Institute and Faculty of Actuaries

Consultation on ICP 12 and ComFrame material integrated with ICP12

IFoA response to IAIS

1 June 2017

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IAIS Consultations

Print view of your comments on "Consultation on ICP 12 and ComFrame material integrated with ICP 12 (Public version)" - Date: 01.06.2017, Time: 17:39

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	Question
	Q1 General Comment on ICP 12 (including ComFrame text)
Answer	The IFoA believes that it is helpful to have a revised ICP12 which includes the ComFrame material. A general comment is that ICP 12 does not distinguish between insurers and reinsurers where there may be different considerations – in particular noting that under SII, reinsurance policyholder creditors rank below other insurance policyholders. The ICP is silent on the issue of capital. In practice, there are many different bases on which liabilities can be calculated (and, particularly illiquid, assets can be valued), so assessing by how much the value of assets exceed the value of liabilities is not a precise calculation. Indeed, assets and liabilities may be based on a best-estimate and hence the reason capital needs to be held. In our view therefore, it is insufficient to consider simply the situation where the value of assets is less than liabilities, or that it is likely that claims may not be paid when they fall due, without considering how the likelihood may be assessed. Loss events that would trigger resolution need to be considered. This may be scenario dependent, and may well be impacted by the degree of certainty over the value of the assets and liabilities, and how well-matched they are. We recognise that this is partly addressed in paragraph 12.6.1, but believe that this could be also considered in other parts of the ICP.
	Q2 Comment on Introductory Guidance ICP 12.0.1
Answer	
	Q3 Comment on Introductory Guidance ICP 12.0.2
Answer	
	Q4 Comment on Introductory Guidance ICP 12.0.3
Answer	
	Q5 Comment on Introductory Guidance ICP 12.0.4
Answer	

Q6 Comment on Introductory Guidance ICP 12.0.5

Answer

Q7 Comment on Introductory Guidance ICP 12.0.6

Answer

We appreciate the recognition given to the key theme of ‘continuity of insurance cover’, and stress that the mechanisms in place to achieve such continuity are critical within a resolution context.

Q8 Comment on Introductory Guidance ICP 12.0.7

Answer

Q9 Comment on Introductory Guidance ICP 12.0.8

Answer

Q10 Comment on Introductory Guidance ICP 12.0.9

Answer

Q11 Comment on Introductory Guidance ICP 12.0.10

Answer

We note that in other IAIS documents the term ‘Insurance Guarantee Fund’ is used instead of PPS (Policyholder Protection Scheme), and it would be helpful to use consistent terminology. We also note that in many jurisdictions PPSs are not pre-funded (and in any case the pre-funding may be insufficient), so levies to fund PPSs may in practice be absorbed by other firms’ policyholders, and the levies themselves may cause further firms to enter resolution. Ultimately the costs may then have to be borne by taxpayers. (This may be addressed by loans from the authorities to spread the burden for the industry with repayment over time).

Other considerations are liquidity and/or uncertainty: it may be that assets are sufficient to cover liabilities on a best estimate basis, but there may not be sufficient liquid assets. In such circumstances a liquidity facility could be required, so that the resolution authority or PPS can pay claims as they fall due and/or to avoid the forced sale of assets in a depressed market.

Q12 Comment on Introductory Guidance ICP 12.0.11

Answer

Mixed groups as well as pure insurance groups need to be considered.

This section should also consider in-house asset managers, as they may fall within the remit of an insurance group’s resolution regime or be considered a critical shared service in this context.

Q13 Comment on Introductory Guidance ICP 12.0.12

Answer

There could be mention here of the role of ‘Crisis Management Groups’ (CMGs) for IAIGs, while recognising that the CMG would probably not include the resolution authorities for all group companies.

Q14 Comment on ICP 12.1

Answer

Q15 Comment on ICP 12.1.1

Answer

We note that for some mutual firms there is a difference between the roles and rights of different groups of policyholders and their 'members'.

Q16 Comment on ICP 12.1.2

Answer

'Appropriate arrangements' could be made more precise – in particular, this would likely involve the insurer refreshing its run-off plan.

Operational infrastructure is also required for insurers to fulfil their insurance obligations, in addition to human and financial resources.

Q17 Comment on ICP 12.1.3

Answer

For the reasons noted in the answer to Q1, capital requirements should be considered.

Projected financial statements should cover both capital and liquidity arrangements, and include specific examples such as the company's P&L position and balance sheet. In addition, projected capital and liquidity numbers should reflect financial interdependencies including reinsurance arrangements and hedging strategy.

Furthermore, the run-off programme should consider both a base and stressed case.

Q18 Comment on ICP 12.1.4

Answer

Q19 Comment on ICP 12.2

Answer

This should include protection of creditors. 'Liquidation' may have a specific meaning in a jurisdiction and there may be other forms of winding up that can occur. We also note that the liquidation of insurers is not a common occurrence in most countries, and therefore it may not be known what would actually happen in liquidation until it happened (which as noted below is a problem with the 'No Creditor Worse Off than in Liquidation' (NCWOL) concept).

Q20 Comment on ICP 12.2.1

Answer

Q21 Comment on ICP 12.2.2

Answer

As noted in our answer to Q11, recouping the costs of resolving a large insurer may not be feasible if it: • is required at the same time as needing to resolve other insurers or • it actually triggers the failure of other insurers.

Q22 Comment on CF 12.2a.1

Answer

Q23 Comment on Standard CF 12.2b

Answer

See our answer to Q 21.

Q24 Standard CF12.2b
Does the IAIG currently fulfil the requirements of the standard? If "No" or "Partially", what changes would have to be made in order to comply with ComFrame (e.g. changes to resources, processes, structures, etc.) and to what extent would those changes have to be made solely for the purpose of ComFrame?

Answer

Q25 Standard CF12.2b
What are the one-time (initial) costs to the firm associated with the changes described in the answer to Q24 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q26 Standard CF12.2b
What are the ongoing costs to the firm per year (excluding one-time costs) associated with the changes described in the answer to Q24 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q27 Standard CF12.2b
Please provide the assumptions made to estimate the one-time costs (Q25) and the ongoing costs per year (Q26).

Answer

Q28 Standard CF12.2b
Please specify the benefits of fulfilling the requirements included in the standard (that are attributable solely to ComFrame). The benefit should be viewed in terms of meeting the overall standard and should be all encompassing (e.g. the benefit for the company as well as the benefits for policyholders, for the public, for financial stability, etc.).

Answer

Q29 Comment on CF 12.2b.1

Answer

Q30 Comment on ICP 12.3

Answer

Q31 Comment on ICP 12.3.1

Answer

Q32 Comment on ICP 12.3.2

Answer

Q33 Comment on ICP 12.3.3

Answer

We do not think the list of examples given is helpful, as these examples are only a small part of the range and amount of data that would be needed in practice. However, we agree there need to be appropriate documentation, processes and plans, especially in respect of outsourced activities.

Q34 Comment on Standard CF 12.3a

Answer

Given the objective of financial stability, IAIGs should have resolution plans proportionate to their size and risks.

Q35 Standard CF12.3a

Does the IAIG currently fulfil the requirements of the standard? If “No” or “Partially”, what changes would have to be made in order to comply with ComFrame (e.g. changes to resources, processes, structures, etc.) and to what extent would those changes have to be made solely for the purpose of ComFrame?

Answer

Q36 Standard CF12.3a

What are the one-time (initial) costs to the firm associated with the changes described in the answer to Q35 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q37 Standard CF12.3a

What are the ongoing costs to the firm per year (excluding one-time costs) associated with the changes described in the answer to Q35 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q38 Standard CF12.3a

Please provide the assumptions made to estimate the one-time costs (Q36) and the ongoing costs per year (Q37).

Answer

Q39 Standard CF12.3a

Please specify the benefits of fulfilling the requirements included in the standard (that are attributable solely to ComFrame). The benefit should be viewed in terms of meeting the overall standard and should be all encompassing (e.g. the benefit for the company as well as the benefits for policyholders, for the public, for financial stability, etc.).

Answer

Q40 Comment on CF 12.3a.1

Answer

Information is needed not only on the number of jurisdictions but also the size of the operations and the activities being undertaken.

Q41 Comment on CF 12.3a.2

Answer

The resolution strategy should also consider how it progresses with a change in circumstances and an evolution of the key risks, and ultimately how assumptions are refined accordingly. For example, it should consider how the assessment changes when moving from solvent to insolvent run-off.

Q42 Comment on CF 12.3a.3

Answer

Q43 Comment on CF 12.3a.4

Answer

Q44 Comment on Standard CF 12.3b

Answer

It might be helpful to specify how regularly resolvability assessments will be made. For example, we anticipate that they will be conducted at least annually or when there are material changes to a firm's business structure.

Q45 Standard CF12.3b
Does the IAIG currently fulfil the requirements of the standard? If "No" or "Partially", what changes would have to be made in order to comply with ComFrame (e.g. changes to resources, processes, structures, etc.) and to what extent would those changes have to be made solely for the purpose of ComFrame?

Answer

Q46 Standard CF12.3b
What are the one-time (initial) costs to the firm associated with the changes described in the answer to Q45 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q47 Standard CF12.3b
What are the ongoing costs to the firm per year (excluding one-time costs) associated with the changes described in the answer to Q45 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q48 Standard CF12.3b
Please provide the assumptions made to estimate the one-time costs (Q46) and the ongoing costs per year (Q47).

Answer

Q49 Standard CF12.3b
Please specify the benefits of fulfilling the requirements included in the standard (that are attributable solely to ComFrame). The benefit should be viewed in terms of meeting the overall standard and should be all encompassing (e.g. the benefit for the company as well as the benefits for policyholders, for the public, for financial stability, etc.).

Answer

Q50 Comment on CF 12.3b.1

Answer

Q51 Comment on CF 12.3b.2

Answer

Q52 Comment on CF 12.3b.3

Answer

Q53 Comment on Standard CF 12.3c

Answer

It should be made clear that the regulator will request the insurer to address impediments in the first place, but also retaining the ultimate right to impose changes.

Q54 Standard CF12.3c
Does the IAIG currently fulfil the requirements of the standard? If “No” or “Partially”, what changes would have to be made in order to comply with ComFrame (e.g. changes to resources, processes, structures, etc.) and to what extent would those changes have to be made solely for the purpose of ComFrame?

Answer

Q55 Standard CF12.3c
What are the one-time (initial) costs to the firm associated with the changes described in the answer to Q54 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q56 Standard CF12.3c
What are the ongoing costs to the firm per year (excluding one-time costs) associated with the changes described in the answer to Q54 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q57 Standard CF12.3c
Please provide the assumptions made to estimate the one-time costs (Q55) and the ongoing costs per year (Q56).

Answer

Q58 Standard CF12.3c
Please specify the benefits of fulfilling the requirements included in the standard (that are attributable solely to ComFrame). The benefit should be viewed in terms of meeting the overall standard and should be all encompassing (e.g. the benefit for the company as well as the benefits for policyholders, for the public, for financial stability, etc.).

Answer

Q59 Comment on CF 12.3c.1

Answer

Q60 Comment on CF 12.3c.2

Answer

Q61 Comment on ICP 12.4

Answer

It is worth including asset managers in the second bullet under other financial operations. An additional bullet should also be included in relation to the pensions regulator, for insurers with significant pensions business or company pensions.

Q62 Comment on ICP 12.4.1

Answer

Q63 Comment on ICP 12.4.2

Answer

Q64 Comment on ICP 12.4.3

Answer

The second bullet point refers to ‘other financial operations (such as banking)’. We suggest adding an additional reference to asset managers, to make it clear that asset management services also fall under the remit of resolution strategy in some capacity.

Q65 Comment on ICP 12.5

Answer

Q66 Comment on ICP 12.5.1

Answer

Q67 Comment on ICP 12.5.2

Answer

Q68 Comment on ICP 12.5.3

Answer

Q69 Comment on ICP 12.5.4

Answer

Q70 Comment on ICP 12.5.5

Answer

Q71 Comment on ICP 12.5.6

Answer

Q72 Comment on ICP 12.5.7

Answer

Q73 Comment on ICP 12.6

Answer

Q74 Comment on ICP 12.6.1

Answer

We believe this is trying to address the issue we have noted in our answer to Q1, i.e. the uncertainty in valuing assets and liabilities; however, this could be clarified. It is likely that there are a number of tools which may be used at various stages of the deterioration in a firm’s financial condition; the effectiveness of those tools/actions may vary with where the firm is on a continuum from recovery to resolution. Therefore, in our view, the resolution authority should consider when it might take certain actions, recognising that it may not be clear cut when a firm is no longer viable and hence when resolution powers may be fully engaged.

It would be helpful to include further detail regarding triggers, however we appreciate that keeping trigger details at a high level allows for the flexibility to recognise the features of different business models.

The fifth bullet point could be refined to avoid ambiguity. We suggest specifying that it is ‘policyholder and/or other creditor obligations’, since later in the consultation paper it is mentioned that ‘creditor’ includes policyholders.

Q75 Comment on ICP 12.7

Answer

Q76 Comment on ICP 12.7.1

Answer

We do not believe that it will be easy for a resolution authority to assess the NCWOL test given the uncertainty inherent in establishing liabilities and what would happen in liquidation before the event.

It is also not clear how this interacts with payments from the PPS which will have a responsibility to control payment from the scheme. The paper repeatedly states that the NCWOL principle applies after compensation, but does not appear to say who actually pays the compensation or where it comes from; a range of possible sources of compensation could be relevant, including other funds of the failed company, the regulator/taxpayer, or a PPS. In the examples quoted, it is unlikely to be appropriate to use a PPS for the purpose of providing the compensation.

The resolution authority should attempt to ensure that no creditor (including the compensation scheme if they have made a payments to policyholders) receives less than they would if the insurer had been liquidated, regardless of compensation. We believe the brackets (after compensation, where necessary) should be removed.

Q77 Comment on ICP 12.7.2

Answer

Regarding stay on termination rights: further consideration is needed around the period of stay for termination rights for derivatives and securities financing transactions. This point should also be addressed for stay on termination rights for reinsurance.

Q78 Comment on ICP 12.7.3

Answer

Q79 Comment on ICP 12.7.4

Answer

The resolution authority may also have the power to clawback deferred variable remuneration from the insurer’s Senior Management.

The resolution authority may also prohibit the payment of debt coupons (in addition to prohibiting the payment of dividends to shareholders), as it is automatically triggered under Solvency II if firms fall below 100% SCR.

The resolution authority may exercise the power to put in place a special manager (in certain circumstances) to manage the insurer; this could be specified in the fifth or sixth bullet point. The penultimate bullet point could be rephrased to ‘stay of termination rights of the reinsurers’.

Q80 Comment on ICP 12.7.5

Answer

Q81 Comment on ICP 12.7.6

Answer

Q82 Comment on ICP 12.7.7

Answer

Q83 Comment on ICP 12.7.8

Answer

Q84 Comment on ICP 12.7.9

Answer

A consideration here is what capital or risk margin needs to be transferred along with the value of the liabilities.

This should consider: • the tools to effect resolution and • liquidity and working capital which are the facilitators of these tools.

Q85 Comment on ICP 12.7.10

Answer

This point should discuss measures more generally which could be put in place to expedite portfolio transfers, with the sentence currently in place provided as an example.

Q86 Comment on ICP 12.7.11

Answer

Q87 Comment on ICP 12.7.12

Answer

Q88 Comment on ICP 12.7.13

Answer

Q89 Comment on ICP 12.7.14

Answer

This paragraph explains that resolution authorities should have powers over the head of insurance group and/or non-regulated entities within their jurisdiction 'to the extent necessary and appropriate'. We think 'extent' should be clarified.

There is a reference to 'head of the insurance group' which should be updated to 'holding company'. Please see an earlier comment regarding this.

Q90 Comment on ICP 12.7.15

Answer

The phrasing of this section could be refined to avoid ambiguity. We believe that the key message here is that where the entity and its branches operate across borders and are in different jurisdictions, and the branch (or branches) are material enough to be covered by an overseas supervisor, then co-operation is required across borders between the different supervisors.

Q91 Comment on ICP 12.7.16

Answer

Q92 Comment on Standard CF 12.7a

Answer

There should an explicit mention of restructuring, limiting or writing down of ‘Excessive Benefits’ in the list.

An additional point to include could be to prohibit loan payments to non-insurance entities / unregulated entities. This is particularly pertinent if the entity is part of a mixed conglomerate.

The 17th,18th and 20th bullet points should form a separate list of powers that should be exercised in advance of entering the resolution phase.

A point on ‘stay on termination rights for reinsurance’ should be added to the final bullet point, for consistency with previous comments regarding this.

Q93 Standard CF12.7a
Does the IAIG currently fulfil the requirements of the standard? If “No” or “Partially”, what changes would have to be made in order to comply with ComFrame (e.g. changes to resources, processes, structures, etc.) and to what extent would those changes have to be made solely for the purpose of ComFrame?

Answer

Q94 Standard CF12.7a
What are the one-time (initial) costs to the firm associated with the changes described in the answer to Q93 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q95 Standard CF12.7a
What are the ongoing costs to the firm per year (excluding one-time costs) associated with the changes described in the answer to Q93 that would have to be made solely for purposes of ComFrame (please specify the currency)?

Answer

Q96 Standard CF12.7a
Please provide the assumptions made to estimate the one-time costs (Q94) and the ongoing costs per year (Q95).

Answer

Q97 Standard CF12.7a
Please specify the benefits of fulfilling the requirements included in the standard (that are attributable solely to ComFrame). The benefit should be viewed in terms of meeting the overall standard and should be all encompassing (e.g. the benefit for the company as well as the benefits for policyholders, for the public, for financial stability, etc.).

Answer

Q98 Standard CF12.7a (21st bullet point)
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.

Answer

Q99 Comment on CF 12.7a.1

Answer

Q100 Comment on CF 12.7a.2

Answer

Q101 Comment on CF 12.7a.3

Answer

Q102 Comment on CF 12.7a.4

Answer

We believe the reference here should be to the 20th bullet point

Q103 Comment on ICP 12.8

Answer

We believe this point could be made clearer by adding ‘where that legislation provides’ at the end of the text in bold.

Q104 Comment on ICP 12.8.1

Answer

Q105 Comment on ICP 12.9

Answer

Q106 Comment on ICP 12.9.1

Answer

Q107 Comment on ICP 12.9.2

Answer

This should consider the issue of claims reinsurance policyholders who rank behind other policyholders.

Q108 Comment on ICP 12.9.3

Answer

We note here the issues with NCWOL from our answer to Q76.

Q109 Comment on ICP 12.10

Answer

We note here the issues with NCWOL from our answer to Q76.

Q110 Comment on ICP 12.10.1

Answer

This explains that creditors ‘should have a right to compensation’, but does not identify who should pay for it.

Q111 Comment on ICP 12.10.2

Answer

Q112 Comment on ICP 12.10.3

Answer We note direct policyholders do not rank on an equal footing with cedants within the EU.

Q113 Comment on ICP 12.10.4

Answer

Q114 Comment on ICP 12.10.5

Answer The example requires compensation to Portfolio A policyholders, but does not say how it is funded; although it does conclude that a PPS may pay for some claims.

We would be grateful for clarification that this does not imply that the NCWOL test applies only after payments to meet PPS obligations are taken into account. This may be fine if the PPS is driving the process.

In this example, prior agreement of the PPS should be a pre-requisite if the transfer may increase the costs of the PPS.

Q115 Comment on ICP 12.11

Answer

Q116 Comment on ICP 12.11.1

Answer We believe this should be rephrased to: ‘Whilst restructuring is available in most cases, it is often subject to approval from the court’

Q117 Comment on ICP 12.11.2

Answer

Q118 Comment on ICP 12.12

Answer

Q119 ICP 12.12
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.

Answer

Q120 Comment on CF 12.12a.1

Answer

Q121 Comment on CF 12.12a.2

Answer

Q122 Comment on CF 12.12a.3

Answer

	Q123 Comment on ICP 12.13
Answer	This section needs to be a bit clearer. In particular, it needs a clear definition as to who is responsible for the resolution of branches and also a clear definition as to the role of the supervisor versus the resolution authority.
	Q124 Comment on ICP 12.13.1
Answer	
	Q125 Comment on ICP 12.13.2
Answer	
	Q126 Comment on ICP 12.13.3
Answer	
	Q127 Comment on ICP 12.13.4
Answer	
	Q128 Comment on Appendix
Answer	