

**INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS**



**SUPERVISORY STANDARD ON THE
EXCHANGE OF INFORMATION**

January 2002

Supervisory Standard on the Exchange of Information

The purpose of this standard is to bring together for insurance supervisors in one document the conditions that should apply to the exchange of information. It draws on the G7 Ten Key Principles on Information Sharing; the G7 Ten Key Principles for the Improvement of International Cooperation Regarding Financial Crime and Regulatory Abuse; the Joint Forum's Principles for Supervisory Information Sharing; and the existing IAIS material on this issue, notably in the Core Principles and Insurance Concordat.

The standard applies particularly where restricted or confidential information is involved, recognising the principle that all insurance supervisors should be subject to professional secrecy constraints.¹ In many jurisdictions a considerable amount of valuable information is already in the public domain and can readily be passed on through informal exchanges. Initial contacts over the telephone, or through e-mail, can often be the most effective way of handling specific information requirements as they arise.

Contents

1. Preamble.....	3
2. Standard to be Applied	4
2.1 The legal framework.....	4
2.2 Types of information covered	5
2.3 Decisions on sharing information	6
2.4 Formal agreements and written requests.....	6
2.5 Reciprocity requirements	7
2.6 Confidentiality	7
2.7 Financial crime.....	8

1. Preamble

1. An efficient and regular exchange of information between supervisory bodies, both within the insurance sector and across financial services sectors, is becoming increasingly critical to the effective supervision of internationally active insurers, insurance groups and financial conglomerates.

2. The development of complex groups and financial conglomerates, in particular, will make it more and more difficult for insurance supervisors to rely exclusively on the solo supervision of legal entities within their jurisdictions. The extent of intra-group transactions, and a concern to monitor risk concentrations within a group or conglomerate, will require more regular communications with other supervisors. The desire of supervisors in other sectors to supplement their supervision of individual entities forming part of a financial conglomerate through an assessment of the financial health of the conglomerate as a whole will increase the

¹ The Insurance Core Principles include a general duty of professional secrecy.

demands on insurance supervisors to provide information to their banking and securities equivalents both within and outside their own jurisdiction.

3. The increasing use of the internet by insurers and intermediaries is another factor creating pressure for extended and improved communications between financial sector supervisors. Internet sites can be accessed globally, and without the exchange of information and cooperation between supervisors it will prove difficult to regulate the activities of companies offering products through this medium. Supervisors will not have the same unilateral ability to protect consumers in their market. The internet will also widen the opportunities for fraudulent operators to sell bogus insurance, although on the positive side it provides the capacity for supervisors to exchange information in a more efficient and speedy manner.²

4. The broad principle that insurance supervisory authorities should have the capability to exchange information with each other in order to facilitate the effective supervision of insurance companies, and to help combat insurance fraud, is widely accepted. Yet the current reality would seem to be that there is little systematic information exchange between supervisory authorities in the insurance sector, or with the supervisors in other financial services sectors. Cultural factors such as the traditional reliance on solo supervision, and different legal approaches to professional secrecy/freedom of information, have restricted the development of information flows.

5. The IAIS's commitment to seek improvements in the exchange of information is longstanding. The Exchange of Information Subcommittee was one of the first to be established, and as early as the Association's Second Annual Conference in St Louis in 1995 a number of members signed an Undertaking to provide assistance on a reciprocal basis to other signatories to an IAIS Recommendation Concerning Mutual Assistance, Cooperation and Sharing of Information. The Association also approved a Model Memorandum of Understanding on mutual assistance and the exchange of information in 1997.³

2. Standard to be Applied

2.1 The legal framework

6. An insurance supervisory authority should have statutory power or legal authority, at its sole discretion and subject to appropriate safeguards, to share relevant supervisory information that it has obtained in the course of its own activities with:

- a. other insurance supervisory authorities within the jurisdiction;

² When considering exchanging information over the internet, insurance supervisors should remember that this is not a secure medium. See also Principles on the Supervision of Insurance Activities on the Internet.

³ The primary objective of a Memorandum of Understanding is to facilitate the exchange of information between jurisdictions, but it can also be helpful in a domestic context in demonstrating the commitment to cooperation. Industry and public confidence in the way that a supervisory authority conducts its business may be enhanced if a formal structure for the exchange of information exists.

- b. the insurance supervisory authorities in other jurisdictions;
- c. the supervisory authorities responsible for banks and other credit institutions both within the jurisdiction and in other jurisdictions;
- d. the supervisory authorities responsible for investments, securities and financial markets both within the jurisdiction and in other jurisdictions; and
- e. the relevant law enforcement agencies within the jurisdiction in cases that further supervisory purposes or where financial crime, money laundering or fraud is suspected.

7. The statutory power or legal authority should permit the exchange of supervisory information both when it is in the direct interest of the insurance supervisory authority to do so, and when the insurance supervisory authority is reasonably requested to provide relevant information by one of the authorities referred to in paragraph 6a.-e. above.

8. A statutory power should provide, with appropriate safeguards, for an insurance supervisory authority to be able to gather from supervised entities information sought by one of the authorities referred to in paragraphs 6a.-d. above, or otherwise provide assistance. In the absence of specific statutory authority, a supervisor should not be prevented from gathering information or providing assistance.

9. Any existing laws that prohibit the exchange of supervisory information, without appropriate provisions permitting exchanges with the authorities referred to in 6a.-e. above, should be removed from the statute book at the earliest opportunity. Laws or procedures that unnecessarily impede the exchange of supervisory information should be amended.

2.2 Types of information covered

10. The ability to exchange supervisory information should cover, but not be limited to:
- a. the management and information systems and controls operated by insurers and reinsurers;
 - b. the financial condition of an insurer or reinsurer;
 - c. objective⁴ information on individuals holding positions of responsibility in insurers or reinsurers (to include owners, shareholders, directors, managers, employees or contractors);
 - d. objective⁵ information on individuals, insurers or reinsurers involved, or suspected of being involved, in criminal activities; and
 - e. information on regulatory investigations and reviews, and on any restrictions imposed on the business activities of insurers or reinsurers.

^{4,5} 'Objective' information is normally regarded as information that can be demonstrated to be true, for example that an individual has been publicly charged with a particular offence or found guilty by a Court of law. It would not cover hearsay or conjecture.

2.3 Decisions on sharing information

11. The decision on whether or not to share information in any particular case rests with the insurance supervisory authority concerned. In considering whether to accept or decline a request for information, the authority will in particular take account of:

- a. the ability of the recipient authority to maintain the confidentiality of any information exchanged, taking account of the legal arrangements in each jurisdiction (see paragraphs 18-19 below);
- b. the use to which the information will be put;
- c. relevant laws and regulations in their jurisdiction; and
- d. the nature of the information to be exchanged.

12. The primary purpose of exchanging information is to address material supervisory issues. Insurance supervisory authorities will seek to respond positively to appropriate requests for information taking into account any resource constraints.⁶ The recipient supervisory authority should advise the authority that provided the information of any subsequent action taken on the basis of the information received.

2.4 Formal agreements and written requests

13. The insurance supervisory authority should have the ability to enter into an agreement or understanding with any other supervisor, both in other jurisdictions and in other sectors of the financial services industry, to share information or otherwise work together. Such an agreement or understanding may set out the types of information to be exchanged, as well as the basis on which information obtained by the insurance supervisory authority may be shared. The IAIS Model Memorandum of Understanding provides some guidance on some of the elements that an optimal information sharing agreement might include.⁷

14. Formal agreements are particularly valuable where there is a need to provide a basis for a continuing relationship between the supervisors in two jurisdictions, or between supervisors responsible for different financial sectors.⁸ However, whilst information sharing agreements can be used to establish a framework among supervisors to facilitate the efficient execution of requests for information, the existence of such an arrangement should not be a prerequisite for information sharing.

15. Whilst formal requests for information should be in writing from a verifiable source, insurance supervisory authorities should not insist on written requests in an emergency

⁶ Where language difficulties arise, and in the absence of any specific agreement between the parties concerned, the cost of translating any information exchanged will generally fall to the authority requesting the information.

⁷ The Model Memorandum of Understanding covers a number of issues in some detail. These include the general principles to be applied, scope, requests for information and assistance, procedures for taking testimony (where applicable), permissible uses and confidentiality, and consultations between the parties.

⁸ For example, a formal agreement between two (or more) supervisory authorities may be considered in order to facilitate the supervision of a major group or conglomerate.

situation where the supervisor is known to them. The expectation is that oral requests will be confirmed in writing, but the absence of written confirmation should not delay a response where such a response would otherwise be appropriate. To facilitate the exchange of information, insurance supervisory authorities may wish to consider nominating an individual to act as their main contact point.

2.5 Reciprocity requirements

16. Information sharing agreements should allow for the two-way flow of information, but strict reciprocity in terms of the level, format and detailed characteristics of the information exchanged should not be required. Similarly reciprocity should not be a strict precondition for the exchange of information where no information sharing agreement is in place.

17. It is accepted that the principle of reciprocity may be a consideration in a decision on whether or not to comply with a specific request. However, the lack of reciprocity should not be used by an insurance supervisory authority as the only reason for not exchanging information that it would otherwise be appropriate to share in an emergency or other serious situation. In that case any information will be taken as strictly confidential.

2.6 Confidentiality

18. The insurance supervisory authority is required to keep confidential any confidential information received from other supervisors or law enforcement agencies, except where constrained by law or in situations where the supervisor or law enforcement agency who provided the information, or the subject of the information, provides authorisation for its release. In the event that an insurance supervisory authority is legally compelled to disclose confidential information it has received from another authority, the supervisor should promptly notify the authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding the release.

19. Freedom of information provisions should not override the confidentiality requirements applying to the insurance supervisory authority in respect of information received from other supervisors or law enforcement agencies where confidentiality is necessary for sound regulatory practice or effective communications with the other supervisor or agency.

20. With the exception of confidentiality requirements, an insurance supervisory authority should not seek to limit unduly the use of information provided by it for supervisory purposes. Depending on the legal arrangements in the jurisdiction, such supervisory purposes may include the use of the information in connection with administrative or civil proceedings or criminal cases in which the authority is involved.

21. In cases that further supervisory purposes, the insurance supervisory authority should generally be willing to permit information provided by it to be passed on to other supervisory or law enforcement agencies in the jurisdiction of the recipient that meet equivalent confidentiality requirements. Prior to passing on the information, the initial recipient in the

jurisdiction should consult and seek the agreement of the supervisor that originated the information, who may attach conditions to its release.

22. Jurisdictions where information received by the insurance supervisory authority from another supervisor or law enforcement agency cannot be kept confidential are urged to review their requirements.

2.7 Financial crime

23. Where an insurance supervisory authority identifies suspected financial crime activity – including fraud – in supervised insurers or reinsurers, they should ensure that the information is shared with the relevant law enforcement agency in their jurisdiction. The law enforcement agency should be able to use the information for the full range of its responsibilities subject to any necessary limitations established at the outset.

24. The law enforcement agency should be subject to legal requirements so that it is bound to maintain the confidentiality of any restricted information provided to it by the insurance supervisory authority. The law enforcement agency should normally only pass on the information to other law enforcement agencies with the consent of the insurance supervisory authority, and subject to any confidentiality requirements.