

IAIS Revised ICPs and ComFrame Material - Draft NAIC Comments

Introduction and Assessment Methodology

Section/Paragraph	Comment
Para 34	While the first sentence makes it clear that assessment should be based “solely on legislation and other supervisory requirements and practices that are in place at the time,” the rest of the paragraph seems to focus more on legislation and its role and says little more about other supervisory requirements and practices. Suggest adding more about how these other things can demonstrate observance.
Para 37	As this round of revisions is intended in part to make the ICPs more outcomes focused, the description of what qualifies as “observed” seems overly focused on having the authority to do something, rather than actually doing it, as well as whether there is legislation. Suggest revising what is ‘observed’ to: “Observed – to be considered observed it is necessary that the supervisor demonstrate how it has the legal authority and/or supervisory practices to effectively perform the requirements of the Standard. Having legislation without supervisory practices to implement a Standard is insufficient to be considered observed, except for those Standards that are specifically focused on legislation itself and what it contains. For supervisory practices which may lack explicit legal authority, the assessment may be considered as observed if the practice is clearly substantiated by the supervisor and is generally accepted by stakeholders. Having the necessary resources is essential for the supervisor to implement Standards effectively.”

ComFrame material under ICPs 5, 7 and 8

Section/Paragraph	Comment
General Comment on ComFrame material integrated with ICP 7	While we agree that general principles and expectations outlined in the ComFrame material under ICP 7 for corporate governance should be applicable to the Head of the IAIG, we are concerned that some of the standards and guidance come across as a prescriptive, one size fits all approach that requires the Head of the IAIG to perform specific oversight responsibilities for <i>all</i> of its insurance legal entities. In our experience, insurance groups can also be effectively governed under decentralized approaches, whereby significant oversight responsibility is delegated to legal entity and/or other intermediate holding company levels. Under such a decentralized model, material issues or concerns are still communicated to the Head of the IAIG through an escalation process, but such a structure allows the concepts of proportionality and materiality to be more effectively implemented at a local level. In addition, such an approach can allow the Head of the IAIG to focus on more substantive group-wide issues, as opposed to utilizing its time to address legal entity issues that may not affect the overall group. While ICP 7 and recent IAIS issue and application papers recognize the variety of governance approaches insurance groups may have, this does not come across in some of the ComFrame material which seems to assume a centralized approach for all IAIGs. Suggest making the ComFrame material more balanced.
Standard CF7.0a	It does not seem reasonable to expect the IAIG to present the information necessary to sufficiently understand the legal/management structures and inter-relationships of the group within a single written outline. Therefore, we don't agree with the supervisor requiring a specific document in this area for purposes of identifying and managing risks. Instead, the standard should be revised to require the Head of the IAIG to have such an understanding and to demonstrate such an understanding at the request of the group-wide supervisor. Guidance could then suggest ways that such an understanding could be demonstrated, which may include the submission of written documentation, participation in supervisory college sessions or conducting other in-person meetings with the group-wide supervisor.

Guidance CF7.0b	While we agree that the group-wide supervisor should require the Head of the IAIG to ensure that an appropriate governance framework is in place to address the structure, business and risks that are significant/material to the IAIG, we feel that it should be the local supervisor's responsibility to ensure that a sufficient governance framework is in place to address the needs of each insurance legal entity. The group-wide supervisor should not have responsibility for reviewing the governance in place at each legal entity, with the exception of those legal entities that are domiciled in the group-wide supervisor's jurisdiction. Otherwise, supervisory review processes and responsibilities can become duplicative and ineffective. Suggest adjusting CF7.0b and its guidance to clarify expectations in this area.
Standard CF7.2a	In general, we feel that responsibility for ensuring that local laws and regulations are complied with should rest with the local boards and legal entity supervisors as opposed to the IAIG Board and the group-wide supervisor. However, we do recognize that major compliance issues and conflicting objectives between a legal entity and the group can impact the overall condition of the group. Therefore, we recommend that this standard be revised to clarify expectations in this area, as well as incorporate considerations related to proportionality and materiality (i.e. use of key or significant entities/jurisdictions when referring to group-wide supervisor responsibilities).
Standard CF7.3a	It does not seem reasonable to require IAIG Board members to have a full understanding of the business of ALL legal entities of the IAIG, including their associated risks. Suggest materiality considerations be incorporated into this standard.
Guidance CF7.3a.1	Same comment as on CF7.3a -- this guidance should include recognition of materiality considerations.
Guidance CF7.9a.1	This guidance should incorporate considerations related to the materiality of individual legal entities.
General Comment on ComFrame material integrated with ICP 8	Similar to our general comments on the ComFrame material under ICP 7, we are concerned that ComFrame material under ICP 8 is too prescriptive and would not allow for decentralized approaches in risk management and internal controls. Responsibility for certain control functions and risk management processes can be delegated to local business units and/or legal entities without compromising the overall effectiveness of the group function. Guidance should be developed that would allow the Head of the IAIG to delegate certain responsibilities to local business units and/or legal entities, as long as an effective overall framework is in place to identify and address issues that should be escalated to the Head of the IAIG for remediation. Such an approach would allow the group-wide supervisor and the local supervisor to have separate and distinct roles in assessment and to avoid duplication in monitoring efforts. In addition, such an approach would further encourage supervisor communication across jurisdictions and leverage the use of supervisory college sessions that are currently taking place to facilitate this type of communication.
Standard CF8.1a	The Head of the IAIG should be able to delegate responsibility for certain elements of risk management functions to local business units or legal entities. For example, the Head of the IAIG should not be required to ensure that the function covers compliance with all laws and regulations of the jurisdictions where the IAIG operates. Suggest revising this standard to allow additional flexibility in delegating responsibilities and recognizing materiality considerations.
Guidance CF8.1a.1	The risk management function at the Head of the IAIG may not need to be fully integrated with that of a legal entity, as long as there is some level of collaboration and communication to ensure that the functions do not conflict and that material risk exposures are communicated to the Head of the IAIG. Suggest developing additional guidance in this area to recognize that different approaches may be appropriate in this regard.
Guidance CF8.1a.2	It may not be efficient and appropriate to require the Head of the IAIG to ensure that a full risk assessment is carried out before ANY new business lines and/or products are introduced at a legal entity level. Suggest adding some language related to materiality in this guidance.
Standard CF8.2a	It does not seem necessary to require the Head of the IAIG to ensure that the internal controls at the group-wide level cover

	issues that would typically be the responsibility of local business units or legal entities, unless they are clearly relevant and material to the entire group. Suggest revising this standard to allow additional flexibility in delegating responsibilities and recognizing materiality considerations.
Standard CF8.2b	It is not clear what is meant by requiring the Head of the IAIG to assess annually that the internal control systems at both the group-wide and legal entity levels are coherent, complete and effective. Does the IAIG to assess whether the functions are effective on an annual basis or to attest to the fact that they are effective (or both)? Depending upon the expectations here, this could be a significant undertaking for the group and its legal entities, depending upon how it is interpreted and implemented. Suggest additional clarification in this regard, as well as consideration as to whether certain areas may be assessed on a rotational basis, as opposed to annually. Additionally, the Head of the IAIG should be able to delegate responsibility for certain elements of internal control systems to local business units or legal entities that are in a better position to test and review those functions. Under this approach, material issues or concerns could still be required to be communicated to the Head of the IAIG through a defined escalation process.
Standard CF8.4a	The Head of the IAIG should be able to delegate responsibility for certain elements of risk management functions to local business units or legal entities. For example, the Head of the IAIG should not be required to monitor all risk management activities and mechanisms employed at the legal entity level or to conduct a full assessment of risks at that level. Suggest revising this standard to allow additional flexibility in delegating responsibilities and recognizing materiality considerations.
Standard CF8.5a	It does not seem necessary for the Head of the IAIG to monitor ALL compliance mechanisms and activities across all levels of the company. In addition, it is not clear what would be included in a group-wide compliance plan as regulatory compliance varies extensively across jurisdictions. Suggest revising this standard to allow additional flexibility in delegating responsibilities and recognizing materiality considerations.
Standard CF8.6a	Given that not all jurisdictions require direct actuarial involvement in the calculation of regulatory capital requirements (particularly when using a standard model/formula), the language in the second bullet may require revision.

Revised ICPs 9 and 10

Section/Paragraph	Comment
Guidance ICP 9.1.6	The NAIC is concerned about the use of the word “appropriateness” in the lead into each of the bulleted items. The supervisor’s responsibility is to assess the risk associated with these items and collectively include that in its assessment of the insurer. The supervisor would engage with the insurer about what they are doing to address risks created where these items are not effective relative to its nature, scale and complexity. However, including whether these are appropriate suggests something more subjective and could suggest putting the supervisor in the role of management – suggest this read, “...evaluate the effectiveness of at least...”
Guidance ICP 9.1.7	The NAIC is concerned about the inclusion of the word “adequacy” in this text. Suggest it be deleted leaving “...assess the soundness of the insurer’s...”, which is more consistent with the supervisor’s responsibility to assess the risk associated with these items and then engaging in a conversation with the insurer to determine how they are addressing the risk.
Guidance ICP 9.1.8	ICP 9 is about ongoing supervisory review and reporting. The insurer’s failure should only be considered if the risks are sufficiently high to suggest insolvency may occur. Otherwise, this seems to suggest that the framework for ongoing supervision should expect to take control of an insurer as opposed to taking actions that are more risk-based to prevent

	insolvency. Suggest deleting this paragraph; issues regarding resolution are covered adequately elsewhere, such as ICP 12.
Guidance ICP 9.1.9	This paragraph should be modified to make it clear that the frequency and depth of communication should be commensurate with the risks of the insurer.
Guidance ICP 9.1.12	Suggest adding that review of the framework should include regular public communication with relevant stakeholders (not just limited to internal and other relevant authorities). Such interaction may help identify and address issues for improvement in the current framework.
Guidance ICP 9.1.14	As written, this paragraph reads that the group-wide supervisor's framework should include all entities identified within the insurance group and therefore suggests the group-wide supervisor performs the review and reporting for all these entities; however, this would not be the case for legal entities located in other jurisdictions and/or supervised by other authorities (as explained in 9.1.15 and 9.1.16). Suggest the intended message in 9.1.14 needs clarification.
Standard ICP 9.3	Suggest deleting the word "any" as the standard already appropriately uses the word "material".
Guidance ICP 9.3.1	Suggest deleting "any" in the first line as the word "material" is already included and consistency with 9.3.2 and 9.3.3.
Standard ICP 9.4	A jurisdiction's auditing standards are generally determined by a party other than the insurance supervisor who may have no authority to specify the standards if all auditors in that jurisdiction are required to comply with those standards. If there is not a way to clarify this in the standard, suggest adding appropriate guidance.
Guidance ICP 9.4.15	Suggest the first sentence needs some clarification; we agree coordination should be done for ad hoc reporting (information requests) but disagree with extending this concept of coordination with host supervisors for regular reporting as it would not be necessary.
Guidance ICP 9.4.16	Suggest this guidance be clarified – is this information being submitted by the head of the group? Suggest it also be rewritten to be more risk-based as well; as currently drafted, the guidance focuses on general information to be submitted but does not say why this information would be useful or suggest the group-wide supervisor should take a risk-based approach in seeking information on the insurance group.

ComFrame material under ICPs 9 and 10

Section/Paragraph	Comment
Standard CF9.0b	Suggest CF9.0b should be deleted as this is already required of all supervisors and insurers, including IAIGs, by ICP 9.
Guidance CF9.2a.5	Not all IAIGs are the same, so peer-group analysis may not be possible or relevant for all IAIGs. Where possible, peer-group analysis would be a complement to the group-wide risk assessment, whereas this guidance reads as if this is an expectation in every case. Suggest revising the first sentence to: The group-wide supervisor may consider conducting peer-group analysis, where possible, to provide information that may complement the group-wide risk assessment, in cooperation with group-wide supervisors of other IAIGs.
Standard CF9.2b	<u>Having a list of this nature as a standard is far too prescriptive and suggests a tick-the-box approach to risk assessment; consider whether all of these bullets are necessary as a standard for an effective group-wide risk assessment and whether the content of this standard can be written as more outcomes focused.</u> In the eight bullet, delete "adequacy and". Assessing the soundness of the IAIG's ERM is more consistent with the supervisor's responsibility to assess the risk associated with these items and then engaging in a conversation with the IAIG to determine how they are addressing the risk. The last bullet should be deleted; such an assessment should only be considered if the risks are sufficiently high to suggest

	an insolvency may occur rather than performed on an annual basis.
Guidance CF9.2b.1	Much of this guidance is far too prescriptive and suggests a level of supervision that is not appropriate given it “steps into the shoes of management.” This guidance should be reworded accordingly; for example, remove words such as evaluating “adequacy” and replace with words such as assessing the “residual risks” of what is left after management has addressed in the way it has. It is appropriate for supervisors to consider any risk within the group and consider that in its overall risk assessment, but the language utilized as drafted goes beyond that.
Guidance CF9.2b.2	The first sentence is fine, but the rest of this paragraph should be deleted as the issues addressed and level of detail are not appropriate for this part of ComFrame.
Guidance CF9.2b.4	Although considering the adequacy of capital in general may be appropriate as part of an annual risk assessment, the other text after the first sentence should be deleted as the issues addressed and level of detail are not appropriate for this part of ComFrame.
Guidance CF9.2b.5	The first sentence should be revised to read: “The group-wide supervisor should identify and consider in the assessment situations which may give rise to double or multiple gearing”. In addition, the third and fourth sentences should be deleted as the issues addressed and level of detail are not appropriate for this part of ComFrame.
Guidance CF9.2b.6	This should be deleted as the issues addressed and level of detail are not appropriate for this part of ComFrame. Additionally, as drafted, the text seems to ignore that not all capital is fungible and that available capital may not be fungible at any time, such as when capital has been reduced to a level of concern. Regulatory, legal and other requirements do affect (not may affect) the IAIG’s ability to transfer capital to other parts of the group.
Guidance CF9.2b.7	This paragraph correctly focuses on macro issues in “material” jurisdictions in which the IAIG operates. The idea of materiality (and a risk-based approach) is unfortunately often missing from other parts of ComFrame. This should be emphasised throughout, otherwise suggesting the same level of review, assessment, coordination, etc. across the IAIG and all of its legal entities may waste valuable supervisory resources and duplicate supervisory efforts.
Standard CF9.6b	This standard needs to be reworded or deleted. While there may be times where the supervisors agree this is important, it would likely be rare. Guidance on this standard provides little insight as to when/why a joint inspection would be “appropriate”.
Standard CF10.0a	<u>This standard suggests that all supervisory measures are applied directly at the Head of the IAIG, however supervisors can acheive similar outcomes regardless of whether measures are applied directly or indirectly. Additionally, which type of measures and how to apply them may depend on the structure of the IAIG and the specific circumstances. Limiting the ability to take effective supervisory measures to only direct ones seems overly prescriptive and contrary to what was agreed to in June 2014 (which outlined four specific direct powers and that these powers should be supported by escalating supervisory actions and enforcement powers – not that such things are ONLY done directly). Suggest deleting “directly”.</u> It is unclear what “within the group-wide supervisor’s jurisdiction” adds. Don’t all ComFrame standards and guidance come with the assumption that when the group-wide supervisor does or requires something of the Head of the IAIG, that they have the authority to do so as they are within that supervisor’s jurisdiction? There should be no suggestion in the standard or guidance below that a group-wide supervisor can apply supervisory measures on the Head of an IAIG over which it has no authority.
Question 141 on Standard CF10.0a	<i>Should the ComFrame standard refer to any specific measures which must be available to the group-wide supervisor to apply directly to the Head of the IAIG?</i> No. The focus should be on the outcome, not the form. Including specific measures in the standard would be overly prescriptive.

Standard CF10.0b	Since the involved supervisor will be the one to carry out the supervisory measure on the legal insurance entity within its jurisdiction, what exactly is being “coordinated” with the other involved supervisors? This seems to be more about communicating rather than coordinating – suggest revising the standard and its guidance accordingly.
Standard CF10.3b	<u>In general, members of a supervisory college overseeing IAIGs experiencing financial hardship would require that management information systems are well functioning for proposed recovery actions. It is unclear why this particular issue is being singled out as part of the recovery planning process and necessitates a standard and how it is not already covered by requirements (ICPs and/or ComFrame) related to internal controls. Consider deleting this standard.</u>
Standard CF10.6a	<u>Similar to our comment on CF10.0a, this standard suggests that all sanctions are applied directly at the Head of the IAIG, however supervisors can achieve similar outcomes regardless of whether sanctions are applied directly or indirectly. Additionally, which type of sanctions and how to apply them may depend on the structure of the IAIG and the specific circumstances. Limiting the ability to apply effective sanctions to only directly seems overly prescriptive and contrary to what was agreed to in June 2014 (which outlined four specific direct powers and that these powers should be supported by escalating supervisory actions and enforcement powers – not that such things are ONLY done directly). Suggest deleting “directly”.</u> <u>Additionally,</u> it is unclear what “within the group-wide supervisor’s jurisdiction” adds. Don’t all ComFrame standards and guidance come with the assumption that when the group-wide supervisor does or requires something of the Head of the IAIG, that they have the authority to do so as they are within that supervisor’s jurisdiction? There should be no suggestion in the standard or guidance below that a group-wide supervisor can apply sanctions on the Head of an IAIG over which it has no authority.
Standard CF10.6b	Similar to our comment on CF10.0b, since the involved supervisor will be the one to carry out the sanction on the legal insurance entity within its jurisdiction, what exactly is being “coordinated” with the other involved supervisors? This seems to be more about communicating rather than coordinating – suggest revising the standard and its guidance accordingly.

Revised ICP 12

Section/Paragraph	Comment
General Comment on ICP 12	Because of the variability and complexity of insurance markets around the world, ICP 12 should reflect that resolution regimes can provide for broad regulatory authority that envisions necessary flexibility to address problems when they arise, rather than only focusing exclusively on a prescriptive statutory framework or required explicit powers.
Guidance ICP 12.0.11	ICP 12.0.11 states that resolution may apply to “other regulated (e.g. banks) or non-regulated entities”. While its application “depend[s] on the circumstances”, this guidance raises issues about the powers of the resolution authority. See NAIC comments to ComFrame Guidance 12.12a.1; suggest additional clarification here could be helpful.
Standard ICP 12.3	While there is a valid concept here, the wording of the Standard could be improved. Using “contingencies” could mean a variety of things depending on the reader and “gone-concern” is not used anywhere else in this ICP. Thus suggest rewording this standard to better describe the intended outcome: “12.3 The supervisor requires insurers to evaluate their specific operations and risks in a resolution scenario and to institute process and procedures for use during a resolution to the extent appropriate.”
Guidance ICP 12.7.2	ICP 12.7.2 states that “Liquidation may be incompatible with some resolution powers (e.g. stay early termination rights associated with derivatives and securities financing transactions).” Suggest finding another example as this power is not listed in 12.7.4.

Guidance ICP 12.7.5	Typo – change “the types of business the insurer engage in” to “the types of business the insurer is engaged in”
Guidance ICP 12.7.7	ICP 12.7.7 states that resolution powers should be exercised in a manner that does not discriminate between creditors on the basis of their nationality, the location of their claim, or the jurisdiction where it is payable. While a policyholder protection scheme (PPS) is described as a “mechanism”, and is not listed as a resolution power in ICP 12.7.4, there is a possibility that the prohibition against discrimination could be construed to apply to a PPS; suggest clarifying accordingly.
Guidance ICP 12.9.1	The IAIS glossary defines insurance legal entity as, “a legal entity, which includes its branches, that is licensed to conduct insurance, regulated and subject to supervision.” Thus it is not clear why the first sentence says, “...an insurance legal entity (or branch)...” as the latter is covered in the definition of the former. Is this intended to cover “a branch of a foreign insurer in its jurisdiction” as used in 12.8 and 12.8.1? Suggest either deleting “(or branch)” or use the same wording as in 12.8 for consistency and to better convey the distinction here.
Standard 12.10	<u>Suggest adding guidance under this standard that a resolution action should not deprive policyholders of protection available from a PPS, and that such protection be taken into account when a resolution authority exercises resolution powers.</u>
Guidance ICP 12.10.2	<u>This guidance provides an example where two categories of creditors rank pari passu, and one is covered by a PPS while the other is not. As a PPS should only pay policy claims, and non-policy claims should not be in the same class as policy claims, the example should be clarified by referring to "policy claimants" instead of "creditors": "For instance, different types of creditors could be: two categories of policy claimants ranking pari passu where one is covered by a PPS while the other is not..."</u>
Guidance ICP 12.10.4 and 12.10.5	<u>There are examples illustrating the NCWOL principle, which do not take payments by a PPS into account. As PPS protection is a significant topic in ICP 12, it would be helpful to provide guidance to illustrate how the safeguards would apply where a PPS exists.</u>
Guidance ICP 12.10.5	In the hypothetical situation illustrating the “no creditor worse off than in liquidation” principle, the resolution authority departs from pari passu treatment of claims. The unequal treatment results in a creditor being worse off than in liquidation, and the creditor has a right to receive “appropriate compensation”. However, there is no discussion of how compensation would be provided. A PPS could be a source of funding for compensation, but the example states that it “does not take account of potential PPSs which could pay some claims”. Suggest clarification here would be helpful.
Question 119 on Standard ICP 12.12	<p>Question: <i>This Standard has been created on the grounds that the revised ICP 12 addresses not only legal entity issues but also group issues like other ICPs and resolution of insurance legal entities can be complex where they belong to a group. The IAIS acknowledges that liquidation will take place in most cases on a legal entity basis. On the other hand, there might be cases where resolution actions on one entity can impact other entities within the group (e.g. resolution of the head of the insurance group can impact insurance legal entities in the group). The IAIS acknowledges that guidance needs to be provided under this Standard to help ensure appropriate implementation of the Standard. Please provide your thoughts on what guidance can help implementation of this Standard. Concrete ideas with supporting rationale are welcome.</i></p> <p>It is not clear what outcome this Standard aims to achieve or why it necessary. The ICPs use “insurer” to cover both insurance legal entities and insurance groups. Based on this approach, the other Standards of ICP 12 adequately address what “mechanisms” should be in place to resolve the head of an insurance group and guidance should be provided to describe what would be unique in a group situation (such as Guidance 12.7.14 to .16) if need be. The text of 12.12 could be made into guidance where most appropriate; otherwise it should be deleted.</p>

ComFrame material under ICP 12

Section/Paragraph	Comment
Guidance CF12.3a.1	As CMGs are covered in ICP 25, it may be helpful to provide a cross reference as otherwise there is no context for them in ICP 12. Suggest: "...in consultation with members of the IAIG CMG (<u>see ComFrame material under ICP 25 Supervisory Cooperation and Coordination</u>), taking at least the following issues into consideration:"
Guidance CF 12.3a.2 and .3	As written, this guidance provides that the group-wide supervisor and/or resolution authority leads the development of group resolution plans. Additional jurisdictional flexibility here would be appropriate as each jurisdiction should have discretion with regard to the mechanics of drafting/submission of group resolution plans. Suggest: "The group-wide supervisor and/or resolution authority <u>initiates</u> leads the development of..." Similarly, for 12.3a.3 suggest: "Host supervisors and/or resolution authorities may <u>have</u> require <u>separate resolution plans for the IAIG's...</u> "
Guidance CF 12.3b.2	For consistency with CF12.2b, this should read: "...in a way that protects policyholders and maintains financial stability without <u>reliance on the use of public funds.</u> "
Standard CF12.3c	<u>In general, resolution authorities dealing with the resolution of an IAIG would require that management information systems are well functioning for purposes of resolution planning and resolution actions. It is unclear why this particular issue within the resolution process is being singled out and necessitates a standard and how it is not already covered by requirements (ICPs and/or ComFrame) related to internal controls. Consider deleting this standard.</u>
Question 98 on Standard CF12.7a (21 st bullet point)	<p>Question: <i>Some IAIS Members consider that this power should be available only for IAIGs; other IAIS Members are of the view that the power should be available both for IAIGs and insurers that are neither G-SIIs nor IAIGs. Please provide your thoughts on this with rationale.</i></p> <p>This should be available only for IAIGs. Such stay powers are thought to be needed so as to not provide further disruption to financial markets when there is a crisis – namely a “cooling off” period can be beneficial. To the extent that this is the purpose, smaller insurers do not have derivative and security financial transactions sizeable enough to have such market impacts.</p>
Guidance CF12.7a.4	Should say bullet 20, not 21.
Guidance 12.12a.1 to .3	This guidance oversteps the legal authorities in many jurisdictions and is presumptive to want insurance resolution standards to apply to non-insurance entity resolution merely because the non-insurance entity is in an insurance group. It is unclear to what extent ICP 12 material would even be applicable or helpful to non-insurance resolutions or to what extent the ComFrame material under ICP 12 would apply to non-IAIGs. This guidance which greatly expands the scope of not only the resolution ComFrame material but all of ICP 12 far beyond the work of the IAIS and the authority of its members is completely inappropriate. This paragraph should be deleted along with 12.12a.2 and 12.12a.3.
Guidance 12.12a.2	This paragraph should be deleted (see comment on 12.12a.1). If the intended meaning is that non-insurance legal entities within a group that is being resolved should be resolved as well (if necessary) by the relevant authorities, then it is stating the obvious.
Guidance 12.12a.3	12.12a.1 says ICP 12 and its ComFrame material is extended to financial institutions other than insurers within the IAIG, but then this paragraph says it is not intended to override existing sectoral requirements? How do these extend but not override?

What is the point? This is very contradictory and should be deleted along with 12.12a.1 and 12.12a.2.

Revised ICPs 3 and 25

Section/Paragraph	Comment
Guidance ICP 3.2.1	Suggest changing “is not a prerequisite” to “may not be a prerequisite” as in many cases, a written agreement may be required (for example, in the U.S., a written agreement is required in the Insurance Holding Company System Regulatory Act).
Guidance ICP 3.2.4	Second sentence, suggest changing “mutual trust and confidence between supervisors” to “mutual trust and confidence among supervisors”.
Guidance ICP 3.3.3	Suggest adding a reference to policies and procedures for internal handling of information received (this is a topic considered during validation of IAIS MMoU applications).
Guidance ICP 3.4.2	Suggest swapping the order of the third and fifth bullets (or delete the bullet on coordination agreements). A coordination agreement may provide appropriate structures for sharing information within a supervisory college, but having the appropriate confidentiality agreements in place is a more important issue for exchange of confidential information.
General Comment on ICP 25	In a few of places throughout the ICP, it includes material that is a level of detail and/or may better serve as simply best practices, which should be included (or may already be included) in the Application Paper on Supervisory Colleges. 25.2 and 25.3 both contain guidance under subheadings to address information sharing but there is no mention of the important point that information sharing is subject to confidentiality agreements between jurisdictions. Suggest adding this point to these paragraphs of guidance where most relevant or else addressing more generally in ICP 25’s introductory guidance.
Guidance ICP 25.0.5 to 25.0.8	It is unclear what is intended by, or what value is achieved, through an assessment of supervisory recognition, given the content of the rest of ICP 25. Additionally, ICP 25.0.7 appears to assume an ongoing assessment of supervisory recognition, which seems to add uncertainty about the effect of recognition of a group-wide supervisor. It is also unclear how these paragraphs relate to Standard 25.1 and the list of objective factors under ICP 25.1.2 which should perhaps take precedence over a subjective assessment of recognition.
Guidance ICP 25.1.2	The parenthetical in the first bullet seems unnecessary – suggest deleting.
Guidance ICP 25.2.5	Suggest adding that that information sharing is subject to confidentiality agreements between jurisdictions
Guidance ICP 25.3.2	Given the long bullet list includes a variety of information that could be provided once, ad hoc or on a more ongoing basis, suggest these be provided more as examples and make the emphasis on providing information more broadly: “Other involved supervisors should provide the group-wide supervisor with relevant key information, regarding insurance legal entities within the insurance group. Such information may include, but is not limited to:” Additionally, clarification is needed for what “significant financial links” means. Is this in reference to affiliated transactions and intercompany affiliations? Clarification is also needed on what a “transfer of risks to and from non-regulated entities” might refer. What is an example of a risk of an insurer that is transferred to a non-regulated entity? Additionally, after “relevant key information,” add “subject to appropriate confidentiality agreements.”
Standard ICP 25.4	Is 25.4 necessary if it is a requirement in 25.5 to put the arrangement in writing? Seems these two standards could be

	combined.
Guidance ICP 25.4.1	The discussion here and elsewhere about coordination agreements would benefit from clarification about the treatment of confidentiality and information sharing within those agreements or through another agreement. That is, will the IAIS MMoU control for those jurisdictions that are signatory members of that agreement? For jurisdictions that are not signatories to the IAIS MMoU, will confidentiality be addressed in the coordination agreement or through a separate arrangement? While there is a cross reference to ICP 3, suggest some additional explanation here may be helpful.
Guidance ICP 25.5.1	See comments on ICP 25.4.1.
Guidance ICP 25.5.2	Where does the IAIS MMoU apply to the discussion about agreements related to information flows?
Guidance ICP 25.6.1	The last bullet should be revised to read that a supervisory college is established when: “the insurance group has significant market share in <u>more than one jurisdiction</u> one or more specific jurisdictions. ”
Guidance ICP 25.6.2	This paragraph is a level of detail that may be better suited in the Application Paper.
Guidance ICP 25.6.3	As currently drafted, 25.6.3 seems to suggest colleges are open to all supervisors, but then 25.6.4.says there should be criteria to limit the membership/participation, which creates a disconnect. Suggest revising to be more descriptive, which may then flow better with 25.6.4: “A supervisory college <u>is typically</u> should be comprised of representatives of each of the supervisors responsible for the day-to-day supervision of the insurance legal entities which are part of the group and, as appropriate, any supervisors of other material non-insurance entities.
Guidance ICP 25.6.4	The bullets under this paragraph may be better as best practices in the Application Paper.
Guidance ICP 25.6.6	It seems the intent of this guidance is to point out that one supervisor would not seek to take legal action against another supervisor, but the guidance may benefit from a statement of the overall purpose for a coordination agreement, which is to establish a framework for the operations of a supervisory college.
Guidance ICP 25.6.8	The guidance would benefit from a statement about how confidentiality will be addressed for jurisdictions that are not signatories to the IAIS MMoU. The reference to “a similar long-term agreement” seems to imply another agreement in addition to the coordination agreement. Should this be a “bilateral” agreement? Suggest clarifying who this long-term agreement would be with.
Guidance ICP 25.6.10	The bullets in this paragraph may be better as best practice in the Application Paper.

ComFrame material under ICP 25

Section/Paragraph	Comment
Guidance CF25.1a.1	CF 25.1a.1 should be deleted. The IAIS has identified a narrow set of specific powers the group-wide supervisor should be able to apply directly to the Head of the IAIG. As written, this suggests a much broader expectation on direct powers in ComFrame which is not appropriate. Additionally, as this is the only ComFrame guidance on this topic, it seems to overemphasize this factor in determining who should be the group-wide supervisor for an IAIG.
Standard CF25.6a	<u>Supervisors should be able to hold a supervisory college anytime they deem it necessary. A static requirement of holding</u>

	<u>supervisory colleges at least annually because a group is an IAIG appears overly prescriptive and not risk-based. If a supervisory college meeting is not necessary one year, why should the involved supervisors and the firm undergo the cost, time and effort simply to observe ComFrame?</u>
Guidance CF25.6a.2	Guidance CF25.6a.2 to .4 should be moved to guidance in the ICP as these paragraphs seem relevant to any supervisory college, not just ones for IAIGs.
Standard CF25.6b	CF25.6b should be deleted as it states the obvious and adds no value and. Communication and exchange of information for any group, including IAIGs, is already covered by the ICPs.
Standard CF25.7a	While we recognize that a CMG is only required for IAIGs, there seems to be a bit of disconnect between this ComFrame material and what is in ICP 25.7 and its guidance, which has no mention of crisis management groups. It may be helpful in the ICP 25.7 guidance to include something that mentions how forming a crisis management group may be one way to help coordinate crisis management preparations, if appropriate for that particular insurance group.
Guidance CF25.7a.1	<u>Based on experience in the U.S., policyholder protection schemes may play an important role in developing or assessing resolution strategies for complex groups, and therefore may be appropriate to include within a crisis management group and other coordination efforts. Suggest adding to the end of this paragraph: "A supervisor may consider involving or consulting a PPS during the course of a CMG, where appropriate."</u>
Guidance CF25.7a.2	It is not clear what this guidance is about – what name would a crisis management group have in the first place? Is the idea here that the form of a crisis management group may vary from group to group but they should still serve the same function?

**INTERNATIONAL INSURANCE
RELATIONS (G) COMMITTEE
Conference Call
Tuesday, May 30, 2016
2:00 p.m. Eastern**

Comments received from Interested Parties:

- NOLHGA/NCIGF
 - ACLI
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**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
THE NAIC'S DRAFT COMMENTS ON THE
IAIS REVISED ICPS AND COMFRAME MATERIAL**

The National Organization of Life and Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds respectfully submit their joint comments regarding the NAIC's draft comments on the IAIS Revised ICPS and ComFrame Material.

NOLHGA and NCIGF are an integral part of the insurance resolution process in the United States, preparing for and coordinating the provision of guaranty association benefits to U.S. insurance consumers whose insurance carriers become insolvent. NOLHGA's members are principally concerned with protecting consumers of failed life, annuity, and health insurers, and NCIGF's members are principally concerned with protecting consumers of failed property and casualty insurers.

We appreciate the opportunity to comment and offer our continued support of the NAIC's ongoing efforts.

- 1. Policyholder protections schemes can and should play an important role in developing or assessing resolution strategies, and therefore should be part of, or otherwise support, crisis management groups and other coordination efforts.**

We respectfully request that the NAIC reiterate the comments it made to the Financial Stability Board (FSB) in 2015, emphasizing that policyholder protection schemes can and should play an important role in developing or assessing resolution strategies, and therefore should be part of, or otherwise support, crisis management groups and other coordination efforts.

In its December 29, 2015, comment on the FSB Consultative Document “Developing Effective Resolution Strategies and Plans for Systemically Important Insurers,” the NAIC stated:

While prior FSB guidance emphasized the need for coordination between resolution authorities and policyholder protection schemes, the consultative document seems to view policyholder protection schemes only as a source of funds, and not as an important partner in the insurance resolution process. In the U.S., regulators, receivers and the insurance guaranty system (or PPS) work together closely to protect policyholders. Our joint efforts have included contingency planning for the possible liquidation of large and complex insurers and multi-insurer groups that were experiencing financial challenges. We believe that policyholder protection schemes can and should play an important role in developing or assessing resolution strategies, and therefore they should be part of crisis management groups and other coordination efforts.

More recently, in keeping with its comment to the FSB, the NAIC invited NOLHGA and NCIGF to attend meetings of the Receivership Financial Analysis (E) Working Group, so as “to foster communication and coordination between regulators, receivers and guaranty funds.”¹

We appreciate the NAIC’s recognition that a policyholder protection scheme is much more than a payment mechanism and ask that the NAIC express that view to the IAIS.

We encourage the NAIC to make comments addressing the above in response to ICP 12.0.4, ICP 12.5, ICP 12.9.3 and CF 25.7a.1.

2. Early policyholder protection scheme involvement in a resolution is a critical part of policyholder protection.

We strongly emphasize the importance of being able to provide information to a policyholder protection scheme as early and as quickly as possible. Early policyholder protection scheme involvement in a resolution is a critical part of policyholder protection. The IAIS should consider adding a timeframe or a trigger for when such plans and procedures should be in place.

We encourage the NAIC to make comments addressing the above in response to ICP 12.3.3.

3. In no event should insurance liabilities be restructured, limited or written down in a way that deprives policyholders of the protection afforded by a policyholder protection scheme.

Given the emphasis on policyholder protection, insurance liabilities should be written down only when necessary to maintain financial stability. In no event should insurance liabilities be restructured, limited or written down in a way that deprives policyholders of the protection afforded by a policyholder protection scheme. Similarly, insurance contracts should not be

¹ Minutes of the December 11, 2016 meeting of the NAIC Receivership and Insolvency (E) Task Force.

terminated if doing so would deprive policyholders of the protection afforded by a policyholder protection scheme. Finally, the duration of any restriction or suspension of policyholder withdrawal rights should take into account whether there is a policyholder protection scheme.

We encourage the NAIC to make comments addressing the above in response to ICP 12.7.4, ICP 12.7.9, ICP 12.7.11 and CF 12.7a.

4. Policyholders should not be treated differently from each other so that payments can be made to lower priority claimants.

Resolution authorities should depart from the principle of pari passu only when necessary to maintain financial stability. Even in instances where financial stability may be an issue, policyholders should not be treated differently from each other so that payments can be made to lower priority claimants. Furthermore, in jurisdictions where the policyholder protection scheme is subrogated to the rights of covered policyholders, uncovered policyholders should not be allocated a higher percentage of estate assets than covered policyholders are allocated. Allocating a disproportionate share of estate assets to uncovered policyholders could undermine the policyholder protections scheme's subrogation rights, violate the No Creditor Worse Off than in Liquidation principle and potentially impair the policyholder protection scheme's ability to fulfill its mission.

We encourage the NAIC to make comments addressing the above in response to ICP 12.10.2.



In the NAIC's comment on CF12.3b.2, it suggests changing the phrase "without use of public funds" to "without reliance on the use of public funds". Since most states allow for a premium tax offset to counter the effect of guaranty association assessments, and since it is not the IAIS' role to recommend how countries fund resolutions, we would respectfully suggest that neither phrase be used and that the sentence end with "protects policyholders and maintains financial stability". We are mentioning that in our comments, as well as related comments for 12.2.2, CF12.2b and CF12.2b.1.