

**INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS**



**ASSESSING THE IAIS'S
REQUIREMENTS ON CROSS-BORDER
AND CROSS-SECTOR COOPERATION
AND INFORMATION EXCHANGE**

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Assessing the IAIS's requirements on cross-border and cross-sector cooperation and information exchange

Contents

1. Introduction	3
2. Existing IAIS standards on cooperation and information exchange	4
3. Assessing the adequacy of IAIS standards	4
3.1. Demonstrating willingness	5
3.2. Removing barriers	5
3.3. Knowing the what's, when's and how's	6
3.4. Adequacy of IAIS papers	9
4. Standard-implementation efforts and other initiatives	10
	12
5. References	

1. Introduction

1. One of the objectives of the IAIS is to cooperate to contribute to improved supervision of the insurance industry on a domestic as well as an international level. In pursuing this, it is critical to promote cooperation and information exchange among insurance supervisors to the extent in does not run contrary to any existing legislation. In October 2004, the IAIS Technical Committee requested¹ the Financial Conglomerates Subcommittee to review existing IAIS requirements on cross-border and cross-sector cooperation and information exchange to identify whether further work is needed in these areas.

2. In this paper, the Financial Conglomerates Subcommittee first seeks to identify the IAIS principles, standards and guidance papers² that deal with cross-border and cross-sector cooperation and information exchange (section 2). This is followed by an analysis of the

¹ The request was prompted by the International Monetary Fund (IMF) August 2004 report entitled "Financial Sector Regulation: Issues and Gaps". Based on the IMF's experience gathered through the Financial Sector Assessment Program (FSAP), the report describes the state of implementation of financial regulatory standards across financial sectors, and raises issues related to the design of these standards. Cross-border/cross-sector cooperation and information exchange amongst financial-sector supervisors was highlighted as one of the areas which need strengthening.

² These documents are collectively referred to as "IAIS papers" in subsequent paragraphs.

adequacy of these standards (section 3). Future work is proposed in areas where improvements may be required. In addition, this paper appraises the IAIS's efforts to implement its standards and other initiatives that promote cross-border and cross-sector cooperation and information exchange (section 4). Assessment of whether IAIS members are cooperating and exchanging information effectively is not within the scope of this paper.

2. Existing IAIS standards on cooperation and information exchange

3. In the *Insurance core principles and methodology* adopted in October 2003, a principle has been dedicated to supervisory cooperation and information sharing. Insurance Core Principle (ICP) 5 states that “the supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.” Essential criteria (EC) under ICP 5 further elaborate on what information should be exchanged and how information exchange should be carried out. One important precondition for information exchange – maintaining confidentiality of information acquired – is explained in EC3f on confidentiality requirement.

4. There are also several ICPs covering when supervisors should exchange information, most notably ICP 17 on “Group-wide supervision”. It addresses the importance of cooperation and information sharing among supervisors, with a view to ensuring effective and efficient group-wide supervision of insurers, who are part of a wider insurance group or conglomerate. Other areas where information exchange amongst supervisors is mentioned include ICP 6 on “Licensing”, ICP 7 on “Suitability of persons”, ICP 8 on “Changes in control and portfolio transfers”, ICP 13 on “On-site inspection”, ICP27 on “Fraud”, and ICP 28 on “Anti-money laundering, combating the finance of terrorism (AML/CFT)”.

5. In addition to the ICPs, there are other IAIS principles that promote the concept of supervisory cooperation and information exchange. These are:

- *Principles applicable to the supervision of international insurers and insurance groups and their cross-border business operations (insurance concordat)* (1999);
- *Principles on the supervision of insurance activities on the internet* (2004);
- *Principles on minimum requirements for supervision of reinsurers* (2002).

6. IAIS standards and guidance papers serve to expand on IAIS principles in greater detail about what is expected of supervisors and regulated entities in specific areas of insurance supervision and insurance operations. Among the IAIS standards, the *Supervisory standard on group coordination* (2000) and the *Supervisory standard on information exchange* (2002) are of particular relevance. These two standards demonstrate how work done by the Joint Forum and the G7 in the same topics should be implemented in the context of insurance supervision.

7. Establishing a memorandum of understanding (MoU) is a tool to facilitate cooperation and information exchange among supervisors. In September 1997, the IAIS adopted a model MoU as a template for supervisors to use in negotiating bilateral MoUs.

8. There is also mention of the need for supervisors to cooperate and exchange information in other IAIS standards and guidance papers such as the *Supervisory standard on licensing* (1998), the *Standard on supervision of reinsurers* (2003), the *Guidance paper for fit and proper principles and their application* (2000) and the *Guidance paper on anti-money laundering and combating the financing of terrorism* (2004).

3. Assessing the adequacy of IAIS standards

9. The first step to assessing the adequacy of IAIS standards on cooperation and information exchange is to set out the key features that the standards should possess. These features can be broadly grouped into three categories: (1) demonstrating the willingness to cooperate and share information; (2) having the ability to do so; and (3) knowing what, when and how to cooperate and share information.

3.1 Demonstrating willingness

10. The Joint Forum *Principles for supervisory information sharing paper* (1999) states that “Supervisors should be *proactive* in raising material issues and concerns with other supervisors. Supervisors should respond in a *timely* and *satisfactory* manner when such issues and concerns are raised with them.” The paper further states that “Supervisors should *purposefully* take measures to establish and maintain contact with other supervisors and to establish a *climate of cooperation and trust* amongst themselves”.

11. These principles, which emphasise a positive attitude towards cooperation and information sharing, are echoed in the G7’s *Ten key principles on information sharing*. In particular, the G7’s principles highlight that the correct attitude involves not allowing bureaucracy to be used as an excuse to hinder cooperation. It is stated that “The Requestor should not have to enter into a strict formal agreement in order to obtain information from the Provider. Nor should a written request be a prerequisite to the sharing of information, particularly in an emergency”. Also stated is that “reciprocity requirement, too, should not be a strict precondition for the exchange of information, but the principle of reciprocity may be a consideration”.

12. Matters about attitudes are best addressed through principles rather than standards or guidance papers. It is recommended that in future work it needs to be emphasised that the home supervisory authority should proactively provide information to the host supervisor where there is a material need. Such a proactive approach of providing information would require a tight and careful consideration and documentation regarding the scope of information (both nature and volume) to be exchanged, the definition of the standardised process used to exchange the information (if any) and the frequency of exchange of information. It would also be essential to make it subject to some test of need in order to meet the test of reasonableness.

3.2 Removing barriers

13. While having the will to cooperate and exchange information is an essential precondition, one must recognise that, in real life, the environment that insurance supervisors operate in does create barriers to cooperation. These barriers include legal limitations, structure of supervisory authorities, powers to collect information, and financial and human resource constraints. The following paragraphs examine how IAIS papers deal with some of these barriers.

Legal constraints

14. Supervisors may be subject to laws that restrict effective cooperation. For example, the law may:

- Limit supervisors to exchanging information only with agencies that have identical responsibilities. This may prevent cooperation between an insurance supervisor and

a banking supervisor. Even if it were among two insurance supervisors, difference in the scope of supervision (for example, prudential versus market conduct) may become an issue.

- Limit supervisors to sharing information with agencies in other jurisdictions only if the alleged offence is suspected to have taken place in the supervisor's own jurisdiction.
- Mandate the establishment of a MoU before information exchange can take place.
- Require a supervisor to document factors that it had considered before any exchange of information, and to follow prescribed procedures when information is exchanged. This effectively slows down, or in some case prevents, cooperation. Supervisors may also be exposed to legal action by regulated entities for mere procedural matters.

15. The legal barriers to cooperation can be minimised by having appropriately drafted laws. ICP 5 provides some guidance on the validity of the above-mentioned legal barriers and requires cooperation with other relevant supervisors. Laws that impose limits on the type of supervisors with which information exchange can take place are clearly not ICP 5 compliant. In addition, ICP 5 ECa states that formal requirement should not be a prerequisite to information sharing. Laws that mandate the establishment of MoUs should be changed.

Structure of supervisory authorities

16. There are different ways to structure the supervision of the financial services industry in a jurisdiction. Some jurisdictions prefer a single agency model. Others prefer a split between prudential and market conduct supervision. There are also jurisdictions where banking, securities and insurance supervision are conducted by separate agencies. Supervisory standards should therefore address both inter-agency and intra-agency issues.

17. On inter-agency cooperation, ICP 5 remains relevant. In addition, ECs under ICP 17 on group-wide supervision require a significant level of cooperation and coordination among supervisors of an insurance group or a conglomerate. This implies that there should be in place effective communication channels between supervisors in the same or in different jurisdictions, looking after the same or different sectors of the financial services industry, on all the issues relevant to the supervision.

Powers to collect information

18. A supervisor cannot exchange information with another supervisor if it does not have the information, or the power to collect it, to begin with. ICP 3 EC c requires that legislation grants sufficient powers for the effective discharge of supervisory responsibilities. ICP 12 requires that the supervisory authority receives the information necessary for it to conduct effective off-site monitoring and to evaluate the condition of each insurer as well as the insurance market. ICP 13 EC (a) further requires the supervisor to have the general power to gather information during on-site inspections. These provisions provide a good foundation to share information among insurance supervisors.

Financial and human resource constraints

19. With the power to collect a wide range of information from regulated entities, a requested supervisor still needs sufficient financial and human resources to collect information requested by another supervisory or enforcement agency if such information is not already in its possession. As such requests may entail more investigation than others, thereby placing a major burden on the requested jurisdiction they should be limited to requests for material information. As recognised in the *Supervisory standard on the*

exchange of information (2002,) this can be a serious concern for jurisdictions which host a large number of global or regional headquarters of insurers.

20. Apart from resource constraints, there is also an issue of quality. ECs under ICP 1 recognise that the existence of competent accounting, audit and actuarial professions are key preconditions to effective insurance supervision. However, if the financial services industry in that jurisdiction is not large enough to sustain strong accounting, audit and actuarial professions, a supervisor may not be able to gather a sufficient number of skilled staff. The effect of this deficiency may be accentuated if the request for information is highly specialised in nature. These factors may also hinder cooperation.

21. ICP 3 requires supervisory authorities to have adequate financial resources to exercise their functions and powers, wherever deemed material and to hire, train, and maintain sufficient staff with high professional standards for efficient discharge of its functions. To the extent that this is not achievable given the lack of necessary preconditions³, there is currently no guidance on the alternative measures that should be taken. More work could be done to fill this gap.

3.3 Knowing the what's, when's and how's

22. With the willingness to cooperate and exchange information established and barriers removed, we shall now focus on the operational aspects. IAIS papers should highlight:

- Areas where cooperation and information exchange are crucial
- Information that should, at the minimum, be exchanged
- Tools that supervisors can use to facilitate cooperation and information exchange (including protocols, formal agreements, communication gateways, etc.)

Areas of cooperation

23. Cooperation is crucial when the matter at hand concerns more than one agency or one jurisdiction. An example would be the supervision of international insurers, insurance groups and conglomerates. The IAIS has dedicated a single ICP (ICP 17) to group-wide supervision. In addition, the *IAIS Principles applicable to the supervision of international insurers and insurance groups and their cross border business operations (insurance concordat)* sets out principles for the supervision of cross-border business operations and for cooperation among supervisor.

24. The global nature of reinsurance business also calls for specific cooperation among supervisors. The Insurance core principles apply to the supervision of insurers and reinsurers. More specifically reinsurance is covered by the *Principles on minimum requirements for supervision of reinsurers* and the *Supervisory standard on supervision of reinsurers*. The work in progress by the Mutual recognition subgroup addresses reinsurance specifically.

25. Besides standards addressing specific types of institutions, there are other IAIS papers addressing specific areas where effective cooperation and information exchange can significantly improve the quality of supervision. These are:

- *Principles on the supervision of insurance activities on the internet*

³ Insurance supervisors often have limited influence on the preconditions to effective insurance supervision. There has been a call by some IAIS members for the ICPs to provide guidance on alternative measures that a supervisor can take to compensate for the lack of preconditions.

- *Supervisory standard on licensing*
- *Guidance paper for fit and proper principles and their application*
- *Guidance paper on anti-money laundering and combating the financing of terrorism.*

26. The scope of IAIS papers is therefore sufficiently comprehensive in dealing with the supervision of insurance business. However, one should note that there is limited guidance on cooperation for enforcement purposes. Further work on this might be carried out if desired.

Information to be exchanged

27. ECs under ICP 5 set the stage broadly on what information supervisors should exchange. EC c states that supervisors should be able to exchange, upon request and with appropriate safeguards, “relevant supervisory information, including specific information requested and gathered from a supervised entity”, “relevant financial data” and “objective information on individuals holding positions of responsibilities in such entities”. ECs h, i and j further require home supervisors to inform host supervisors of “material changes in supervision”, and home and host supervisors to inform each other in advance of any action taken against firms that they both supervise.

28. The *IAIS Principles applicable to the supervision of international insurers and insurance groups and their cross border business operations (insurance concordat)* provides more detail about the information needs of home and host supervisors, including information on internal controls, and problems or emerging problems arising. A similar list is also seen in the *Supervisory standard on the exchange of information*. In addition, issues that supervisors should consider in the course of their work are highlighted in the standards and guidance papers on licensing, fit and proper requirement, supervision of reinsurers, supervision of insurance activities on the internet, insurance frauds and AML/CFT and offer a basis for supervisors when they need to make requests to external agencies for information.

29. These lists of information which supervisors should exchange were considered to be adequate at the time the above-mentioned principles, standards and guidance papers were adopted. Modifications could be made in future, should supervisors find any deficiency as they implement them.

Tools that facilitate cooperation

30. As noted previously, formal agreements, MoUs and reciprocity requirements should not be preconditions to cooperation. However, these facilities, together with other tools such as a list of contact persons in supervisory agencies, may greatly enhance the effectiveness of, and lower the barriers to cooperation and information exchange.

31. The IAIS has published several key documents that help supervisors establish tools to aid cooperation. The model MoU published in 1997 provided supervisors with a template as a basis for negotiating bilateral MoUs. The model MoU contains a comprehensive coverage of matters important to cross-border cooperation and information sharing, including:

- The supervisory purposes for which assistance is to be provided;
- The types of assistance that may be provided;
- The information to be conveyed by the requesting authority in a request for assistance;
- Considerations of the requested authority in determining whether to accept a request;
- Procedures for taking testimony and conducting inspections;
- Permissible uses of information supplied and confidentiality;
- Onward transmission of information received.

32. Supervisors may also extract several of the elements in this model MoU and develop their own texts reflecting the particular circumstances in the negotiating jurisdictions.

33. There had been calls for the IAIS to develop a multilateral MoU which can be more efficient than a series of bilateral MoUs. The IAIS should explore the possibility of putting in place such a MoU.

34. The IAIS has also published the *Supervisory standard on group coordination* that goes beyond formal agreements like the MoU and deals with the broader issues of coordination and information exchange arrangements. These issues include the need for coordination arrangements, identifying key coordinators or coordination committees and establishing their responsibilities, and procedures for information flows. The standard also points to the Joint Forum's Conglomerate Questionnaire⁴, which helps supervisors map the activities of an insurance group or a conglomerate, and the Supervisory Questionnaire⁵, which helps supervisors understand each other's objectives and supervisory approaches.

35. Knowing who to contact in another supervisory agency can facilitate timely cooperation, especially during emergencies. The *Supervisory standard on the exchange of information* therefore advocates that supervisors should each nominate an individual in their agencies to act as their main contact point. The *Principles on the supervision of insurance activities on the internet* goes further, suggesting that such contact information should be published on the websites of supervisors.

3.4 Adequacy of IAIS papers

36. The analysis above shows that there is no significant gap found in the IAIS papers' coverage on the issues of cooperation and information exchange among supervisors. It might however be desirable to

- Review the results of the ICP self-assessment 2004 to find where the practical difficulties exist and explore what kind of actions are needed for the IAIS to make progress in this area
- Provide additional guidance on removal of barriers to cooperation, including alternative measures that supervisors should take in the absence of the necessary preconditions
- Demonstrate a more positive posture by using proactive language, not over-emphasising confidentiality and avoiding the use of subjective qualifiers

37. With most of the facets of cooperation addressed by various IAIS papers in one way or another, it might also be useful to conduct a comprehensive revision to the papers so as to give clarity to the role of each paper and the linkages between them. For example, a plausible structure may involve:

⁴ The Conglomerate Questionnaire (Questionnaire) is an analytical tool created for financial conglomerate supervisory purposes. The questionnaire is considered a dynamic instrument that can be modified to suit the particular circumstances of individual conglomerates being examined and of the supervisors involved. The questionnaire facilitates discussion by one or more supervisors with a financial conglomerate about its (i) organisational structure, corporate governance and management oversight; (ii) risk management; and (iii) control environment.

⁵ The Supervisory Questionnaire was developed to collect information on supervisors' objectives and approaches. It covers (i) purpose and objectives of supervision; (ii) legal authority; (iii) methods of assessing financial condition; (iv) tools of supervision; (v) other mechanisms to enhance sound practices, and (vi) information flows among supervisors.

- The ICPs and related ECs providing high level principles on cooperation and information exchange
- The *IAIS Principles applicable to the supervision of international insurers and insurance groups and their cross border business operations (insurance concordat)* elaborating on the ICPs and providing the principles on cooperation and information exchange covering all types of regulated entities (as opposed to excluding reinsurers under the current scope) and all aspects of supervision in more detail
- Standards and guidance papers describing in detail tools that facilitate cooperation. This would mean retaining the model MoU, the *Supervisory standard on group coordination* and the *Supervisory standard on the exchange of information*
- Creating references to standards and guidance papers that describe the cooperation tools mentioned above in papers related to areas of supervision where cooperation and information exchange are crucial. By not introducing new concepts in the standards that focus on specific areas of supervision, inconsistencies across documents can be minimised. For example, the need to publish contact information on supervisors' websites to aid information exchange is not exclusive to the supervision of activities over the internet. It could therefore be consolidated into the *Supervisory standard on the exchange of information* whenever the next revision to the text is undertaken

4. Standard-implementation efforts and other initiatives

38. After assessing the adequacy of IAIS principles, standards and guidance papers we now examine their implementation. Anecdotal evidence shows that IAIS members take into consideration these standards in the development of their cooperation and information exchange arrangements, the most notable of which is the European Union's *Helsinki Protocol on the collaboration of supervisory authorities in supervising insurance groups (2000)*. Proliferation of IAIS standards is also enhanced, as the ICPs are the assessment criteria for the soundness of an insurance industry under FSAP.

39. In addition, promoting the implementation of IAIS standards is done via various education efforts. The use of MoUs and cooperation among supervisors in the context of group-wide supervision were among topics discussed in IAIS training seminars in 2003 and 2004. A full module complemented by a case study on supervisory cooperation and information exchange is also being developed under the IAIS Core Curriculum project.

40. One area where improvement can be made is to establish a feedback mechanism between standards implementation and standards setting. The model MoU was adopted in 1997 and the *IAIS Principles applicable to the supervision of international insurers and insurance groups and their cross border business operations (insurance concordat)* in 1999, and neither document was scheduled for review at the time of writing. IAIS members should have built up sufficient experience in implementing these documents and be able to provide insights on the usefulness of the provisions in these documents in real life. A review of the model MoU, the *IAIS Principles applicable to the supervision of international insurers and insurance groups and their cross border business operations (insurance concordat)* and other papers that are more than five years old should therefore be carried out, taking into account members' experience in implementing them. This would help to keep IAIS papers up to date with the latest supervisory practices.

41. IAIS efforts in promoting cooperation and information exchange goes beyond merely setting and implementing standards. As mentioned previously, promoting cooperation and

information exchange is one of the objectives upon which the IAIS was founded⁶. The IAIS provides numerous opportunities for its members to build personal ties with other supervisors through its annual conferences, meetings and training seminars. These events are arguably more powerful tools in fostering greater cooperation among supervisors than standards that the IAIS set. The IAIS should continue to provide supervisors with the opportunity to interact and work together towards better insurance supervision.

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