-closing after reviewing the new owner, so in most cases the parties seek prior clearance from the BMA even though, legally, only a post-closing notice is required.	Noted, this is discussed in 6.2.4 and 6.0.3.
Q11 Comment on Guidance ICP 6.2.1				
22. Institute of International Finance	Global	No	It is unclear why approval should be provided in the event of an increase of control, or what a "proposal" means in this context. To avoid any ambiguity, we recommend that "proposal" be defined to refer to one that has been approved by the Board of Directors or other governing body of the constituent companies.	6.2 makes it clear that the notification comes from the insurer.
Q12 Comment on Guidance ICP 6.2.2				
23. Insurance Europe	Europe	No	A 5% threshold triggering notification requirements appears to be lower than the standards established in many jurisdictions. To Insurance Europe's understanding, the threshold would usually start at 10% to avoid supervisors having to deal with a significant amount of notifications about acquisitions that may not be relevant to achieve sufficient oversight.	Revised to clarify that these are examples.
24. Global Federation of Insurance Associations	Global	No	A 5% threshold triggering notification requirements appears to be lower than the standards established in many jurisdictions. To GFIA's understanding, the threshold would usually start at 10% to avoid supervisors having to deal with a significant amount of notifications about acquisitions that may not be relevant to achieve sufficient oversight.	See response to comment 23.
25. Institute of International Finance	Global	No	The language suggests that the range of threshold for notification start with 5%. In our opinion, 5% is too low, and we recommend starting the range at 10%.	See response to comment 23.

26. AIA Group	Hong Kong	No	In the Asian jurisdictions in which we operate, the notification to an insurance regulator of the acquisition of a 5 percent controlling interest in an insurer is not common.	See response to comment 23.
27. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	For better readability, suggest revising the start of the second sentence to: "Such thresholds may improve transparency…"	Change made.
Q13 Comment on Guidance ICP 6.2.3				
28. Association of Bermuda Insurers and Reinsurers	Bermuda	No	If the intention of this section is to suggest a supervisor receive notifications for information purposes, the text should be clarified to make this clear. As it is currently written, it could be misinterpreted to suggest that supervisors should perform a review/approval that depending upon the outcome could impede the natural course of business.	Agreed; revised to better reflect intention.
Q14 Comment on Guidance ICP 6.2.4				
29. General Insurance Association of Japan	Japan	No	ICP6.2.2 refers to "thresholds for notification". We would like to have confirmation that these thresholds will also apply to "notification" referred to in this guidance.	Correct. This paragraph focuses on the timing of notifications.
Q15 Comment on Guidance ICP 6.2.5				
Q16 Comment on Guidance ICP 6.2.6				
30. Global Federation of Insurance Associations	Global	No	GFIA supports the provision relating to proportionality.	Noted.
31. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Third sentence, for consistency, change "information required" to "information obtained".	Change made.

Q17 Comment on Guidance ICP 6.2.7				
32. International Insurance Foundation	International	No	Stronger emphasis needed here. As a minimum, replace "check" with "verify." Then an additional sentence of explanation would be useful.	Agreed to switch wording.
Q18 Comment on Guidance ICP 6.2.8				
33. Global Federation of Insurance Associations	Global	No	Suitability should be objectively and narrowly defined. In some jurisdictions, it is essentially limited to proper rather than fit and proper.	Noted.
34. International Insurance Foundation	International	No	As with ICP 6.2.7, this point needs stronger emphasis, and perhaps more explanation to reinforce it.	Additional text added.
Q19 Comment on Guidance ICP 6.2.9				
35. Global Federation of Insurance Associations	Global	No	GFIA is concerned about the subjective nature of the grounds for denial of change of control. For example, the mere fact that some supervisors may not have the ability to supervise a complex organization (while others might) should not be a ground for denial, especially if it is in the interest of policyholders.	Revised to address comments.
36. Institute of International Finance	Global	No	The text is unclear whether it is referring to the ability of the specific supervisor to supervise or whether it is referring to the ability of any supervisor to supervise. We would like to recommend clarifying the language using the latter formulation.	See response to comment 35.
37. AIA Group	Hong Kong	No	Rather than having a requirement to straight out deny a change of control if such a change: (a) is prejudicial to the interests of policyholders, (b) the ability to supervise the insurer would be comprised or (c) the ultimate beneficial owner cannot be identified, we suggest that these only be circumstances to consider denying a change of control. It is preferable that refusing a change in control be at the an option of the supervisor as on balance there could be reasons in favour of approving the change of control (e.g. supervisors not having the ability to supervise a complex organisation should not in itself be a ground of denial).	See revised text. These are described as examples; also these are seen as minimum requirements that may provide ground for denying a proposed change of control.
Q20 Comment on Guidance ICP 6.2.10				

38. Institute of International Finance	Global	No	It is unclear whether the reference to ICP 3 would entitle Change of Control notifications to confidential treatment. We recommend that ICP 6 be revised to explicitly note that commercially sensitive or proprietary information should be given confidential treatment under any change of control legislation, to the extent such information is not already exempted from disclosure.	Noted (this is dealt with in ICP 3).
Q21 Comment on Standard ICP 6.3				
Q22 Comment on Guidance ICP 6.3.1				
Q23 Comment on Guidance ICP 6.3.2				
39. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Delete extra period at the end of the paragraph.	Change made.
Q24 Comment on Guidance ICP 6.3.3				
40. ICMIF	UK	No	We would like to suggest adding this sentence.: "the supervisor could consider appointing an independent person to represent the views of the existing members within a demutualisation environment.'	Not necessary to include. 6.3.2 says that the process may vary.
Q25 Comment on Standard ICP 6.4				
41. Insurance Europe	Europe	No	Insurance Europe would encourage the IAIS to consider international portfolio transfers between regulated entities/branches in its review of this ICP. Effective and consistently implemented regulatory conditions for portfolio transfers across IAIS membership jurisdictions could help ensure more fluid insurance markets and could be conducive to recovery and resolution measures.	Moved 6.2.10 to introductory guidance to cover cross-border change of control and portfolio transfer.
42. Global Federation of Insurance Associations	Global	No	The assumption should be that a transfer is acceptable, unless certain conditions exist, such as it is not in the interests of policyholders.	The role of the supervisor is to assess and decide on whether the transfer is acceptable.
43. Institute of International Finance	Global	No	For portfolio transfers between and among regulated entities and branches, it is important that the ICPs acknowledges explicitly that all conditions are met in all	See response to comment 41.

			relevant jurisdictions to promote smooth M&A activity in the sector and to support effective recovery and resolution measures.	
44. AIA Group	Hong Kong	No	In some jurisdictions, the legislation provides that it is the local court and not the supervisor that has the authority to approve a portfolio transfer. Therefore, we suggest the language in paragraph 6.4 be flexible in this regard (i.e. not requiring the supervisor to decide if under legislation it has no such authority). However, we agree that if relevant the supervisor should have the opportunity to express their views on whether the interests of the policyholders will be protected on the portfolio transfer.	Added language similar to 6.3.2.
45. ICMIF	UK	No	We would like to suggest adding this sentence : In jurisdictions where mutual ownership is possible, the supervisors should have a process to support (re)mutualisations.	Assumed this relates to 6.3. As a similar sentence is already in 6.3.1, no change deemed necessary.
Q26 Comment on Guidance ICP 6.4.1				
46. Global Federation of Insurance Associations	Global	No	This paragraph is overly broad. For example, while an insurer should not be able to unilaterally change the terms of coverage under a contract in mid-term, it does have that right at renewal, regardless of cause, and the policyholder has the right to renew or not to renew.	Disagree, the sentence clearly only refers to “alter the terms” by merging, (de)mutualisating or transferring. This is in not in any way related to other instances of altering terms.
47. Institute of International Finance	Global	No	item 6.4.1 indicates that, in effecting a portfolio transfer, an insurer should not be able to "unilaterally alter the terms of a contract by merging with another insurer, (de) mutualizing, or transferring some of its policy liabilities to another insurer." It's unclear precisely what "unilaterally alter" means here. We would therefore suggest that the IAIS clarify 6.4.1 to expressly provide that, so long as the rights of the policyholder are protected by legal process (in either a regulatory or a judicial context), then such transfer shall be deemed to be appropriate. In addition, the wording "or transferring some of its policy liabilities to another insurer" is vague, and would cover reinsurance or similar transactions where the insurer technically retains front-end risk to be policyholder, but has ceded the financial risk to someone else. We suggest the ICP language to be tightened to avoid ambiguity.	See response to comment 46. Clarified wording.
Q27 Comment on Guidance ICP 6.4.2				

48. Insurance Europe	Europe	No	Insurance Europe does not object to supervisory approval of portfolio transfers in general. In most cases, portfolio transfers are subject to national contract law allowing for such changes as well as supervisory approval. Further restrictions by legislation do therefore appear not to be necessary and the sentence should not encourage such. The following sentence in 6.4.2 should be clarified: "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." In the last sentence of this Guidance, it appears that IAIS considers the transfer of a single policy should suffice to trigger a full supervisory approval process. Insurance Europe questions whether this would be efficient.	The sentence does not encourage further restrictions; the legislation referred to may include contract law. Clarified that there should be conditions, not necessarily restrictions on the ability. Clarified as this is covered by the Glossary definition of "portfolio transfer", which may be one or more policies.
49. Global Federation of Insurance Associations	Global	No	In most cases, portfolio transfers are subject to national contract law allowing for such changes as well as supervisory approval. Further restrictions by legislation do therefore appear not to be necessary and the sentence should not encourage such. The following sentence should be clarified: "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." In the last sentence of this Guidance, it appears that IAIS considers the transfer of a single policy should suffice to trigger a full supervisory approval process. GFIA questions whether this would be efficient.	See response to comment 48.
50. Institute of International Finance	Global	No	The language here refers to " a single policy" when discussing the assessment of a transfer. We believe the ICPs, as a high-level set of principles, would not be effective if it recommends the validation prosses for the transfer of a single policy. A materiality threshold should be in place for the assessment.	See response to comment 48.

51. Monetary Authority of Singapore (MAS)	Singapore	No	ICP 6.4.2 states that "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." Legislation to restrict transfer of policy liabilities are more intended to protect the interest of policyholders. Conversely, an insurer's financial condition could also improve (and hence duly safeguarded) after the transfer of policy liabilities. We propose to amend the drafting of ICP 6.4.2 as follows: "Legislation should be put in place to restrict the ability of insurers to transfer their policy liabilities. The supervisor should take into account the interests of policyholders, and financial conditions of the transferor and transferee before and after the transfer, to ensure that these are not adversely affected by the transfer. Specifically, 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)."	Revisions made to better clarify this guidance. Some of the suggested text is already covered by the standard itself.
52. American Insurance Association	USA	No	Proposed Section 6.4.2 states legislation should restrict the ability of insurers to transfer their policy liabilities. The section states a "supervisor should consider the impact of transfers 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." The section continues "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." AIA has no problem with the intent of this proposed section to require regulatory supervision of transfers of all or a part of an insurer's business to another insurer. However, the use of the phrase that supervision is necessary if "the transfer involves a single policy" is alarming. Sometimes an insurer may move a policy from one insurer to an affiliated insurer under common control for any number of reasons–such as, the insurer learns new information that the policyholder merits a better premium available under the rate filings of the affiliated reinsurer. Certainly there should not be regulatory supervision of such transfers of a single policy between an insurer and an affiliated insurer under	See response to comment 48.

			common control. AIA recommends that the section be modified to delete the reference to transfers of a single policy. The suggested modified section could read: "This should apply whether the transfer involves [REMOVE: 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." Alternatively, new language could be added to section 6.4.2 explicitly clarifying that regulatory supervision need not be required to approve simple transfers of single policies by an insurer to an affiliated insurer under common control where such single policy transfers relate to some new underwriting or policyholder information."	
Q28 Comment on definition of Control				
53. Institute of International Finance	Global	No	We recommend that the third bullet be clarified so that, rather than referencing "significant influence", it reference "the ability to direct or cause the direction of management". "Significant influence" is subjective and undefined, whereas the suggested replacement language would offer a more objective standard. Additionally, as mentioned in Q6, we would like to recommend that "financial instruments" be limited to more specific types of securities that actually lead to control.	Disagree, significant influence is defined in the Glossary. See response to comment 18.