ICP 2 Supervisor

The supervisor is operationally independent, accountable and transparent in the exercise of its responsibilities and powers, and has adequate resources to discharge those responsibilities.

Introductory Guidance

2.0.1 Operational independence, accountability and transparency by the supervisor contribute to the legitimacy and credibility of the supervisory process. While each concept is distinct, they are closely interconnected and mutually dependent.

2.0.2 Operational independence means the supervisor should be able to take actions and make decisions in the exercise of its supervisory responsibilities without interference from any part of the government, including other governmental bodies, the legislature, and the insurance sector. The supervisor should be able to carry out the supervisory process, take supervisory measures and impose sanctions as it deems necessary to fulfil its objectives. However, this independence should be balanced with accountability.

2.0.3 The supervisor should be accountable for the actions it takes in the exercise of its supervisory responsibilities to the government, including other governmental bodies and the legislature, which delegated various responsibilities to the supervisor, as well as to those it supervises and the public at large. Accountability means that the supervisor operates within the bounds of its delegated authority, in a fair and equitable manner that is open to scrutiny and review by the government and the public, and that the actions of the supervisor may be challenged as part of a judicial appeal process. Strong internal governance processes, sufficient and skilled human resources and maintenance of high standards of integrity and professionalism underpin the accountability of the supervisor.

2.0.4 Transparency reinforces accountability. Transparency increases the predictability of supervision and shapes the expectations of supervised entities, which enhances supervisory effectiveness. For these reasons, supervisory requirements, supervisory processes as well as information about the supervisor's responsibilities should be publicly disclosed, in a manner consistent with any confidentiality requirements imposed on the supervisor.

2.0.5 The structures of supervisors vary across jurisdictions. For example, a supervisor can be structured as a separate independent entity governed by a board of directors, as a commission or as a body overseen by one appointed individual. No one single structure is appropriate for all supervisors. Regardless of their structure, all supervisors should have processes and safeguards that allow them to be operationally independent, accountable and transparent.

2.0.6 Given the differences in structures between supervisors, in this ICP, the "governing body" refers to the body of individuals that exercises oversight of the supervisory organisation, such as a board or commission, or in the case of a supervisor overseen by an appointed individual, to that individual. The "head of the supervisor" refers to the individual who is an employee of the supervisor and who leads the management

team and exercises full management responsibility for the day-to-day functioning and decisions of the supervisor. The head of the supervisor may or may not also be a member of the governing body.

Operational Independence

2.1 The supervisor is operationally independent and free from undue government or industry interference that compromises that independence.

2.1.1 Operational independence of the supervisor includes having the discretion to allocate its resources, including financial and human resources, and to carry out the supervisory process in accordance with its objectives and the risks the supervisor perceives. Having this discretion, which underpins operational independence, should be reflected in primary legislation.

2.1.2 The supervisor should be financed in a manner that does not undermine its independence. A wide variety of financing models exist, such as financing by government, levies imposed on supervised entities and combinations thereof. To help ensure the supervisor's independence is not compromised, the method in which it is financed should be stable, predictable and transparent, and prevent interference from its funding source.

2.1.3 The institutional relationships and accountability frameworks between the supervisor and the government should be clearly defined in legislation. It is important to specify the circumstances and processes for sharing information, consultation or approval between the supervisor and the government. This may include establishing what information should be provided, how each entity should consult on matters of mutual interest and when approval from relevant authorities is necessary. The daily operations of the supervisor should not be subject to consultation with or approval by the government. In exceptional circumstances, the supervisor may choose to consult with the government where there are major socio-economic implications of a supervisory decision. In cases where there are elected officials or government employees on the governing body of the supervisor, the composition of the governing body should be sufficiently diverse to prevent government representatives from controlling the supervisor. The legislation should define the responsibilities of the governing body.

2.1.4 In addition to independence from the government, the supervisor should be independent from the entities it supervises. In cases where there are industry representatives on the governing body of the supervisor, the composition of the governing body should be sufficiently diverse to prevent industry representatives from controlling the supervisor. The supervisor should not have an excessively close relationship with supervised entities. This can lead the supervisor to avoid strictly enforcing the law or failing to control the behaviour of supervised entities in the way intended by law. It can also lead the supervisor to make policy or operational decisions to benefit supervised entities, whether a particular entity or supervised entities as a whole, rather than in furtherance of its objectives. The supervisor's policies, for example, post-employment, anti-corruption and accountability in decision-making, should seek to avoid such close relationship.

2.1.5 The supervisor's staff and members of its governing body can also experience pressures that could compromise their independence. Generally, the staff of the supervisor should not be involved in any capacity in the entities it supervises, other than in a supervisory role or as a customer, including holding any consultancies or directorships in any supervised entity. The supervisor should have policies and procedures to avoid or manage real, potential or perceived conflicts of interests. The supervisor should require its staff and members of its governing body to report conflicts of interests. Staff and members of the governing body of the supervisor should exclude themselves from decisions where they have a conflict of interest.

2.2 Legislation governing the supervisor provides the necessary legal protection from legal action against the supervisor and its staff for actions taken in good faith while discharging their duties. In addition, the supervisor's staff is adequately protected against the costs of defending their actions.

2.2.1 Having necessary legal protection from legal action promotes the independence of the supervisor by enabling its staff to make decisions and take action against a supervised entity even though such action or decision may be contested by that entity.

2.2.2 In this context, legislation should protect the supervisor and its staff from criminal or civil liability for decisions made and actions taken in the course of discharging their supervisory responsibilities, provided that the action or decision was not taken in bad faith or illegally.

2.3 Procedures regarding the appointment and dismissal of the head of the supervisor and members of its governing body (if such a governing body exists) are transparent.

2.3.1 Public procedures regarding the appointment and dismissal of the head of the supervisor enhance independence, as they limit the potential for government interference in the management of the supervisor. Those procedures should be codified in legislation.

2.3.2 Those procedures should disclose, for example, who appoints the head of the supervisor and members of the governing body, the length of those appointments and the reasons for which the head of the supervisor or members of the governing body can be dismissed before the end of their term.

2.3.3 Legislation should disclose the general criteria for appointing members of a governing body, including that they possess relevant qualifications, knowledge and experience to oversee the activities of the supervisor, as well as the mechanism for their remuneration (for example, salary, daily allowance or voluntary work). The procedures regarding the appointment of the members of the governing body should result in a balance of skills, knowledge and experience amongst the members of the governing body as a whole.

Accountability

2.4 The supervisor has effective internal governance structures, processes and procedures to preserve the integrity of its actions and decisions and to enable it to be accountable to its stakeholders.

2.4.1 A well-defined internal governance structure and strong internal governance processes support the accountability and integrity of the supervisor. The supervisor's internal governance includes its organisational structure and management arrangements, lines of responsibility, and systems of risk management and internal controls. In this context, integrity refers to the supervisor acting with honesty, respectability and lawfulness, and within the bounds of its delegated authority.

2.4.2 Regardless of the supervisor's governance structure, the responsibilities of the governing body, the responsibilities of senior management, communication channels and decision making authorities, including delegation thereof, should be documented in writing to facilitate compliance with internal controls, including proper authorisation of actions taken by or on behalf of the supervisor. In addition, well-defined communication channels help ensure prompt escalation of significant issues to appropriate levels within the supervisor.

2.4.3 The supervisor should have a process to develop and implement a strategic or operational plan that sets out its goals and priorities for a given period of time, such as a two or three year span. The supervisor should report on its performance against such a plan to the government and other relevant stakeholders.

2.4.4 The supervisor should identify the individual or group of individuals responsible for the implementation and review of the internal governance arrangements. The internal governance processes and procedures should be subject to regular independent review, for example by an internal audit function or a public auditor.

2.5 The supervisor applies requirements and supervisory procedures equitably and consistently. There are processes to appeal against supervisory decisions which do not unduly impede the ability of the supervisor to make timely interventions in order to protect policyholders' interests or contribute to financial stability.

2.5.1 The supervisor should have internal mechanisms to ensure that it is consistent in the actions and decisions it takes. Cases where circumstances are similar should lead the supervisor to take similar actions or decisions in similar cases. Actions taken in a particular case in the past should be considered in new cases where the circumstances are similar, unless a change in the requirements or procedures occurred in the time between the two cases.

2.5.2 Procedural fairness enhances public confidence in the supervisory process. Parties subject to a decision made by the supervisor should be able to receive the written reasons for the decision and to appeal the decision to an impartial review body or tribunal. The manner in which the supervisor's decision could be subject to judicial review, or in which decisions can be appealed, should be defined and transparent.

2.5.3 The existence of an appeal or review mechanism helps ensure that the supervisor's decisions are made within the law as consistently as possible and are well reasoned.

Appeal processes should be specific and balanced to preserve supervisory independence and effectiveness. However, these mechanisms should allow the supervisor to exercise its powers quickly in cases where expeditious action is required, for example, by keeping the decision of the supervisor in force until the appeal or review mechanism has produced a final decision on the appeal.

2.6 The supervisor, including its staff and any third party acting on its behalf (presently or in the past), are required by legislation to protect the confidentiality of information in the possession of the supervisor.

2.6.1 The supervisor and its staff, including former staff, and all persons acting on its behalf (presently or in the past) should be liable to penalties for unlawful access to, use of, or disclosure of, information. This includes any outside experts hired by the supervisor and persons to which the supervisor outsourced any supervisory function. The penalties for such conduct should be specified in legislation and may include disciplinary actions, up to and including termination of employment, and criminal or legal proceedings. The duty of confidentiality should survive the termination of employment of a staff member or other third party engaged by the supervisor.

2.6.2 The supervisor should protect confidential information. Safeguards should apply to information maintained in any format, including in physical form as well as electronic. The supervisor should assess the sensitivity of various categories of information in its possession, and identify the appropriate data protection requirements applicable to each category, including the duration of the retention period for information in each category.

2.6.3 The duty of confidentiality should include information received from another supervisor (see ICP 3 Information Sharing and Confidentiality Requirements).

Transparency

2.7 The supervisor is transparent to the public, the regulated sector and the government about how it exercises its responsibilities.

2.7.1 Transparency reinforces accountability of supervisors. The supervisor should publish information about itself, including:

- information on its objectives and responsibilities;
- its goals and priorities for the future;
- its plan on how to achieve its objectives, goals and priorities;
- information and analysis about the state of the insurance sector;
- information about problem or failed insurers, including information on supervisory actions taken, subject to confidentiality considerations and in so far as it does not jeopardise other supervisory objectives or prejudice another case pending before the supervisor; and
- its audited financial statements.

2.7.2 The supervisor should seek to publish a report at least annually that contains the elements listed above and that describes the supervisor's activities in light of its objectives in the previous year. This type of report is a key document by which a supervisor accounts to its stakeholders.

2.8 The supervisor publishes its requirements, policies and supervisory procedures. The supervisor consults publicly on significant changes that it makes to requirements, policies and supervisory procedures.

2.8.1 The supervisor publishes and regularly reviews requirements, policies and supervisory procedures to ensure they remain appropriate for the characteristics of the industry, emerging risks and evolving international standards. Some requirements may be contained in primary legislation, while others might be contained in instruments issued by the supervisor, such as guidance and industry advice. The supervisor should ensure these instruments are made available to the public, for example on the supervisor's website.

2.8.2 A critical element of transparency is for the supervisor to provide the opportunity for meaningful public consultation on proposed requirements and supervisory procedures. The supervisor should have written procedures on the types of documents that are subject to public consultation as well as the process and timelines for consultation. Some documents used in the supervisory process may not be suitable for consultation, such as detailed procedural manuals that are used to guide staff of the supervisor in the performance of their day-to-day duties.

2.8.3 In some jurisdictions, the development and issuance of requirements may be outside of the control of the supervisor; for example, the power to enact legislation may be vested in another government body or supranational bodies that have a direct role in the legislation in force in their member countries. In such cases, the consultation process may also be outside the remit of the supervisor. To the extent possible, the supervisor should be involved in the development of the requirements, for example, by participating in consultations, and the supervisor should keep the public and the industry informed of proposed changes.

Resources

2.9 The supervisor has sufficient resources, including human, technological and financial resources, to enable it to conduct effective supervision.

2.9.1 The supervisor's financial resources and staffing policies should enable it to attract and retain highly skilled, competent and experienced staff. The supervisor should have the ability to hire or contract the services of external experts when necessary.

2.9.2 The supervisor should have a process for regularly reviewing its human resources needs, the skills and experience of existing staff and its projected human resource requirements over the short to medium term.

2.9.3 This review could lead the supervisor to implement measures to bridge any gaps in numbers and/or skills. Such measures could include more flexible hiring policies or schemes for secondment of staff from industry or other supervisory authorities within

the jurisdiction or internationally. These measures may help in providing access to specialist skills on a temporary basis. Secondments for supervisory staff to industry or other supervisory authorities enhance the skills and experience of staff particularly to better understand industry practices.

2.9.4 The supervisor should provide adequate training opportunities for its staff to ensure that their skills remain up to date with evolving supervisory and regulatory developments and changes in the industry.

2.9.5 The technological resources of the supervisor should enable supervisory staff to collect and store securely, quickly access, and efficiently analyse information about the entities it supervises.

2.10 Where the supervisor outsources supervisory responsibilities to third parties, the supervisor:

- **sets expectations for their role and work;**
- **monitors their performance;**
- **ensures their independence from the supervised entity or any other related party; and**
- **subjects them to the same confidentiality rules and professional standards as the staff of the supervisor.**

2.10.1 Outsourcing of selected supervisory responsibilities to third parties can complement the supervisor's resources with valuable expertise. However, supervisory responsibilities are primarily the responsibility of the supervisor. The supervisor should retain accountability for and oversight of any outsourced responsibilities to the same degree as non-outsourced responsibilities. Outsourcing should not adversely affect the supervisor`s ability to conduct effective supervision or meet its objectives.

2.10.2 The process used to select third party providers should be fair, open and transparent. All qualified third party providers should have equal access to information regarding the process. Prior to engaging a third party, the supervisor should assess the proposed provider's competence and experience and the safeguards for the treatment of any confidential information. The decision to select a provider should be made free from conflicts of interest, or where such conflicts cannot be avoided, they should be managed.

2.10.3 A written agreement should govern the relationship between the supervisor and the third party provider. The agreement should describe all material aspects of the outsourcing arrangement, including the services to be provided, remuneration of the third party provider, resolution of disputes and procedures governing the sub-contracting of services.