

出國報告（出國類別：出席國際會議）

**參加國際保險監理官協會(IAIS)治理及
遵循工作小組(Governance and
Compliance Subcommittee, GCS)會議報告**

服務機關：行政院金融監督管理委員會保險局

姓名職稱：吳崇權 副局長

派赴國家：美國（華盛頓特區）

出國期間：97年11月17日至23日

報告日期：98年2月22日

出國報告（出國類別：出席國際會議）

**參加國際保險監理官協會(LAIS)治理及
遵循工作小組(Governance and
Compliance Subcommittee, GCS)會議報告**

服務機關：行政院金融監督管理委員會保險局

姓名職稱：吳崇權 副局長

派赴國家：美國（華盛頓特區）

出國期間：97年11月17日至23日

報告日期：98年2月22日

目 次

摘要.....	2
背景說明.....	3
拜訪行程.....	5
參加會議.....	11
一、主席報告.....	11
二、會議討論過程.....	14
心得與建議.....	23

摘要

國際保險監理官協會 (IAIS) 治理及遵循工作小組及 OECD 保險及私人補貼委員會 (Insurance and Private Pensions Committee, IPPC) 自 2008 年 7 月至 10 月間共同對保險業等機構進行有關公司治理之問卷調查，並將該調查結果予以歸納及分析後，完成議題報告 (Issue Paper) 之撰寫。由於該報告將作為修正 OECD 所擬之「保險業公司治理準則」之參考，故本工作小組乃於同年 11 月 20-21 日假美國華府 NAIC 會議室召開會議，邀集 IAIS 治理及遵循工作小組會員、觀察員代表、NAIC 代表、世界銀行代表及 IAIS 秘書處就該議題報告內容進行討論，本會係指派保險局吳副局長崇權代表出席。為期二天之會議，主席首先說明本議題報告之由來及本次會議之目的，接者要求世界銀行之 Thorburn 氏先簡報微型保險監理之研究報告後，開始討論及修正議題報告內容，並將結論提供 2009 年 1 月本工作小組東京會議中討論定案。

又近來發生全球金融危機所引發之 AIG 事件，本會爰藉參加本次工作小會議之便，指派與會之人員順道赴紐約 AIG 集團總部相關部門拜訪，當面瞭解整體事件之發展，以及未來該集團將如何處置全球資產之問題等，並強調若該集團旗下台灣各保險公司可能易主時，務必優先維護眾多保戶之權益。

背景說明

國際保險監理官協會（IAIS）治理及遵循工作小組係 2008 年甫成立之工作小組，本會由保險局陳主秘開元代表本會擔任該工作小組之個人會員（Individual Member）。本次會議將討論有關公司治理問卷調查之議題報告（Issue Paper）草案，按 IAIS 治理及遵循工作小組係依據 2008（民 97）年 6 月 19-20 日在韓國首爾舉辦之工作小組會議決議，由該工作小組及 OECD Insurance and Private Pensions Committee (IPPC) 共同對有關保險業所進行公司治理之問卷調查（IAIS-OECD Survey on Corporate governance of Insurers）。該份問卷分為 2 組問題，分別由保險業者及政府、監理機關、商業組織填寫，監理機關部分已由本會保險局填寫完竣，並於民國 97 年 10 月 3 日回覆 IAIS 在案（附件 1），業界則由新光人壽及 ING 安泰填報逕送 IAIS。

派員出席會議除可掌握該小組工作進度，展現我國對於公司治理議題之重視，以提升本會之出席率外，並與其他國家監理官員進行相互交流，瞭解他國之公司治理現況及發展；又主辦單位之 NAIC 係美國聯邦監理保險業之機構，本會可藉參加本次會議，與該協會建立良好的合作監

理關係。此外，由於近日發生全球金融危機引發之 AIG 事件，擬藉參加本次會議之便，由經指派出席會議人員順道赴紐約該集團總部相關部門，當面瞭解整體事件之發展，以及未來該集團將如何處置全球資產之問題等，俾本會得以掌握 AIG 集團旗下台灣各保險公司將會受到影響之程度。

拜訪行程

2008年9月間雷曼兄弟爆發財務危機後，美國數家投資銀行如美林紛紛出現嚴重之流動性不足問題，隨後即傳出保險業龍頭－美國國際集團（American International Group, AIG）尋求美國政府紓困，以度過難關。由於AIG在國內有幾家主要保險公司如南山人壽、美國人壽及友邦產險等均有將被出售之傳聞，造成國內保戶之恐慌，因此，基於需要對以下問題之解惑，由本會保險局吳主任秘書崇權在紐約代表辦事處曾秘書美幸之陪同下，於2008年11月18日上午拜訪AIG紐約總部：

- (一) AIG集團對台灣子公司及分公司釋股政策為何？
- (二) 對於紐約聯邦銀行之融資以及美國政府之入股之計畫紓困政策，對AIG集團之財務狀況有否助益？是否會調整對子公司等之釋股策略？
- (三) 希望對台灣保險子公司之釋股策略能以維護台灣廣大保戶之權益為首要。

對方與談人員包括：

Ms. Suzanne Folsom, Chief Regulatory Officer and Deputy General Counsel. (臨時有事未出席)

Mr. Nick Koursides, who is involving in the restruction plan.

Ms. Victoria Zaydman, Senior Regualtory Officer.

Mr. Kourides 應詢就 AIG 為解決流動性不足問題所採取之措施、資產處分原則及 2008 年 11 月 10 日紐約聯邦準備銀行修正對該公司之融資協議內容等議題說明。

訪談摘要：

一、AIG 解決流動性不足問題所採取之措施

為解決該公司流動性不足問題，AIG 已採取多項處理措施，其中包括 11 月 10 日與紐約聯邦準備銀行及財政部重新修正之融資協議如附件一，相關措施說明如下：

(一) 出售特別股予財政部，以取得資金償還借款

AIG 將新發行 400 億美元之永續累積特別股並出售予美財政部，出售股票所得之資金將用以償還向 FRBNY 之部份借款。

(二) 紐約聯邦準備銀行之證券借入機制

AIG 之部分壽險子公司於 10 月 8 日與紐約聯邦準備銀行 (FRBNY) 簽訂證券出借協議，由紐約聯邦準備銀行以現金為擔保品，向該等子公司借入其原出借予第三者之證券，間接對 AIG 提供資金援助，俾供其應付上該借券者之現金贖回要求。截至 11 月 5 日止，該等

證券出借業務之應付帳款為 342 億美元，其中 199 億美元為對紐約聯邦準備銀行之應付帳款。

(三) 出售住宅貸款抵押證券予新設立之責任有限公司，以解決 AIG 證券出借部位

1. 紐約聯邦準備銀行與 AIG 將共同融資 235 億美元，以新設立一家責任有限公司(LLC)，將購買 AIG 原借出面額總計約 400 億美元之住宅貸款擔保證券(RMBS)，出售 RMBS 所得將用以歸還原證券借入者所提供之現金擔保品。
2. Nicholas Kourides 表示，目前 AIG 已不再辦理證券出借業務，既有之部位亦逐日降低中。
3. 一旦所有現金擔保品全數歸還後，AIG 於美國國內之證券出借部位亦將全部出清(wind down)，上開 (二) 紐約聯邦準備銀行之證券借入機制即隨之終止。

(四) 終止 Multi-Sector 信用違約交換交易

1. AIG 子公司 AIG Financial Products (AIGFP) 目前仍持有與擔保債務憑證(Collateralized Debt Obligations, CDOs) 連結之信用違約交換交易(credit default swap, CDS) 部位，該等 CDS 契約要求當項下 CDOs 公平價值跌落或信用評等遭降等時，AIGFP 即必須補提擔保品。截至

11月5日止，AIGFP已提供或同意提供之擔保品總額約為373億美元，此亦為造成AIG流動性不足問題之主因。

2. 依據11月10日修正之融資協議，FRBNY及AIG亦將共同融資以成立一家責任有限公司(LLC)，向CDS之交易對手購買CDOs，該等CDS契約亦將同時終止，AIG因承作CDS所引發之流動性不足問題亦可望解決。

(五) 使用紐約聯邦準備銀行之商業本票融資機制

10月27日AIG之4家子公司包括AIG Funding Inc、ILFC、Curzon Funding LLC及Nightingale Finance LLC等，使用紐約聯邦準備銀行設立之商業本票融資機制，發行商業本票，以取得約152億美元之融資資金，用以支應AIG前所發行之商業本票到期贖回需求、供作營運資金以及償還向紐約聯邦準備銀行之借款等。

(六) 資產處分計劃

1. Nicholas Kourides表示，目前AIG之資產出售計劃仍以於10月3日所公布之處分原則為基礎，即將以產險及意外險(property and casualty)為AIG之核心業務，並繼續持有部份海外壽險子公司之股權，惟考慮出售金融服務及消費性融資等業務。

2.該公司對於海外子公司之可能處分方式，包括出售全部股權、或僅出售小部分股權予特定策略投資人、或出售資產等。惟由於目前市場仍處於動盪情況，資產出售不易，該公司資產處分計劃亦將隨時依市場狀況而調整。

(七) 降低費用及保留現金及資本

AIG 已指派專人負責擬訂及執行擷節成本及降低費用之相關計劃，以減少資金流出，改善流動性問題，該公司並已宣佈將暫停發放普通股股利，以保存資本。

二、對於南山人壽公司之處理方式

針對 AIG 是否出售南山人壽公司股權問題，Mr. Kourides 應詢表示，該公司對南山人壽股權處理方式目前仍未定案，其允諾一旦 AIG 作出任何決定，將立即通知本會。

三、紐約聯邦準備銀行修正融資協議對 AIG 營運之影響

AIG 人員表示，紐約聯邦準備銀行(FRBNY)於 11 月 10 日修正對 AIG 之財務援助協議內容，該修正後協議對 AIG 未來營運之影響包括：

(一) 大幅減輕 AIG 之資金壓力

美財政部以購買股權方式對 AIG 新發行之永續累積特別股，AIG 將以該出售股權所得資金償還向 FRBNY 之部份借款，減輕資金壓力

(二) 融資期限延長，可減輕處分資產之時間壓力

融資期間由 2 年延長至 5 年，可減輕 AIG 出售資產之時間壓力，避免因處分時限過於倉促，被迫低價求售 (fire sale)。Kourides 君表示，目前 AIG 已暫時放慢資產處分之速度，期能審慎規劃資產處分方案。

(三) 利息負擔減輕，有助改善公司財務狀況

融資利率由 Libor + 8.5% 降為 Libor + 3%，承諾費率則由 8.5% 降為 0.75%，可大幅舒解 AIG 之利息負擔，有助改善 AIG 財務狀況。

參加會議

本次國際保險監理官協會(International Association of Insurance Supervisors, IAIS)治理及遵循工作小組(Governance and Compliance Subcommittee, GCS)會議係由國際保險監理官協會主辦，美國全國保險監理官協會(National Association of Insurance Commissioners, NAIC)協辦，於2008年11月20日至同年11月21日止假美國首府華盛頓特區NAIC會議室舉行，並由荷蘭保險監理機構的Mr. Maarten Hage擔任主席。參加者包括來自世界各國之IAIS治理及遵循工作小組會員、觀察員代表、NAIC代表、世界銀行代表及IAIS秘書處人員共約20餘人，本會指派保險局吳副局長崇權代表個人會員陳主秘開元出席。至於本次會議之議程及GCS之會員名單如附件2。

一、主席報告

(一) 本工作小組2008年6月19~20日在韓國首爾舉行之會議通過對保險業者、保險協會及監理機關作有關公司治理之問卷調查，本次會議即係針對該問卷調查結果所草擬之議題報告(Issue Paper)進行討論，以作為未來訂正及修正保險業公司治理相關準則。

(二) 按 OECD 之公司治理原則(Principles of Corporate Governance)為國際公認之公司治理標準，OECD 雖針對保險業之特性所提出之保險業公司治理準則(Guideline for Insurances Governance)，惟為求其適切，OECD 委員會爰要求 IAIS 基於保險監理共同組織之角色，配合重新審視修正。為此，IAIS 遂成立公司治理特別小組(Corporate Governance Task Force)直接向技術委員會報告，並成立工作小組與 OECD 合作，此亦為 IAIS 治理及遵循工作小組成立之原由。

(三) 有鑑於前揭 OECD 之保險業公司治理準則，必須與 IAIS 之保險核心監理原則(Insurance Core Principles, 以下簡稱 ICPs)一致，最近一次在布達佩斯召開之會議，技術委員會也決議修正該核心監理原則，俾兩者趨於一致。

(四) 本工作小組的任務即係在於研議修正 ICPs, 使之與公司治理準則一致，惟這項工作可能有必要協調 IAIS 其他工作小組成員，以確保此項合作之共識與理解，而 ICPs 之最後修正期限已延至 2011 年 10 月。

(五) 在布達佩斯召開之 IAIS 執行委員會在公司治理議題上特別強調近年來所發生之金融危機中，技術委員會所提

及之酬勞問題，風險管理及其相關議題，都將成為今後相當重要之議題。

(六) 關於微型保險(Microinsurance)監理之議題，本次會議資料中也附有工作報告(附件 3)，主要撰寫人世界銀行之 Craig Thorburn 補充說明如下：

1. 微型保險監理之議題，從相關新聞媒體中，可以得知，已有不少國家在認真考慮這方面問題，甚至許多論壇會議中也皆加以討論。
2. 報告彙總後，發現其採互助型態，似乎是微型保險提供者較可能之選項，祇是對此互助型態，究應如何監理，則仍須有較多之案例提供參考。
3. 本工作報告主要包括兩大部分，第一部分為互助型態下及成立微型保險特定社區之規範及監理，此部分可以在下次會議中就相關準則等進行討論，第二部分為如何透過保險自主(暫訂名稱)以取得資金，換言之，可能涉及之籌資計劃，有必要在報告之正式章節中賦予正式地位，以利推動，相關草案內容將由工作小組提出。
4. 保險業核心監理原則(ICPs)及 IAIS 監理報告已將微型保險列為主要課題，最近討論之重點則在於如何有效

風險管理。

二、會議討論過程

(一) 討論及修正公司治理問卷調查結果及分析

有關公司治理方面對保險業所為之問卷調查，工作團隊 (Work Team) 由所收到 37 份監理機關及 9 份公會組織之回覆意見加以整理分析後，撰寫完成議題報告草案(附件 4)，然而工作團隊仍期待繼續有來自保險公司對問卷之意見，故完整之報告草案預計能在 2008 年聖誕節前夕提出。

由於這份議題報告希望能反映真實情況，因此一些翻譯而來之問卷內容，可能要被排除，本報告除了在量的分析及辨認其不同觀點外，也討論更多質的因素。基此，下列議題將被提出討論：

1. 問卷調查結果將被放入議題報告草案中。
2. 主題報告草案將在參考隨後之回覆意見另作調整。
3. 任何會員及觀察員之意見仍然歡迎。
4. 所有章節內容隨後將被確認，最後一篇可能包括未來展望。
5. 翻譯後之內容，如問卷 11b 及 24b 可能會被誤解，因

為其乃譯自法語，其他議題也可能這有種情形。

6. 所回應意見原則上會保密，不過如依其特性、地區，經分析後該資訊具有差異性，例外可能提出討論。
7. 議題報告草案將不會分送回覆者，惟將被一併納入會議報告，送交 2009 年 3 月之 IAIS 技術委員會及 OECD 工作小組討論。

主席裁示：暫定之問卷調查結果將先在 2008 年 12 月 5 日之 OECD 圓桌會議上報告，而該報告草案將提交 2009 年 1 月中旬在日本東京召開之會議中討論。

(二) 議題報告草案之討論

主席強調本草案能提供本會議討論表示相當有進展，然而更進一步的工作則是如何將調查結果加以納入，非常感謝工作團隊在這方面的貢獻，主席提議本次會議主要討論範圍、型態、基本內容，以及草稿是否提供正確信息，俟東京會議時，工作小組再對草案內容作更詳細之討論。

主要是必須確保與現有 IAIS 之報告一致，主席將提供訊息給其他相關 IAIS 工作夥伴之主席們有關本工作小組之活動，以及告知彼此間協調及一致之重要性，在正式

有關回覆之諮詢將被要求在特定議題上提供意見。

1. 議題報告之範圍、型態及基本內容，必須符合以下要件：

- (1) 本報告應多聚焦在與保險相關之公司治理議題上。
- (2) 本報告之目的並非在列舉公司治理之普遍性，相關背景資料應僅在介紹或架構一項議題。
- (3) 本報告所提及之公司治理應包括單獨公司及集團公司之標準。
- (4) 本議題也應納入集團及跨境機構，尤其是遵循沙氏法案之外國個體。
- (5) 其他相關 IAIS 報告之參考亦應納入草案有關章節（含簡介及個別章節）。
- (6) 報告用語應是描述，而非開藥方——它應作為議題而非提供指導方針。
- (7) 報告之長度最好不要超過 50 頁。
- (8) 目前所提之草案內容應是適當的，不過未來本文可能需要再縮短一些。
- (9) 報告之型態必須前後一致。
- (10) 重疊及重複部分在正式報告時，應予以刪除。
- (11) 與報告之其他內容交叉參考，可能是有用的。
- (12) 可以將最近金融危機所引起之議題如酬勞問題納

入討論作為反映。

(13) 有關監理機構內容方面，可增加與其他金融監理之互動關係。

(14) 執法者之效率以及重複要件之降低及(或)避免等議題可能需要增加。

(15) 在工作小組會議中無共識或有多方意見之議題，或許在特定對象如開發中國家有所幫助，應可納入報告中，惟該多方意見有必要在報告草案中更詳細說明。

(16) 正式報告必須充分且大到可適用所有公司型態，如果僅適用到相互公司則應避免。

2. 傳達正確信息

針對議題報告內容逐項進行討論，其結論臚列如下：

※ 前言部分

(1) IAIS 詞彙表所使用之專有名詞於報告中亦沿用之，如有必要可建議修正詞彙表，詞彙表可作為附件。

(2) 報告須強調由準則基礎之監理(Principles-based Regulation)取代法規基礎之監理(Rule-based Regulation)後公司治理更

為重要。

※ 公司治理之架構部分

- (1) 本章節應納入委員會之一般性敘述，至於較詳細之敘述則留由其他章節。
- (2) 多方考量後，有關股東會議之功能也應增列。

※ 董事會功能部分

- (1) 外界壓力促使保險人應具有良好的公司治理，評等機構就是其中之一。
- (2) 下列議題應在本章節提出或詳細說明：
 - ① 訴訟效力所造成之影響。
 - ② 董事會結構可能間接形成一種公司文化。
 - ③ 申報制度及集團(含跨境公司)對董事會之挑戰議題。
 - ④ 董事酬勞政策。
 - ⑤ 治理階層如投資者(債權人)及保險公司之利害關係人(stakeholder)之角色及責任。
 - ⑥ 董事會之專業性。

※ 風險控管功能部分

- (1) 本章節應討論到風險管理失效及最近金融危機之樣態及董事會成員有必要在公司治理方面加強訓

練等。

- (2) 第 74 點、137 點及 154 點性質相同應合併一起。
- (3) 縮寫部分應完整拼出原文(例如第 177 點)
- (4) 本報告應提出有關內部及外部精算師之議題，惟可能不會有答案。

※外部稽核部分

- (1) 應著重更多保險特定議題。
- (2) 下列事項有參考納入必要：
 - ①精算師與稽核人員之關係
 - ②如何發揮吹哨子功能
 - ③非稽核工作之內容
 - ④集團公司之稽核
 - ⑤股東會在指派稽核人員時之角色
 - ⑥監察人是否參與指派過程
 - ⑦董事會之董事職責及對稽核之人員管理
 - ⑧事實上極少稽核公司可能提升對公司治理之重視
 - ⑨精算師如由外部稽核所推荐，是否會有潛在之利益衝突
- (3) 以上意見僅供參考，原則上應不影響稽核費用及工作範圍。

(4) 第 189 點有必要再詳加說明清楚

※資訊揭露及透明化部分

(1) 可不必要納入討論者有：

①公開揭露

②對監督者之揭露

(2) 有必要加以討論者有：

①揭露方面之公司治理作為

②對消費者之揭露

※利害關係人部分

(1)應包括：

①利害關係人名單

②應著重與公司治理相關議題

③公司治理及公司社會責任之保險概念

(2)是否具有信託義務並非認定公司利害關係人之唯一要件(第 209 點)

※與監察人互動部分

本章節可能應增列：

(1)考慮到監察人監督之需求，應配置具專業之職員，
以評估董事會之運作。

(2)必須考慮到風險管理，損害防阻及事業永續性。

主席裁示：

起草議題報告之工作團隊成員將修正業經討論過之各章節，並應提前將修正草案在 2008 年 12 月前提交主席及 IAIS 秘書處，希望能趕在東京會議之前將本草案編入會議議程資料中。

(三) 話訊會議

主席先將本次會議討論情形簡略說明後，希望其他未出席之會員及觀察員能參與話訊會議。

參與者特別提到有鑑於最近之金融危機，報酬問題及評等機構之角色等議題都應該被納入報告中。

其實這些問題過去以來在許多論壇，包括共同論壇(Joint Forum)、金融安定論壇(Financial Stability Forum)也都有討論及分析，主席希望這些問題在未來能在工作小組會議有所辯論，並提出貢獻，而問卷調查之回覆意見中或許也可獲取這方面有用資訊。

(四) 巴黎圓桌會議之準備

本工作小組與 OECD 公司治理工作小組之共同會議，將在 2008 年 12 月 5 日在巴黎舉行，報名表格已傳送並上傳網站，相關共同會議簡要議題亦被傳送，圓桌會議係由 OECD 秘書處等主辦。

(五)下次會議

本年度工作小組最後一次會議即是與 OECD 公司治理工作小組在 2008 年 12 月 5 日召開之圓桌及共同會議，至於 2009 年之會議，預計召開之時間地點如下：

- (1) 2009 年 1 月 14~15 日 日本 東京
- (2) 2009 年 4 月 22~23 日 加拿大 蒙特婁
- (3) 2009 年 7 月 13~14 日 荷蘭 阿姆斯特丹
- (4) 2009 年 9 月 9~10 日 巴林 麥納瑪(Manamah)
- (5) 2009 年 12 月(暫定) 法國 巴黎(與 OECD 共同開會)

於此一提是，為符合 60 天正式諮詢期間規定，四月份在蒙特婁之會議時間可能需要調整。

心得與建議

- 一、參加本次會議除了對公司治理相關議題表示意見外，並與出席之各國保險監理官代表及觀察員交流，其中主席 Maarten Hag 為荷蘭保險監理官，頗能掌握研討會議之流程，不但在相關議題報告之結構有所檢視並略作調整外，在內容之適切性與否，亦多有著墨，相信隨後 12 月上旬召開之會議將有更具體之結論，可提供 2009 年 1 月之東京會議充分討論，以縮短議題報告定案之時程。
- 二、本次會議係以討論公司治理相關議題報告內容為主，由於該議題報告係依據 IAIS 治理及遵循工作小組對保險業等所進行有關公司治理之問卷調查結果之歸納與分析，擬在未來作為修正 OECD 所擬「保險業公司治理準則」之參考，透過本次會議之參與，發現適切可行之保險業公司治理準則，必須能符合下列要求：
 - (一)保險業面對之特殊風險及責任有別於一般產業，故有必要特殊之監理指導。
 - (二)保險業對其保單持有人之忠實義務及其保險商品之複雜性。
 - (三)保險業存在著複雜之當事人代理關係，及對眾多利

關係人而言，市場影響力及資訊之不對稱。

以上特點在議題報告亦均有提及並獲致回覆者之寶貴意見；尤其本會正研議我國保險業之資訊揭露如何與國際接軌之際，治理結構中，多數意見回覆者贊同公司應有「揭露委員會」之設置並加強其功能乙節，值得參考。

三、有鑑於 IAIS 執行委員會另外指定治理及遵循工作小組研議有關微型保險監理之議題，本次會議亦確立 IAIS 保險核心原則將是會員機構推動微型保險監理時應遵循之方向，依照世界銀行代表 T 氏在會議中所提報告，有關微型保險之通路管理以及設立條件上之差異化管理等問題，或可供未來我國推動微型保險之監理參考。

四、至於此次趁參加會議之便，順道拜訪 AIG 紐約總部，除聽取該集團企劃部及法令遵循主管 K 氏等說明集團解決流動性問題所採取之措施外，並以其子公司所在地監理官身分要求該集團在進行相關資產處分時，應優先維護台灣眾多保戶之權益，經渠等允諾一旦 AIG 有任何決定，將立即通知本會，而與會人員自美返台迄今經常可以經由 e-mail 收到該集團處分各地資產之第一手訊息，也確實感受到該集團之誠意及此次拜訪之具體成果。

**IAIS-OECD Survey on Corporate Governance of Insurers
QUESTIONNAIRE FOR OTHER RESPONDENTS**

Deadline for responses:
Supervisors: 3 October 2008
All other respondents: 31 October 2008

If you are a Trade Association or Other party:

Name of Trade Association or Other party

Jurisdiction

Contact person (contact details and e-mail)

For Trade Associations Self-regulatory function [please select]

If you are a Supervisor:

Name of Supervisor

Financial Supervisory Commission

Jurisdiction

Chinese Taipei

Contact person (contact details and e-mail)

If you are a Governmental body (non-supervisory):

Governmental body

Jurisdiction

Contact person (contact details and e-mail)

QUESTIONNAIRE

(Please answer all questions that apply or are relevant to you. Please note that the numbering of questions corresponds with the numbering in the questionnaire addressed to insurers; there may therefore be gaps in the numbering.)

1. GENERAL

- | | | |
|----|---|--|
| 2 | In your opinion, what are the key strengths and weaknesses of insurers' governance? | <p>Strengths: enforced self-regulated corporate governance conduct, adopting the requirements of the independent board directors and supervisors</p> <p>Weaknesses: the quality of professionalisms of controlling owners, and some family-running insurance companies conduct weak governance practices</p> |
| 3a | Within your jurisdiction, are you aware of any failure (or near failure) of an insurer directly attributable to poor corporate governance standards or practices. Please identify the main triggers of the (near) failure and, where possible, provide further references (e.g., formal public hearings, investigations or commissions undertaken). | There is a non-life insurance company with financial deterioration in 2005, which involved frauds of taking the advantages of the leak of cash flow processes to transact company's money into personal accounts. |
| 3b | What conditions provide the basis for high-quality insurer corporate governance and what factors might be detrimental? | Board composition, fit and proper |
| 4a | How have the corporate governance practices of insurers evolved over the last five years, and what future developments are expected? | The requirement of independent board directors, encouraging the insurers to take external audits, educational courses held by the authority for related staff of the companies |
| 4b | Please provide copies of any documented practices on corporate governance applicable to insurers in your jurisdiction (please attach to your response to the questionnaire). | as attached |

2. GOVERNANCE STRUCTURE

Governance structure refers to the organisation of decision-making and oversight in an entity and includes related arrangements and practices.

The governance structure includes both the governing body (i.e., one- or two-tier board of directors) and the system in which it operates (e.g., shareholder meetings). It involves the assignment of rights and responsibilities across the organisation and other parties (e.g., shareholders, policyholders, auditors, actuaries).

Elements of the governance structure may include: role, structure, and responsibilities of the governing body and any sub-bodies; linkages with related institutions (conglomerate); shareholder and policyholder oversight mechanisms (e.g., annual meetings, election of directors); and roles of the actuary and auditor.

General

- 5 Which of the following factors have an important and specific impact on the governance structure of insurers? (Please rank each factor with "great importance" [3], "medium importance" [2] or "low importance" [1], or "low importance"[0]).

Nature of insurance activities and contracts	2
Policyholder rights and interests	2
Supervisory requirements for prudent behaviour and proper market conduct	3
Investments relating to unit-linked insurance products	2
Connections with related parties and controlling shareholders	3
Expectations of corporate social responsibility	2
Other factors (please specify) Transparency and information disclosure	3
	[please select]
	[please select]

Establishment of committees

- 6a) What board committees are necessary to ensure a sound and effective system of corporate governance? Which board committees are currently required and are new requirements being considered?
- Risk management committee, Audit committee
There is no explicit requirement for the companies to set up committees within the board. Yet the insurers are required to facilitate necessary internal controlling infrastructures and to report to the board of directors or the competent authority periodically or when necessity.
- 6b How should the members of these committees be nominated?
- The members of the committees should be nominated by the board of directors for that the board of directors should take the ultimate responsibility of governance.
- 6c What should the responsibilities of these committees be?
- The board of directors should audit and be responsible for the sound operations of the committees.

Internal controls and risk management

- 7 Is a risk management function required by regulation? Please specify the scope of this requirement.
- There are companywide risk management requirements as for underwriting risk, market risk, operation risk, legal risk, investment risk, etc.
- 8 How have internal control and risk management systems and practices of insurers evolved in recent years? To what extent were these changes in response to regulatory developments?
- Required the company to facilitate risk modeling, cash flow testing, etc. More and more companies to have CROs, qualification requirements for underwriters, claim adjusters, actuaries, legal personnel, investors, etc.
- 9 Are specific internal controls and risk management practices needed with respect to policyholder funds and accounts (e.g., participating policyholders or policyholders with unit-linked products)? Please explain.
- The account is required to separate for the insured's funds from investment-linked policies. The assets are required to segment for participating policies, universal life and interest sensitive annuity.

Conflicts of interest

- 11a What mechanisms should be in place to manage the following potential conflicts of interest:

Related party transactions	By the requirements of the insurance law, there are strict regulations
----------------------------	--

towards the loans and investments with related parties.

Determination of policy dividends

The appointed actuary should submit a profit distribution report to the board of directors for approval, which suggests the amount of distributable earnings and the sharing portion of the applicants.

Other potential conflicts (please specify)

The following situations might introduce interest conflicts: same independent board directors in different non-affiliated companies, the executive manager to be the CEO and chairman in the same time, the appointed actuary to be the CEO, etc.

11b Are there requirements for specific independent functions? If so, which ones? Are the requirements for specific independent functions applied across all insurers or only o certain types of insurers or in certain circumstances?

Yes, for instance, the appointed actuary, internal controlling unit and external auditors like accountants are required to be functioning independently.

11c Do laws, regulations, guidance, or self-regulation establish rules to address conflicts of interest that are applicable to insurers and the members of the board of directors?

Yes, for instance, there're conditions and restrictions in the insurance law towards the loans to related parties as well as the ownership of other entity.

11d Are there any other measures that are imposed on the board of directors and/or senior management for the purpose of avoiding situations where the quality of corporate governance might be at risk (e.g., lending to members of the board of directors, specific remuneration policies)?

There're conditions and restrictions in the insurance law towards the loans to related parties as well as the ownership of other entity. There're fit and proper requirements for the executive managers of an insurance company to ensure their integrity and professionalism. The relatives of an internal supervisor cannot be the board member or manager of the insurance company. The information of the remunerations of the board directors should be disclosed to the regulators in the regulatory annual report. The transactions between related parties and controlling owners are required to declosed to the public in the annual report.

Separation of functions

12a Which specific functions (e.g., risk management, actuarial valuations, internal audit and compliance) are required for insurers to operate independently?

The internal control unit, legal compliance unit and risk management mechanism are required to operate independently and to report to the board of directors and the supervisory authority.

12b How should the independence of those functions (e.g., risk management (RM), actuarial valuations (AV), and internal audit and compliance (IA&C)) be ensured?

	RM	AV	IA&C
Independence of budget	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Independence of personnel (e.g., prohibiting persons from taking independent positions because of prior position or experience with an insurer, supervisory review of dismissal by the board of directors)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Independence of performance evaluation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Direct reporting to the board of directors, supervisors and/or	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

general meeting

Participation in meetings of the board of directors

Access to the external auditors

Oversight by board members and/or supervisors

Others (please describe) RM

AV

IA&C

12c

Please describe any requirements or measures to promote the independence of these functions.

We have measures in place to insure the independencies of these functions. For instance, the appointed actuary should be independent of personnel and the companies should report to the authority upon appointment and dismissal of an appointed actuary.

Transparency

13

Are there any specific problems or issues regarding the transparency of governance structure of insurers?

Yes, there are insufficient disclosures towards the ownership structure due to the ownership of legal entities, which increases the difficulties of tracing the real controlling shareholders.

Mutual insurers

15a Within mutual insurers, how would you evaluate the effectiveness of oversight functions at policyholder meetings?

N/A. There's no mutual insurer in our jurisdiction.

15b How can it be ensured that such oversight functions reflect a majority of policyholders' interests?

N/A. There's no mutual insurer in our jurisdiction.

15c Please explain how mutual insurer governance requirements help to ensure that policyholders' interests are appropriately reflected in management decisions.

N/A. There's no mutual insurer in our jurisdiction.

Group and conglomerate

16a Do you have the legal authority to review the governance, internal control and/or risk management functions within the head of the group?

Yes, the Financial Supervisory Commission is responsible for the review.

16b Do you have the legal authority to review the internal operations of a non-regulated entity within a group headquartered in your jurisdiction?

No, legally we only have financial holding companies, which are supervised by the Financial Supervisory Commission. That means all entities within a group headquartered in our jurisdiction are financial institutions and hence are all regulated by the Financial Supervisory Commission.

16c What are some of the challenges with supervising the corporate governance, internal controls and/or risk management functions within a group/conglomerate?

Complex inter-group transactions and cross holdings increase the difficulties to understand the risks held by the group.

3. STAKEHOLDERS

Policyholders

17a What arrangements, if any, could protect policyholder interests within the governance system of an insurer (e.g., voting rights, management decision-making, special meetings, election of members of the board, arrangements for participating policyholder funds)? If arrangements for policyholders with governance related rights (such as voting rights) and policyholders without such rights should be different, please explain.

The introduction of the independent board directors could be regarded as to represent the policyholders' right in the board of directors.

17b Please describe any significant differences (within an insurer and across different types of insurers, e.g., shareholding and mutual companies, life and non-life companies) between policyholders in terms of duties owed to them, their rights (e.g., differences in their rights to receive policy distribution of surplus, in their ability to elect directors representing policyholders), and their role in the governance structure. Please explain the main rationale for the differences, including any relevant background information.

No significant differences.

17c To what extent is policyholder claims management a relevant issue from the perspective of corporate governance?

The manager of legal compliance should assess the progress of internal control system including claims handling and disputes mediation and should report to the board of directors and supervisory regulators annually.

17d For unit-linked products, what arrangements, if any, should be established within the governance structure for the funds associated with unit-linked insurance products to ensure the appropriate treatment of these funds (e.g., investment policy, pricing, equal treatment of policyholders in redemptions, etc)?

For unit-linked product, the conditions such as investment policy and pricing are predetermined and disclosed to the policyholder and they cannot be altered by the decision of the board of directors.

17e Has your jurisdiction established any special governance rules in respect of the funds associated with unit-linked insurance products?

The account is required to be separated for the insured's funds associated with unit-linked insurance products.

Redress

18a What redress mechanisms are and should be available to policyholders and/or other

There're private and governmental organizations such as the Non-life Insurance Association, Taiwan Insurance

stakeholders?

Institute, Consumers' Foundations, Consumer Protection Committee, etc. to provide free-of-charge services to the policyholders to mediate claim disputes.

18b Are insurers or supervisors required to analyse and disclose information on policyholder complaints (e.g., number of complaints, main contents, etc.)?

Insurers are required to report to the authority semi-annually the number of claim disputes they have had and the handling time of each case. The information will be disclosed to the public on the Insurance Bureau's website.

18c Is an insurer required to improve its business practices based on the results of such analysis?

The performance of handling policyholder complaints has been deployed as a risk factor within Risk-based Capital system, also it is an index for the authority's consideration to approve the non-life insurers' operation into new business scope of short-term health insurance.

Participating policyholders

20a How should participating policyholder funds/profits (including distribution of surplus) be addressed within the governance structure of an insurer with participating policies?

We have no explicit requirement towards the handling of policyholder's funds/profits within corporate governance, yet we have introduced various measures of protection such as requirements of asset segmentation, actuary's valuation, etc.

20b How can it be ensured that the distribution of surplus policy reflects the majority of policyholders' interests and is not unduly influenced by shareholders and/or management? Please describe practical challenges associated with coordinating policyholder interests, if any.

The calculation of profit distribution of the participating policy should be determined ex ante and submitted to the authority. It is required to disclose to the potential clients, too. The challenge is the ex post review, which is of practical difficulty.

20c Do participating policyholders have any governance rights (e.g., board representation) in shareholding companies? Are there regulatory requirements or guidance addressing governance arrangements and practices surrounding participating policyholder funds and related profits/distribution of surplus? Please describe any relevant issues or experiences.

No. Although there're explicit protection measures adopted surrounding participating policies, but the policyholders are not present in the process.

20d For participating contracts, are policies on future distribution of surplus required to be made sufficiently clear so that policyholders can develop reasonable expectations regarding the future stream of distribution of surplus? Must insurers seek policyholders' views on how the source of future distribution, such as unrealised gains and retained earnings, should be treated?

Yes, the distribution of surplus is required to indicate clearly in the policy and disclose to the potential clients.

20e Are there situations where policyholders may not be appropriately informed of the existence of a participation clause (e.g., only the beneficiary is informed)?

No, for there is disclosure requirement in place and we have few complaints in this issue.

4. FUNCTIONS AND RESPONSIBILITIES OF THE BOARD OF DIRECTORS AND SENIOR MANAGEMENT

Policies

21 In which main areas regarding the conduct of insurance business (e.g. risk management, investment, underwriting, reinsurance, introduction of new products, related party transactions etc) are the boards of insurers required to develop and maintain a written board policy?

The boards of the insurers are required to setup internal control process guidance paper with content related to companywide operations, risk management, legal compliance, etc.

Board independence

22a What practices, arrangements and/or structures should help to promote the independence of the board of directors and its committees?

The introduction of independent board directors, internal supervisors, and audit committee would help to promote the independence of the board of directors.

22b To what extent should members of the board or its committees (e.g., audit) be non-executive (i.e., not an employee) and, in the context of a conglomerate, not be affiliated with related institutions?

The board should at least have one fifth and minimum two independent board members. The independent board directors should not be the employees of the company or affiliated entities. One person cannot present as an independent board director for more than three companies.

22c What factors, conditions, or incentives tend to weaken the independence of the board of directors or of individual members of the board of insurers?

There is no limitation for the number or portion of executive staff within a board of directors.

22d Is there any specific definition for "independence" set in laws, regulation, guidelines, etc.? Please outline the definition/criteria.

No, there are only qualification requirements for the independent board directors.

22e Are there any requirements on the number of independent directors within the board and/or its committees?

The board should at least have one fifth and minimum two independent board directors. The independent board directors should not be the employees of the company or affiliated entities. One person cannot present as an independent board member for more than three companies.

Ethical conduct and corporate social responsibility

23a Are boards of directors required or encouraged to set ethical standards (for themselves and possibly also management) or standards for corporate social responsibility?

Nil.

23b Can the promotion of ethical conduct, standards, and values have any appreciable impact on the

Yes, it can be promoted via the setup of self-regulation ethic standard and continuing education. The promotion

governance of insurers? If so, how best can these been promoted within the board and the insurer more generally? Are there specific standards or values that deserve special attention within an insurer?

of social liability and microinsurance deserve special attention.

- 23c Please provide any concrete examples where such ethical standards and/or corporate social responsibility standards have been applied and have changed the behaviour of an insurer.

N/A

Functions and responsibilities of senior management

- 24a What should be the main functions of senior management in the corporate governance framework of insurers?

The board of directors should setup high ethical standards and the senior managers should facilitate clear and practical processes in corporate governance to ensure an on-going, appropriate, and effective process of adherence to those standards.

- 24b How should the board hold senior management accountable?

The employments and dismissions of senior managers are approved by the board and the senior managers should report to the board on corporate governance and be reviewed by the board for their decision making and efforts.

- 24c Are there requirements or practices pertaining to reports to the board of directors, such as the content, frequency and relevance of management information (e.g., reporting against the policies and strategies set by the board of directors)?

Yes, we have several reporting requirements such as daily report for the fair values of the invested derivative products, monthly report for the net and gross amount of effective insurance policies and the assessment of the hedge of derivative products, and yearly report for the progress of internal control mechanism.

Reporting

- 25 What type(s) of reporting systems should be established within an insurer (e.g., committees to the board, management to the board and/or committees, board to shareholders, external auditor to committees and/or board) (see questions below on auditors)?

The reporting systems such as management to the board, board to shareholders, internal audit to board, and external auditor to board should be established within an insurer.

- 26 Please describe how it should be ensured that the board of directors (especially independent members of the board) can access and/or receive all relevant information to fulfil their expected roles appropriately and thoroughly (e.g., can attend all board meetings and other relevant meetings, can interview any business unit without notification, have an independent budget allowing them to employ external consultants).

It is common practices in our jurisdiction that the independent board directors can have the rights to attend all board and other meetings, interview any business unit without notification, and have an independent budget to employ external consultants.

Accountability

27

What is the best way to make members of the board and the board as a whole accountable with respect to their duties and responsibilities?

According to the company act, the board and the members of the board are legally responsible for their decisions and operations under the principle of authority and responsibility.

Review

28

What should be the nature and frequency of internal and external reviews of corporate governance structures and practices?

Internal reviews should be built up for reviewing the deviations between company's operations and the pre-setup goal on a higher frequency of every one year.

External reviews are to examine the structure and operations of the company in an independent and professional point of view on a lower frequency that can be longer than every one year.

Fitness and qualifications

29a How should insurers ensure that individual board members and the board collectively have enough knowledge to monitor and oversee the activities of the insurer appropriately, particularly where specific expertise is needed?

The professionalisms, ethics, and experiences requirements for the independent board directors and specific minimum portion of other board members will be helpful for the board to fulfill its duties.

29b Are there any specific requirements for the compositions of members of a board of directors in terms of qualification of directors, board size, maximum age of directors, maximum years of tenure, minimum or maximum years of experience in specific areas, maximum number of board memberships each board member can hold, etc? Please describe any specific requirements established in order to promote the quality of decision-making by the board of directors.

We have specific requirements on the professionalisms, ethics, and experiences of the independent board directors and minimum portion of one fifth of board members. The board should at least have one fifth and minimum two independent board directors. The independent board directors should not be the employees of the company or affiliated entities. One person cannot present as an independent board member for more than three companies.

29c Are there specific criteria for evaluating the fitness and propriety of owners (e.g., main shareholders), members of the board of directors, and senior management? When do such evaluations take place—before or during their term?

There are professionalisms, ethics, and experiences requirements for the board directors and executive managers before the appointments, and will be reviewed when necessary during their terms.

29d Are insurers required to notify their supervisor of any changes of owners (e.g., main shareholders), members of the board of directors, and senior management?

Yes, for the revisions of appointed actuary, CEO, and managers of internal auditors and legal compliance, the company should report to the authority and disclose the information on their websites.

29e Who has the responsibility to report these changes?

CEO or chairman of the insurer

Remuneration and benefits

30a How should incentives be aligned such that senior management and directors fulfil their functions appropriately with the long-term interests of the insurer in mind?

The compensation and performance should be connected and disclosed.

30b

What disclosures should be made regarding remuneration and benefits?

The remuneration and benefits should be approved in the shareholders' meeting and report to the authority. The insurer is also required to disclose the calculating methodology and related information in their annual report.

5. ACTUARY OR THE ACTUARIAL FUNCTION

General

31a Are insurers required to have an actuary (or an actuarial function)?

Yes.

31b

What are the powers, responsibilities, and duties of actuaries in your jurisdiction as set out in legislation or regulation and have these changed in recent years? Do actuaries have any duties to policyholders?

In general, the actuary or appointed actuary should be responsible or partially responsible for the followings: pricing and valuation of the insurance products, suggesting the profit sharing of participating policies, asset liability management, risk management, giving opinions to the investment policies, assessing the solvency of the insurer, reporting any abnormalities to the CEO or the authority, etc. There had been rules of punishments adopted for violating the regulations towards appointed actuaries since 2008.

The appointed actuary is responsible for reserves decision and portions of profit sharing of participating policies.

31c

Who is responsible for appointing the actuary (or the person in charge of the actuarial function)? Are there qualification requirements for actuaries?

The nomination of an appointed actuary should be approved by more than half of the presenting board directors while more than half of total board directors should be presenting in the meeting.

Yes, to be an actuary, one should meet the following qualifications: having related work experiences for more than five years, registered as a fellow of domestic or admitted foreign actuary's association, and attending the ethics course.

31d Are insurers required to set transparent and fair qualification/selection criteria and selection processes for actuaries? Please describe them. Are such criteria and processes disclosed to

No, the insurers just follow related regulations and the name of their appointed actuaries will be disclosed on their websites.

policyholders?

31e Are actuaries in your jurisdiction required/expected to play a supervisory role? If yes, please describe this role.

Yes, the appointed actuary should report any abnormalities to the CEO and then to the board if situations remained, or directly to the authority upon significant events.

31f Are there differences between life and non-life insurers with respect to regulatory requirements and standards?

No.

Quality

32a Is there a system of regulatory oversight of the actuarial profession in your jurisdiction, or is there a system of self-regulation? Do these systems include an independent peer-review process?

There is self-regulatory conduct set out by the actuary's association for the appointed actuary. The appointed actuary's annual report will be reviewed by other independent institute. The peer-review is not included in the system.

32b How effective are these systems?

The appointed actuary system was introduced in 2003. Through the review of independent institute, the quality of the actuarial report has been improved. The adequacy of reserves is more transparent and hence advances the policyholder's benefits.

6. EXTERNAL AUDITOR

General

33a Who is responsible for appointing the external auditor(s)?

The appointments of external auditors should be approved by more than half of the presenting board directors while more than half of total board directors should be presenting in the meeting.

33b Are there qualification requirements for external auditors? What are the powers, responsibilities, and duties of auditors in your jurisdiction as set out in legislation or regulation and have these changed in recent years?

Yes. Taking the CPA for example, there is a national CPA examination for the qualification of CPAs. There are also fit and proper and other requirements for the operations of a CPA in the Certified Public Accountant Law.

The regulations towards CPA are stricter in recent years and the CPA is suggested to seek financial protections from liability insurance.

33c Do auditors have any duties to policyholders?

Yes, the audit report should be disclosed on the insurer's website.

33d Are auditors in your jurisdiction

Yes. For instance, the CPA is required to report to the

required/expected to play a supervisory role? If yes, please describe this role.

authority when the insurer is not cooperative during audit period, or the CPA finds significant fraud as well as insolvency of the insurer, etc.

Independence and Quality

34a How can the independence of the external auditor be maintained (e.g., clear disclosure of appointment, removal of external auditors, disclosure of policies regarding auditing fee levels)?

There are disclosure requirements for the name and approved certificate number of the appointed actuary, the names of the auditing CPA and the firm where he/she works with, etc.

34b How is the quality of the external auditor ensured? (e.g., features of the system of self-regulation or regulation, such as peer review, ethical standards, etc)

The quality of the external auditor is ensured via qualification examination, self-regulatory conduct set out by the association, acts or regulations, and information disclosures upon appointment and dismissions.

34c Is the disclosure of any selection criteria/ process of the external auditor and/or reporting thereof to the supervisor required?

No

34d Is there an appropriate separation between audit and non-audit services? If yes, please explain briefly.

Yes

34e Is there a requirement of external auditors to inform, shareholders and/or the board of directors about any involvement of board members or senior management in illegal activities, fraud or insider abuse?

Yes

34f Do auditors have the legal obligation to report to the supervisory authority any concerns they might have in relation to the insurer?

Yes

34g Comments (if any):

For question 34d, the insurer should disclose the auditing fee levels when the fee of non-audit services exceeds one fourth of audit services as well as when the fee of non-audit services exceeds five hundred thousand NT dollars.

For question 34f, the external auditor has legal obligations to report to the supervisors upon specific situations.

Relationship with Actuary

35 What role should the auditors play in respect of the valuation of liabilities of an insurer? Should they rely on the work of an auditor or do they

During the audit, the external auditor would rely on the information provided by the appointed actuary, such as

perform their own due diligence? What should be the relationship between the actuary and the external auditor?

reserves, and by other professionals, such as estimation of outstanding claims by adjusters. The external auditors should cooperate with each other and with internal professionals and have the ability to exam the reasonableness of the information.

7. SUPERVISION

36a

What role does corporate governance play in the prudential framework in your jurisdiction?

The role of corporate governance is critical in the supervisory system as the trend of insurance regulations towards principle base on rule base. The facilitation of strong corporate governance and cooperation with external auditors would help with the improvement of market conduct as well as improve the insurer's financial strength, and hence would advance the policyholder's benefits ultimately.

36b

Are there any specific supervisory challenges associated with corporate governance in the insurance sector?

Yes. Lack of fit and proper requirements for controlling owners might weaken the quality of corporate governance.

36c

Are corporate governance standards and practices at insurers regularly reviewed and enforced (e.g., regular assessment through on-site inspections and offsite supervision)?

Yes.

8. OTHER

Disclosure

37a Beyond providing market disclosures as may be required by securities laws, or general disclosures to stakeholders as may be required by corporate governance legislation, what other disclosures should specifically be made by insurers and to whom?

There are disclosure requirements for the information, which is affective to the benefits of the policyholders, such as revision of ownerships, major legal event, revision of CPA, financial difficulty, fraud, penalty by the authority, etc.

37b What should be the vehicle for making these disclosures (e.g., annual report, statements to policyholders)?

Website, written documents on the office counter, and periodical reports

37c

Are insurers and their board of directors required to disclose and explain their governance structure to the public (i.e., shareholders, policyholders, the supervisory authority and/or public)?

There are legislations towards the insurer to disclose the composite of controlling ownerships, auditing CPA and appointed actuary employed, business with related parties and affiliated entities, etc. The disclosure for corporate governance is required by the self-regulatory conduct.

37d Are insurers required to explain how their governance structure takes into account the interests of policyholders?

No.

38 Are there any governance practices that, in your opinion, can best be achieved through disclosure rather than through specific supervisory requirements? In your opinion, which governance practices should be mandatory for an insurance company?

Yes, the disclosure of the remuneration and the standard of remuneration would be an effective measure to prevent interest conflicts for executive managers and board directors.

Lessons of recent market turmoil

39a What lessons have been learned from the current market turmoil with regard to the corporate governance of insurers (e.g., structured products, off-balance sheet reporting, etc.)?

1. The majority of board of directors should meet the fit and proper principle
2. Insurers should appoint independent directors and establish audit committee

39b Has the recent market turmoil generated any specific plans to enhance the structure or practices of corporate governance?

The role of corporate governance has been addressed by the authority and has been well recognized by the industry. Currently there is a research program of the enhancement of the information disclosure for the interests of the public and stakeholders. Also the insurers are encouraged to take external audit from independent and professional institutions to strengthen their practices of corporate governance.

Self-regulation

41a How can insurance trade associations supplement and deepen legal requirements for corporate governance?

The insurance trade associations can contribute in the standard drafting and provide best practices of the industry.

41b Please provide specific examples of corporate governance structures and practices that can be better implemented through self-regulation rather than through legal or supervisory requirements.

The due diligence of the board directors would be better implemented through self-regulation rather than supervisory requirements.

Proportionality and competitive effects

42a Under your regulatory regime, is corporate governance regulation applied according to the nature, scale and complexity of an insurer's business? If yes, please describe any significant differences and rationale for the differences.

No

42b In your view, have proportionality principles contributed towards achieving a level playing field amongst various insurers in terms of governance and compliance costs? Please explain.

We share the view that the proportionality principle is necessary to achieve level playing field amongst various insurers for the interests of the policyholders because the practice of corporate governance is related to the nature, scale, and complexity of the insurer's business.

Additional insights

44

Please provide any other insights which you think are relevant to corporate governance of insurers.

Independent internal supervisors system, balance between the voting right and cash flow right, and independent board directors system

Thank you for your cooperation!



International Association of Insurance Supervisors

Governance and Compliance Subcommittee

National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 701
Washington, DC 20001

20 November 2008, 9.00 – 17.30

21 November 2008, 8.30 – 17.00

Open to Members and Observers

Draft agenda

20 November 2008

9.00 – 10.30	1. Approval of the agenda 2. Report from the Chair
10.30 – 11.00	Coffee break
11.00 – 12.30	3. Update and discussion of the compilation and analysis of the survey responses
12.30 – 13.30	Lunch
14.00 – 15.30	4. The draft Issues Paper
15.30 – 16.00	Coffee break
16.00 – 17.30	The draft Issues Paper, continued

21 November 2008

8.30 – 10.30	5. Teleconference – members and observers are asked to phone in at 9.00 Washington time at this number: +1 412-317-6715
10.30 – 11.00	Coffee break
11.00 – 12.30	6. The draft Issues Paper, continued
12.30 – 13.30	Lunch
14.00 – 15.30	The draft Issues Paper, continued 7. Preparation for the Paris roundtable
15.30 – 16.00	Coffee break
16.00 – 17.00	8. Next meetings 9. Any other business

Appendix 2

Governance and Compliance Subcommittee members

Name	Jurisdiction
Maarten Hage	Netherlands – Authority (Chair)
Ann Nee Kee	Singapore (Vice Chair)
Teresa Valle	Argentina
Nader Al Mandeel	Bahrain
Shanna Lespere	Bermuda
Julien Reid	Canada (Quebec)
Kai-Yuan Chern	Chinese Taipei
Ines Alpert	European Commission
François Tempé	France - ACAM
Harald Eschmann	Germany - BAFIN
Tim Street	Guernsey
C R Muralidharan	India
Elena Bellizzi	Italy
Nobuyasu Sugimoto	Japan
Nadine Habbal	Lebanon
Jessica Chew Cheng Lian	Malaysia
Rainer Ritter	Namibia
Gabe Shawn Vargas	Switzerland
Alastair Tosh	United Kingdom
Michael McRaith	USA
Chris Mapipo	Zambia

12 November 2008

**Report of IAIS Subgroup on Microinsurance
to Governance and Compliance Subcommittee**

1. The IAIS-CGAP Joint Working Group met on 15-16 September 2008 in Basel, Switzerland and 3-4 November in Cartagena, Colombia. The main agenda items included:
 - a. Work plan of Subgroup of Microinsurance and IAIS-CGAP JWG for 2009-2010 and 2010-11
 - b. Funding proposal - Access to Insurance Initiative

2. **Work plan of Subgroup of Microinsurance and IAIS-CGAP JWG for 2009-2010 and 2010-11**
 - a. ***Issues paper on the regulation and supervision of mutual organisations, in relation to microinsurance, in emerging economies (October 2010):***
 - *It was decided to delay the time line for adoption of the paper by IAIS Technical Committee from October 2009 to October 2010.*
 - *The following members present volunteered themselves to form part of the drafting group for the Issues paper on the regulation and supervision of mutuals: Regina Lidia Giordano Simões, Hong Qiang Huo, Harald Eschmann, G. Prabhakara, Jacky Huma, Craig Thorburn, Sabbir Patel, Kulmie Samantar, Doubell Chamberlain, Brigitte Klein, Martina Wiedmaier-Pfister, Sabrina Regent, Doug Barnert, and Arup Chatterjee.*
 - *It was also agreed that the findings from the survey and the country studies on the role of mutuals shall be combined and form part of a Focus Note*
 - *A draft workplan shall be circulated and time lines shall be circulated for discussion of the next steps via teleconference to be held sometime in the last week of November 2008.*

 - b. ***Standards and guidance paper on regulation and supervision of microinsurance (October 2010) - first draft to be ready by October 2009***
 - *Presentation of the country study synthesis report, its background and future steps was made. Members present acknowledged that the report was of a high quality.*
 - *It was agreed that Craig Thorburn and Alan Seeley shall draw linkages from the Country study synthesis report and the Issues paper and come with an outline of the draft standards for regulation and supervision of microinsurance for further deliberation within the JWG during its meeting in February 2009.*
 - *Members felt that such an exercise will be useful for starting with the due process for paper development as envisaged in the work plan.*

- c. Development of a road map and work plan, and Capacity development and training of supervisors and policy makers**
- Members deliberated on the following points: (i) development of a road map and work plan; (ii) capacity development and training of supervisors and policy makers, and (iii) supporting implementation of IAIS ICPs and standards, and (iv) development of a data base for microinsurance regulations.
 - *It was agreed that the JWG may seek guidance from the IAIS Implementation Committee on their training and implementation strategy and try to work closely so that it can play a complementary role.*
 - *Members also agreed to have a survey of IAIS members on the various needs for training, preferred mode of delivery and standard implementation, including translations, so that it is easy to identify and prioritise development of different tools and materials. Such an exercise would also be useful to seek funding as it would reflect the real needs as demanded by supervisors.*
 - *The Secretariat was requested to liaise with the IAIS Implementation Committee and report on the developments at the next meeting. This input would be vital for developing a road map and earmarking resources once the Access to Insurance Initiative is operationalised.*

3. Funding proposal - Access to Insurance Initiative

1. A presentation was made outlining the main features of the funding proposal for improving access to insurance. It was explained as to how this initiative will generate, validate and disseminate knowledge on how appropriate regulation and supervision can facilitate the provision of greater access to insurance markets for low income clients. It will provide inputs to the International Association of Insurance Supervisors (IAIS) to develop standards and guidelines that will grow more inclusive insurance markets.
2. The Access to Insurance Initiative is a seven year program jointly sponsored by the IAIS, the German Development Cooperation / BMZ, the World Bank, the International Labor Organization (ILO) and FinMark Trust and is likely to commence operations by June 2009.
3. Through this initiative the IAIS would be able to develop and disseminate training tools and instruments (driven by demand from IAIS members and by market need), as well as assessment and other capacity building development tools, including translations of IAIS papers. It will also foster awareness about the role of regulation and supervision in the development of inclusive insurance markets and link up with similar initiatives aimed at improving regulation and supervision of financial services.
4. Other priority areas identified are:
 - The role that microinsurance can play in the provision of essential health services for poor people
 - How mutuals and cooperatives (that play a crucial role in risk mitigation for the poor) should be regulated and supervised to facilitate their playing an optimal role in the development of microinsurance markets

- Developing product-based guidance, for example on risk-based supervision etc.
- The relationship between social security interventions (government-subsidised interventions) and the provision of market-based risk mitigation products for low income groups
- The governance arrangements would reflect the close working relationship between the A2II and the IAIS, a relationship that is essential to the achievement of the objectives of the programme.

5. Future meetings are proposed in:

Microinsurance Subgroup of the Governance and Compliance Subcommittee			
Date	Location (city, country)	Rationale for location	Open to Observers (if not provide rationale)
February 2009	Basel, Switzerland/ or Atlanta, USA	Location of Secretariat	Yes
April 2009	China	Location of member	Yes
June/July 2009	Rio de Janeiro, Brazil or venue of ASSAL meeting	Location of Chair	Yes
October 2009	Rio de Janeiro, Brazil (TBC)	Information session at triannual meeting	Yes
November 2009	Senegal	Back-to-back with CGAP Annual Conference	Yes

International Association of Insurance Supervisors



Corporate Governance Issues Paper Draft 0.3

13 November 2008.

This document was prepared in consultation with IAIS Members and Observers and the Governance and Compliance Subcommittee

This publication is available on the IAIS website (www.iaisweb.org).

© International Association of Insurance Supervisors 2009. All rights reserved. Brief excerpts may be reproduced or translated provided the source is stated

Table of Contents

Introduction	10
Governance Structures	18
Different board structures	18
Board committees	23
Audit committee	25
Compliance committee	26
Remuneration committee	27
Disclosure committee	28
Conflict of duty and interest	30
Qualifications of significant owners	31
Mutuals	32
Functioning of the Board	33
Introduction	33
Source of Board Functions	34
Specific Board Responsibilities	35
Corporate Governance	35
Code of Ethics and Standards of Business Conduct	37
Internal Reporting System	39
Business Strategy	41
Risk Management	42
Accountability	44
B. Board Accountability	47
Regulatory Compliance	52
Risk Control Functions	55
Introduction	55
Risk Management	57
General requirements	57
Access to the organisation	60
Overall solvency assessment	61
Contingency plans	61
Stress tests	62
Investments - in particular derivatives and similar commitments;	63
Asset-liability management	68
Written policies	70
Risk management function and risk committee	74
Appointment	79
Qualifications	79
Reporting to the supervisor	81
Rating Agencies	83
Compliance	84
Compliance function	85
Access to the organisation	88
Independence	88

Appointment.....	89
Qualifications.....	89
Reporting to the supervisor	90
Internal Audit	90
Internal audit function.....	90
Independence	92
Access to the organisation	93
Written policies.....	94
Appointment.....	94
Qualifications.....	95
Reporting to the supervisor	96
The Actuary.....	96
Role of the Appointed Actuary	96
Qualifications of appointed actuaries	99
Competency and Experience	99
Access to information	100
Continuous Education	103
Peer Reviews / Independent review of the appointed actuaries' work	104
Independence of appointed actuaries	105
Appointment of appointed actuaries	106
Reporting lines	107
Performance Measurement, Appraisal and Dismissal	109
Budget	110
Conflict of interests.....	111
External Auditor.....	114
Role of the external auditor.....	114
Qualifications of the external auditor	114
Competency	114
Peer Review or Independent Review of the work of the External Auditor	116
Independence of the External Auditor	116
Appointment of External Auditors	117
Reporting lines	118
Performance Measurement, Appraisal and Dismissal	119
Conflict of interests.....	120
Audit Fees and Audit Scope of work.....	121
Disclosure and Transparency.....	123
Disclosure policies.....	126
Disclosure communication channels	130
Assurance.....	131
Disclosure on governance	131
Specific transparency requirements.....	132
Relationship with the Stakeholders.....	134
Stakeholder law, theory, definition, types and analysis.....	134
Corporate social responsibility (CSR)	144
CSR in practice	147
Examples of how voluntary interpretation produces different practical applications (and pitfalls)	149
Interaction with the Supervisor	155
Conclusions and Recommendations	158

Introduction

1. The International Association of Insurance Supervisors (IAIS) and the Organisation for Economic Co-operation and Development (OECD) have agreed to issue a joint issues paper on the corporate governance of insurers.

2. The OECD published Guidelines for Insurers' Governance in 2005 as a complement to the OECD Principles of Corporate Governance. The Guidelines provide governments and the insurance industry with a roadmap for promoting insurer corporate governance, and thereby better protecting policyholders and other stakeholders. In view of this extensive regulation and oversight of the insurance sector, the OECD pursued two main objectives in drafting the Guidelines:

- to provide complementary guidance that would help the sector to enhance the protection of policyholders and/or shareholders beyond the protection already provided by existing regulation and supervision; and
- to develop complementary guidance specifically directed to the insurance sector that would supplement corporate governance rules generally applicable to corporations.

3. As mandated by the OECD Council, the IPPC is required to initiate a review of the Guidelines in 2008 and, to this end, has formed an ad hoc IPPC Task Force on Corporate Governance (IPPC Task Force) to provide assistance to the IPPC and facilitate coordination with the IAIS.

4. Since its inception in 1994, the IAIS has developed a number of principles, standards and guidance papers to help promote the development, domestically and globally, of well-regulated insurance markets. Central to this objective is the development of a common framework for insurance supervision that establishes a common structure within which standards and guidance may be developed. Governance is one of the elements of the framework.

5. The Insurance Core Principles¹ consist of essential principles that should be in place for a supervisory system to be effective and serve as a basic benchmark for insurance supervisors in all jurisdictions. Insurance Core Principle 9 states that "*The corporate governance framework recognises and protects rights of all interested parties. The supervisory authority requires compliance with all applicable corporate governance standards*". However, the IAIS *Report on the ICP Self-Assessment Exercise 2004/05*² (February 2006) identified that corporate governance is one of principles with a low level of observance.

6. The former Corporate Governance Task Force of the IAIS reviewed existing corporate governance guidance, including material prepared by IAIS, the Basel Committee on Banking Supervision (BCBS) and International Organisation of Securities Commission (IOSCO), the OECD, and self-regulatory entities. In a document titled "Main Elements of Insurer Corporate Governance," the IAIS Corporate Governance Task

¹ IAIS *Insurance Core Principles and Methodology* (October 2003).

² The IAIS Task Force on Assessment and Implementation of Core Principles.

Force summarised the main elements of insurer corporate governance. The IAIS endorsed this summary document in October 2007.

7. To obtain information on current practices in the corporate governance of insurers and views on what might constitute good practices, the IAIS and the OECD conducted a joint survey on the corporate governance of insurers. The survey report is available on the IAIS and OECD websites.

8. The Issues Paper builds on the OECD Guidelines and the IAIS "Main Elements of Insurer Corporate Governance" as well as the answers to the IAIS/OECD survey. It addresses sector-specific issues of corporate governance related for instance to the responsibilities of fiduciaries, the rights of policyholders and beneficiaries and the non-corporate (e.g. mutual) nature of some insurers. The insurance business is characterised by complex principal-agent relationships, as well as asymmetry in market power and information among various stakeholders.

9. From a supervisory point of view, corporate governance is important because the functioning of an insurer affects its risk profile. Effective corporate governance allows the supervisor to rely on the work performed by the board of directors and senior management and, in so doing, allows the supervisory process to operate more efficiently and effectively than it could in the absence of such reliance. However, this reliance is only possible if the supervisor satisfies himself, on a regular basis that the corporate governance is, in fact, appropriate, implemented and complied with.

10. The objective of the Issues Paper is to explore, highlight and discuss the main issues relevant to the corporate governance of insurers that will form the basis for an IAIS Supervisory Paper, as well as providing input to the revision of the Insurance Core Principles and to the review of the OECD Guidelines.

11. The main issues of corporate governance discussed in this issues paper should be interpreted in the light of the principle of proportionality. The principle of proportionality requires the provisions of a supervisory regime to be applied proportionate to the nature, scale and complexity of the risks to which the insurer is exposed. Supervisors throughout the world will encounter many variances in the practical application of the corporate governance issues arising from the specific circumstances and conditions in their insurance industry.

12. It is recognised that some of the issues covered in this paper are also dealt with in other IAIS and OECD papers. This paper takes a corporate governance approach and the issues are discussed in a governance context. Other IAIS and OECD papers discuss some of these issues from other perspectives.

13. The paper refers to a corporate governance structure composed of a board of directors and senior management. The terminology "board of directors" and "senior management" is used in a functional and not a legal sense.

14. The Issues Paper discusses the following elements of corporate governance of insurers: governance structures, functioning of the board, risk control functions, the actuary, external audit, disclosure and transparency, relationship with stakeholders and interaction with the supervisor. The last chapter provides conclusions and recommendations.

Governance Structures

Different board structures

15. Different governance structures exist. Due to differences in corporate law, governance and board structures differ across states. Yet, within each institution and regardless of the specific governance structure there are two key functions that must be fulfilled: supervision and management. These functions can either be entrusted to a single body or spread over separate bodies. A board of directors may include top executives - often referred to as "inside" directors - and outside directors who are neither employees nor stakeholders in the company. This is called one-tiered board. Two-tiered boards have one tier acting as board and the other acting as supervisory board.

Discussion Point:

We probably should draft a glossary as an appendix explaining phrases like board, senior management etc.

16. A board of directors is a body of elected or appointed persons who jointly oversee the activities of a company or organisation. The body sometimes has a different name, such as board of trustees, board of governors, board of managers, or executive board. It is often simply referred to as "the board." A board's activities are determined by the powers, duties, and responsibilities delegated to it or conferred on it by an authority outside itself. These matters are typically detailed in the organisation's bylaws. The bylaws commonly also specify the number of members of the board, how they are to be chosen, and when they are to meet.

17. The legal responsibilities of boards and board members vary with the nature of the organisation, and with the jurisdiction within which it operates. For public corporations, these responsibilities are typically much more rigorous and complex than for those of other types. Typically the board chooses one of its members to be the chair or chairperson of the board of directors, traditionally also called chairman or chairwoman.

18. Directors are the members of a board of directors. Directors must be individuals. Directors can be owners, managers, or any other individual elected by the owners of the business entity. Directors who are owners and/or managers are sometimes referred to as inside directors, insiders or interested directors. Directors who are managers are sometimes referred to as executive directors. Directors who are not owners or managers are sometimes referred to as outside directors, outsiders, disinterested directors, independent directors, or non-executive directors.

19. The role and responsibilities of a board of directors vary depending on the nature and type of business entity and the laws applying to the entity. For example, the nature of the business entity may be one that is traded on a public market (public company), not traded on a public market (a private, limited or closely held company), owned by family members (a family business), or exempt from income taxes (a non-profit, not for profit, or tax-exempt entity). There are numerous type of business entities available throughout the world such as a corporation, limited liability company, cooperative, business trust, partnership, private limited company, and public limited company.

20. Directors must exercise their powers for a proper purpose. While in many instances an improper purpose is readily evident, such as a director looking to feather

his or her own nest or divert an investment opportunity to a relative, such breaches usually involve a breach of the director's duty to act in good faith. Greater difficulties arise where the director, while acting in good faith, is serving a purpose that is not regarded by the law as proper. Directors cannot, without the consent of the company, fetter their discretion in relation to the exercise of their powers, and cannot bind themselves to vote in a particular way at future board meetings. This is so even if there is no improper motive or purpose, and no personal advantage to the director.

21. This does not mean, however, that the board cannot agree to the company entering into a contract which binds the company to a certain course, even if certain actions in that course will require further board approval. The company remains bound, but the directors retain the discretion to vote against taking the future actions (although that may involve a breach by the company of the contract that the board previously approved).

Board committees

22. Sound governance requires that the decision-making process be clearly stated within each institution, in terms of hierarchy and level of responsibility. The board may delegate some of its tasks to board committees. However, the board carries full and complete responsibility for both abovementioned functions, irrespective of the delegation or allocation of tasks and functions. A board committee is an operating committee of the board of directors. Committee members are drawn from members of the Company's board of directors, with a chairperson selected from among the members. Often board committees of a publicly-traded company are composed of independent and outside directors referred to as non-executive directors.

23. These committees can include:

- audit committee
- compliance committee
- remuneration committee
- disclosure committee

24. The duties of all board committees are typically described in a committee charter, often available on the entity's website.

Audit committee

25. Responsibilities of the audit committee typically include:

- Overseeing the financial reporting and disclosure process.
- Monitoring choice of accounting policies and principles.
- Overseeing hiring, performance and independence of the external auditors.
- Oversight of regulatory compliance, ethics, and whistleblower hotlines.
- Monitoring internal control process.
- Overseeing the performance of the internal audit function.
- Discussing risk management policies and practices with management.

Compliance committee

26. Responsibilities of the compliance committee typically include:

- Supervising the compliance organisation, activities and risk profile.
- Supervising, monitoring and advising the board on the effect of internal risk management and control systems, including supervision of the enforcement of the relevant legislation and regulations, and supervising the effect of codes of conduct.
- Setting the correct tone from the top by communicating the importance of compliance to the board and supervising the board's similar communications regarding the importance of compliance to the bank.

Remuneration committee

27. The remuneration committee shall in any event have the following duties:

- drafting a proposal for the remuneration policy to be pursued;
- drafting a proposal for the remuneration of the individual members of the board, for adoption by the supervisory board; such proposal shall, in any event, deal with: (i) the remuneration structure and (ii) the amount of the fixed remuneration, the shares and/or options to be granted and/or other variable remuneration components, pension rights, redundancy pay and other forms of compensation to be awarded, as well as the performance criteria and their application;
- preparing the remuneration report as referred to in best practice provision.

Discussion Point:

How much detail should we add to the debate on remuneration and incentive schemes in the light of the turbulence on financial markets?

Disclosure committee

28. Responsibilities of the disclosure committee typically include:

- Evaluate the effectiveness of disclosure controls and procedures and help to assess the quality of the disclosures
- Supervising, monitoring and advising the board on the effect of internal risk management and control systems, including supervision of the enforcement of the relevant legislation and regulations, and supervising the effect of codes of conduct.

Discussion Point:

How much detail do we want to put into the organisation and functioning of these board committees (regarding their charter, appointment, evaluation etc)?

Conflict of duty and interest

29. As fiduciaries, the directors may not put themselves in a position where their interests and duties conflict with the duties that they owe to the company. The law takes the view that good faith must not only be done, but must be manifestly seen to be done, and zealously patrols the conduct of directors in this regard; and will not allow directors to escape liability by asserting that his decision was in fact well founded.

30. Any conflict of interest or apparent conflict of interest between the company and board members shall be avoided. Decisions to enter into transactions under which board members would have conflicts of interest that are of material significance to the company and/or to the relevant board member require the approval of the supervisory board.

31. By definition, where a director enters into a transaction with a company, there is a conflict between the director's interest (to do well for himself out of the transaction) and his duty to the company (to ensure that the company gets as much as it can out of the transaction). This rule is so strictly enforced that, even where the conflict of interest or conflict of duty is purely hypothetical, the directors can be forced to disgorge all personal gains arising from it.

Qualifications of significant owners

32. Significant owners or controlling shareholders should be suitable to fulfil their roles. This requires that they, at a minimum, have integrity and appropriate qualifications and a sound financial position. Proposed owners must have the resources to provide the minimum capital required.

Mutuals

33. Typical issues regarding mutuals include:

- Appointment of directors and their independence
- Evaluation of the board
- Member relations/influence

Discussion Point:

What elements should be added to the section on mutuals?

Functioning of the Board

Introduction

34. The modern corporate structure involves an investor or shareholder delegation of management responsibility to a board of directors. The board is thereby legally obligated to manage company affairs in the interests of shareholders and/or policyholders (and, in some jurisdictions, other stakeholders). Board functioning is core to corporate governance. Proper board functioning also has broader implications. With increasingly diffuse stock ownership and more sophisticated corporate conglomerates, continued viability of corporate structures depends upon effective governance and board-of-director monitoring.

Source of Board Functions

35. Board functions arise from at least three sources. First, the state of incorporation imposes statutory or rule-based requirements, including minimum requirements related to board composition and functions. Second, legal duties arising out of common law (or case law) have led to certain required board functions (e.g., in some jurisdictions, the "duty of care" has resulted in board implementation of more rigorous internal reporting structures). Finally, board functions arise from market forces, whether through self-regulation or the voluntary adoption of evolving best practices.

36. In response to recent insolvencies, many jurisdictions now require more specific board functions, including more independent board involvement with the audit function. The growing complexity and size of financial corporations and convergence amongst financial industries are furthering the trend toward increased regulation of board functions. Recent government support for the financial industry, including providing low-interest loans and taking direct financial stakes in corporations, also supports enhanced oversight and board accountability.

Specific Board Responsibilities

Corporate Governance

37. A primary board function is to commit to specific corporate governance principles. These principles shape a governance structure promoting effective management and board oversight. To promote accountability, the board must regularly oversee internal reviews and regularly authorize external reviews of corporate governance principles and processes. As an insurer grows and/or its risks change, it may have to clarify its principles and strengthen its practices.

Discussion Point:

Given the importance of board-defined corporate governance principles and structures to the success of an insurer, it is not surprising that private rating agencies now evaluate these governance principles and structures for the benefit of investors. Supervisors should consider the role and influence of these rating agencies and what, if any, of the rating agency criteria should be incorporated into the regulatory regime.

Code of Ethics and Standards of Business Conduct

38. A key board function is to establish appropriate ethical standards for the corporation. These standards define proper individual and corporate conduct and ethical behaviour. Specifically, the standards address topics such as conflicts of interest (e.g., between board members and shareholders), private transactions, self-dealing, preferential treatment of internal and external entities, and other inordinate trade practices of a non-arm's length nature. The corporate ethical standards should also include standards and policies regarding: 1) fair treatment of consumers; and 2) information sharing with stakeholders, including investors, employees, regulators, and consumers.

39. The board's ethical function must include an ongoing, effective process for ensuring adherence to current standards.

40. The Board must establish a corporate culture that recognizes and rewards adherence to the ethical standards. The appropriate "tone at the top" can prevent corporate misbehaviour and promote long-term shareholder interests. Supervisors encourage such a tone despite the difficulty in defining an identifying an ethical corporate culture. While appropriate rules and board independence address the corporate ethic, some argue that additional regulation is needed.

Discussion Point:

Proposals for board structure and function that might indirectly encourage an ethical corporate culture: 1) increase board independence; 2) require stakeholder participation; 3) professionalize the board (e.g., create full-time, compensated board positions); and 4) require additional disclosure (e.g., disclose more about compensation policies and policies related to nomination of board members).

Internal Reporting System

41. Effective board decision making depends upon the quality and timeliness of the available information. The system whereby the board receives regular information and analysis of the insurer, and can request and receive additional information when necessary, is known as the "internal reporting system." A key function of an informed board, therefore, is establishing and maintaining a quality internal reporting system.

42. Recent events emphasize that the value of an internal reporting system depends, in part, upon the board's knowledge and independence. Boards are responsible for understanding and guiding strategy with respect to complex risks and financial instruments to profit from or hedge against that risk. Recent international financial turmoil calls into question management's – and boards of director's – understanding of complex risks and related financial instruments. Unfortunately, boards of directors often know less about these matters than management. The qualifications and education of board members impacts the quality of a company's internal reporting system.

Discussion Point:

Insurers associated with affiliates and holding companies should develop internal reporting systems that regularly inform the insurer's board about risks associated with these relationships.

Business Strategy

43. Overseeing an insurers' business strategy is one of the main functions of a board. Before the advent of the modern board structure, boards were more active in the daily management of the insurer. While board participation in daily management varies by insurer and by board structure (e.g., in dual board structures, the non-supervisory board typically has significant management responsibilities), modern boards typically delegate most operational duties to management and focus on establishing, reviewing, and guiding business strategy. The board's role in strategy development does not always involve approving or disapproving management action. Boards often work with management to explore strategic options.

44. Key business strategies considered by the board include major plans of action, policies related to the annual budget, the main insurance risks, pricing and underwriting, and strategic implications of the auditing and actuarial functions.

45. In order to properly evaluate and guide business strategy, boards must establish performance objectives for the insurer as an enterprise and for individuals in senior management. These performance objectives, and any related remuneration, must be consistent with the insurer's long-term interests.

Risk Management

46. Risk management relates to board's responsibility for the development and oversight of the broader business strategy. Relative to other financial sector boards, insurer boards are in an enviable position with respect to risk management because insurance fundamentally involves providing clients protection against financial risk.

47. Boards establish and monitor internal and external risk management functions, including an independent audit function, an actuarial function, strong internal controls, and appropriate checks and balances. Risks to be accounted for include underwriting risk, asset liability management, investment risk, and liquidity risk.

48. The design of risk management systems reflects the board's independence and is in proportion to the risks faced by the firm. Board independence, and the dissent and alternative perspectives it generates, can help insurers formulate responsible risk management strategies.

Accountability

A. Management Accountability

49. Boards that select and engage senior management, and then delegate managerial responsibility to senior management, hold senior management accountable. The two primary standards of accountability for management are: 1) organizational and governance policies (informed by bylaws and statutes); and 2) established performance objectives related to business strategy. Boards regularly apply and update these standards as the policies and business strategies of the insurer evolve.

50. More specifically, boards are responsible for oversight of personnel with operational responsibilities (especially senior management). Personnel oversight duties include appointing qualified employees, monitoring personnel performance, dismissing personnel when necessary, and providing appropriate compensation. Responsibility also extends to third-parties hired to perform functions that impact insurer governance, operational risk, or compliance.

51. Board and employee remuneration policy should be reviewed periodically to ensure the policy: 1) reflect individual performance, not just insurer performance; 2) encourage prudent behaviour consistent with the best interest of the insurer and consumers; and 3) complies with all applicable law and regulation.

Discussion Point:

To what extent and where in this document should we discuss remuneration policies in the light of the current crisis?

52. If the board holds management accountable for results, it also reinforces a key element of the corporate governance structure – the board's separation from and authority over management. Board authority can be diminished by many forces: strong-willed senior executives immersed in daily insurer operations can use their expertise and resources to overwhelm boards; board members often arrive with or build professional or social relationships with management, relationships which can make a board reluctant to take disciplinary action. Establishing objective measures of performance and regularly evaluating management can help a board assert its proper authority.

53. Other pressures can prevent or deter a board from holding management accountable. In many jurisdictions, the liability imposed on a director for failure to act in his or her fiduciary capacity depends upon the director's knowledge or approval of management action. Therefore, liability concerns may influence a board's decision to reassert authority over management.

B. Board Accountability

54. The list of board functions does not include holding itself accountable. Board accountability ultimately rests with outside forces – shareholders, policyholders, financial supervisors, or the marketplace. Importantly, the boundaries of board accountability vary by jurisdiction.

Discussion Point:

How will board accountability be affected by duties the board may owe the state (i.e., taxpayers) when the state takes a direct stake in the insurer or provides the insurer with low-interest financing?

55. Director and officer legal liability shapes board accountability. The board decisions subject to liability, and the applicable legal standards, vary by jurisdiction. Generally, however, a director owes to the shareholders or policyholders a duty of loyalty and a duty of good faith. (These duties are heightened and can change when the insurer may become or is insolvent.) Personal director liability is rare because courts generally resist imposing liability for reasonable business judgments, but the threat of liability can still shape director behaviour. Of course, modification of director behaviour due to the threat of liability is diminished to the extent that insurer promises to indemnify or insure directors against certain liability findings.

56. While boards are ultimately accountable to external forces, board functions do include rigorous self-monitoring. The challenges inherent to self-monitoring demand rigid expectations regarding director selection, engagement and participation.

Discussion Point:

To encourage more attentive director engagement, some have proposed professionalising the board. Advocates of board "professionalism" promote: 1) limiting the number of directorships an individual can hold; 2) requiring directors to serve the board in a full-time capacity with pay commensurate to that duty; 3) increasing board independence; 4) increasing the training provided to the board.

Other proposals promote disclosure about how directors are selected, including requiring boards to disclose: 1) board member eligibility criteria; 2) the process by which board members are selected; 3) a director's background, education, training, qualification, as well as prior personal and professional relationships with managers and shareholders; 4) the reasons for rejecting a shareholder board candidate.

57. Board accountability also requires the board to establish, implement, and review mechanisms that promote board accountability. Measures to promote board accountability include regular meetings of the governing body, timely and accurate disclosure of consequential matters (e.g., financial situation, performance, ownership, and governance arrangements), and appropriate succession planning.

58. The board develops mechanisms to evaluate its overall performance and the performance of each director, including the level of director participation.

59. Special attention is paid to boards where the posts of Chairman and CEO are combined in one person. Where posts of Chairman and CEO are combined in one person, appropriate controls must be in place to ensure that management remains accountable to the board.

Discussion Point:

Some corporations with a joint Chairman and CEO try to strengthen the distinction between the management and board by appointing a "lead director." Duties given to lead directors often include: 1) presiding over meetings when Chairman is not present, including executive sessions of non-employee directors; 2) consulting and communicating with shareholders; and 3) calling meetings of non-employee directors when necessary and appropriate.

60. Recent events demonstrate the need for each insurer to establish and maintain a board sufficiently independent from the management and leadership of a holding company.

Regulatory Compliance

61. Boards, like a corporation, exist due to state law. One condition of existence is compliance with laws and regulations imposed by the financial supervisor. Boards must ensure insurer compliance with all applicable laws and regulations.

62. One way of ensuring compliance is to identify an officer or officers with responsibility to ensure compliance with relevant legislation and standards of business conduct, and that officer should report to the board at regular intervals.

63. Boards seeking to comply with laws and regulations will maintain an open, working relationship with the supervisory authority. Compared to other financial industries, insurers are already required to disclose a great deal of solvency-related financial information to supervisors. As the recent international financial turmoil demonstrates, insurers that value compliance will immediately notify supervisors of any material

financial change. Additionally, boards should recognize when risks of a holding company may impact the insurers' solvency and/or level of compliance.

64. Boards are monitoring international developments and making appropriate adjustments to compliance efforts. For example, U.S. Sarbanes-Oxley requirements apply not just to U.S.-based insurers, but to any domestic or foreign insurer listed on a U.S. stock exchange. If engaged in international commerce, boards should account for international developments when establishing internal corporate governance standards and when defining compliance standards.

Risk Control Functions

Introduction

65. The business of insurance involves the assumption, pooling and spreading of risk so as to protect individuals and businesses that are policyholders against the financial consequences of adverse events. It is therefore essential that an insurer has a thorough understanding of sources of risk, risk types, their characteristics and inter-relationships, and of their potential impact on the business. It is also important that the insurer has in place robust and efficient internal controls for the recording, management and control of risk. An insurer also has suitable policies and procedures for ensuring compliance with both internal controls and the applicable laws, regulations and administrative provisions. An insurer also has an internal audit function capable of reviewing, assessing the adequacy and effectiveness of, and the insurer's adherence to, its internal controls and processes, reporting policies and procedures. These essential elements are examined in more detail below.

Discussion Point:

How should we best reference to other IAIS papers such as the ERM paper?

Risk Management

General requirements

66. A robust risk management system is a pre-requisite for an efficient internal control and governance system.

67. Risk management is a continuous process used in the implementation of the insurers' overall strategy and should allow the insurer an understanding of the nature and significance of the risks to which it is or may be exposed.

68. To this end insurers have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, on an individual and aggregated level, to which they are or could be exposed, and their interdependencies taking into account the nature, scale and complexity of the business of the insurer concerned.

69. The board is responsible that the implemented risk management system is suitable, effective and proportionate to the nature, scale and complexity of the business of the insurer concerned and that the risk management system is appropriately monitored. This includes a regular review of the strategic guidelines and business policies of the insurer with regard to risk management.

70. The risk management system covers the risks included in the calculation of any capital requirement(s) as well as the risks which are not or not fully included that calculation. It covers at least the following areas:

- underwriting and provisioning;

- asset – liability management (ALM);
- investment, in particular derivatives and similar commitments³;
- liquidity and concentration risk management;
- operational risk management;
- reinsurance and other risk mitigation techniques;
- strategic and reputational risks.

71. The risk management system is well documented and communicated to all relevant staff members.

72. Insurers have a clearly defined and well documented risk management strategy that includes the objectives, key principles and assignment of responsibilities across all activities of the insurer and is consistent with the insurer's overall business strategy. The risk management strategy is set out in the insurers' written policies (see below).

73. Appropriate reporting procedures ensure that the information on risks is continuously monitored by all relevant staff and the board.

Access to the organisation

74. The risk management system is well integrated into the organisational structure and in the decision making processes of the insurer. This includes, in particular, that the risk management system is supported by an appropriate and effective internal control system and a prudent remuneration policy for all relevant staff and the board.

Overall solvency assessment

75. As part of its risk management system the insurer conducts an assessment of its overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the insurer.

Contingency plans

76. Insurers take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development and documentation of contingency plans. To this end the insurer employs appropriate and proportionate systems, resources and procedures.

77. Contingency plans may, inter alia, be relevant for natural catastrophes, terrorist attacks, fires, failure of IT-systems or a pandemic. Insurers identify the risks for which contingency plans should be in place taking into account the risks for which they consider themselves as being vulnerable.

78. In order to ensure proper implementation contingency plans are communicated to the relevant staff.

³ *Similar commitments* refer to financial instruments whose attendant risks are sometimes difficult to determine and whose proper management requires specific expertise.

79. The contingency plans are tested regularly and updated to ensure that they remain effective.

Stress tests

80. Supervisors have the power to develop, in addition to the calculation of any capital requirement and where appropriate, quantitative tools to assess the ability of an insurer to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. Supervisors have the power to require that such tests are performed by the insurers.

Investments - in particular derivatives and similar commitments;

81. Investments are subject to market risk. With respect to the entire portfolio of assets, insurers only invest in assets and instruments whose risks the insurer concerned can properly monitor, manage and control.

82. All assets are invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

83. Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurers' liabilities. Those assets shall be invested in the best interest of policyholders and beneficiaries.

84. In the case of a conflict of interest, insurers ensure that the investment is made in the best interest of policyholders and beneficiaries.

85. The use of derivative instruments is possible insofar as these contribute to a reduction of risks or facilitate efficient portfolio management.

86. The insurer keeps investments in assets which are not admitted to trading on a regulated financial market to prudent levels.

87. The assets are properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of companies, or geographical area and excessive accumulations of risk in the portfolio as a whole.

88. Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurer to excessive risk concentration.

89. In order to ensure a proper risk management of investments, the insurer develops a detailed investment strategy that has regard to at least:

- the financial market environment (including historic and anticipated future environment);
- solvency and liquidity considerations;
- concentration risk;
- credit risk;
- asset and liability considerations, including interrelation with the ALM strategy;
- asset classes and strategic asset allocation;
- conditions under which the insurer can pledge or lend assets;
- the amount of delegated limits by management level;

- the use of credit derivatives, asset-backed securities, collateralised debt obligations, hedge funds or any other financial instrument with similar characteristics (similar commitments);
 - the link between market risk and other risks in highly adverse scenarios (e.g. a pandemic);
 - the independent and appropriate valuation of its investment assets; and
 - procedures to monitor the performance and review the strategy when necessary.
90. Regarding holdings of derivative products, asset-backed securities and collateralised debt obligations, hedge funds or any other financial instrument with similar characteristics, the investment strategy clearly identifies:
- the goals and strategies of the use of derivatives and similar commitments and the way they contribute to an efficient portfolio management;
 - the evaluation of the strategy to use this type of products;
 - the principles of risk management with regard to derivatives and similar commitments.
91. Exposure limits for derivatives are integrated into the overall limits set out in the insurer's investment strategy.

Asset-liability management

92. ALM is the management of a business in such a way that decisions on assets and liabilities are coordinated in order to manage the exposure to the risk associated with the variation of their values.

93. In order to ensure a proper ALM, the insurer develops a detailed ALM strategy. Along with the investment strategy, an ALM strategy describes how financial and insurance risks are managed in an asset-liability framework in the short, medium and long term. The ALM strategy has regard to at least:

- the structure of the asset-liability approach, including the time horizon;
- the portfolio of assets and liabilities, including obligations to pay bonuses to policyholders;
- the stress tests to be performed;
- validation of parameters and hypotheses by comparison with earlier observations (back-testing); and
- the interaction between the ALM policy and the investment policy (see below).

94. When choosing from the different ALM techniques available for measuring risk exposure, an insurer relies on measurement tools that are consistent with the risk characteristics of the lines of business and its risk tolerance. The insurer also takes into account its ALM objectives and the sophistication of its management information system.

95. In order to provide for the effective management of assets and liabilities, the insurer ensures appropriate and continuing liaison between the different areas of its business involved in the ALM.

96. The insurer has effective procedures for monitoring and managing the asset-liability positions and to ensure that investment activities and asset positions are appropriate to its risk profile.

97. When introducing new products, the insurers consider how these affect the management of assets and liabilities.

Written policies

98. Insurers have a written policy on all areas covered by the risk management system. The written policies clearly set out the relevant responsibilities, strategies, processes and reporting procedures. They include a definition and categorisation of the risks to which the insurer is or may be exposed. The written policies contribute to the efficient implementation of the risk management system and support the internal control framework.

99. The written policies are subject to prior approval by the board. They are reviewed at least annually and adapted in view of any significant change in the risk management system.

100. In order to ensure proper implementation of the written policies, staff members are informed about the areas relevant for their responsibility and instructed to take them into account in their daily work.

ALM policy

101. The insurer develops written ALM policies that especially take into account the interrelation of types of risks, such as liquidity and underwriting risks, establishes ways to manage the possible effects of options embedded in the products, provides for a structuring of the assets that ensures that the insurer holds sufficient cash and diversified marketable securities of an appropriate nature, term and liquidity to meet its obligations as they fall due.

102. The insurer tailors its ALM policies to the needs of different product lines and combines the ALM policies appropriately in order to optimise the overall ALM management.

Investment policy

103. The investment policy takes account of the insurer's business, its overall risk tolerance levels, the solvency position and the long-term risk-return requirements and its underlying exposure gross and net of offsetting transactions.

104. When insurers use derivative products, asset-backed securities and collateralised debt obligations, hedge funds or any other financial instrument with similar characteristics the investment policy takes into account the goals and strategies of their use and the way they contribute to an efficient portfolio management as well as procedures to evaluate the strategy to use this type of products and the principles of risk management to be applied.

105. In its policy on investment the insurer considers how to prudently manage liquidity risk in the short as well as in the medium and long term, taking into account the investment strategy, overall underwriting strategy and claims management.

Risk management function⁴ and risk committee

106. Insurers establish a risk management function which is structured in such a way as to facilitate the implementation of the risk management system.

107. The embedding of the risk management function in the organisational structure of the insurer and the associated reporting lines ensures that the function is objective and independent from operational functions. Independence entails that the risk management function has direct access to the board

108. Where appropriate to the nature, scale and complexity of the risks inherent in the business of the insurer, the risk management function may consist of several sub-functions, e.g. for different risk categories. Where this is the case the insurer ensures that the different sub-functions report to one common point that aggregates and challenges the reports and is able to form an overall view of the risk management system.

109. Where appropriate to the nature, scale and complexity of the business of the insurer, the risk management function may be combined with other functions, insofar as the independence from operational functions is ensured via additional control procedures.

110. The tasks of the risk management function include:

- assist the board in the effective operation of the risk management system, in particular by performing specialist analyses and performing quality reviews;
- maintain an organisation-wide and aggregated view on the risk profile of the insurer;
- monitor the risk management system and evaluate its design and operational effectiveness. The results of the evaluation are reported to the board.
- report to the board details on the risk exposures and advising the board with regard to risk management matters in relation to strategic affairs such as corporate strategy, mergers and acquisitions and major projects and investments.

111. For insurers using a partial or full internal model the risk management function covers the following additional tasks:

- to design and implement the internal model;
- to test and validate the internal model;
- to document the internal model and any subsequent changes made to it;
- to inform the board and senior management about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses;

⁴ A function is an administrative capacity to undertake a particular task. The identification of a particular function does not prevent the insurer from freely deciding how to organise this function in practice unless this is otherwise specified. Account is taken of the nature, complexity and scale of the risks inherent in the business of the insurer.

- to analyse the performance of the internal model and to produce summary reports thereof.

112. The internal model is part of a comprehensive risk management system which needs adequate resources and structures to ensure that the internal model is and stays appropriate to the insurer's risk profile.

113. In this context, the risk management function is responsible for the way in which the internal model is integrated with the risk management system and the day-to-day functions of the insurer. It assesses the internal model as a tool of risk management and as a tool to calculate the insurer's capital requirement.

114. The reports on the performance of the internal model should be tailored to the requirements of the board, enabling its members to understand all relevant facts and the implications following from them as a solid and reliable basis for necessary management decisions.

115. Where appropriate to the nature, scale and complexity of the business of the insurer, the insurer establishes a risk management committee.

Appointment

116. Where appropriate to the nature scale and complexity of the risks inherent in the business of the insurer, insurers have procedures in place to appoint the key functionaries.

Qualifications

117. The risk management function is staffed by personnel possessing the appropriate integrity, competence, experience and qualifications taking into account the nature, scale and complexity of the insurer concerned.

118. The personnel should be able, where appropriate, to demonstrate relevant experience and expertise with applicable professional and other standards.

119. The responsibility for the assessment of the fitness and propriety of the personnel lies with the insurer.

120. Insurers ensure that there is an initial and on-going assessment of the fitness and propriety of the key functionaries (key function holders).

121. The insurer notifies the supervisory authority any appointments and changes to the identity of the key functionaries along with the information needed to assess their fitness and propriety.

122. The insurer notifies the supervisory authority, if any key functionary has been replaced because they no longer fulfil the fit and proper criteria. Where an insurer becomes aware of any circumstances that may be relevant to the fitness and propriety of the key functionaries it promptly notifies its supervisory authority.

123. Where necessary the supervisory authority exchanges information with other authorities inside and outside its jurisdiction relevant for the assessment of the key functionaries.

Reporting to the supervisor

124. The insurers submit to the supervisory authority the information necessary to assess the risk management system.

125. Supervisory authorities have the power to determine the nature, scope and format of the information they require the insurers to submit at predefined periods, upon occurrence of predefined events and during enquiries regarding the situation of the insurers.

126. Supervisory authorities have the power to require information from external experts such as auditors.

127. The information comprises qualitative and quantitative elements as well as historic, current or prospective elements.

128. The information reflects the nature, scale and complexity of the risks inherent in the business of the insurer. The information is accessible, complete and consistent over time. It is reliable, comprehensible and relevant.

129. The insurers have appropriate systems in place to fulfil the requirements on the reports to supervisory authorities.

130. In order to ensure the on-going appropriateness of the information reported to the supervisors, insurers have a written policy in place, approved by the board.

Rating Agencies

131. The use of ratings should not have the unintended effect of implying an endorsement of such ratings and/or discouraging insurers from performing their own due diligence...

Discussion Point:

To what level of detail do we want to address this issue in the light of the market turbulence?

Compliance

132. An insurer establishes, implements and maintains adequate policies and procedures sufficient to ensure compliance of the insurer, including its staff, with its obligations under the applicable laws, regulations and administrative provisions and for countering the risk that the insurer might be used to further financial crime.

133. An insurer establishes, implements and maintains adequate policies and procedures designed to detect any risk of failure by the insurer to comply with its obligations under the applicable laws, regulations and administrative provisions. An insurer puts in place adequate measures and procedures designed to minimise such risks, to enable the supervisory authority to exercise its powers effectively under the regulatory system and to enable any other competent authority to exercise its powers.

Compliance function

134. An insurer provides for an effective compliance function.

135. The tasks of the compliance function include:

- to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place and the actions taken to address any deficiencies in the insurer's compliance with its obligations
- to advise and assist the persons responsible for carrying out regulated activities to comply with the insurer's obligations under the applicable laws, regulations and administrative provisions
- to assess the possible impact of any significant changes in the legal environment on the operations of the insurer.

136. In order to enable the compliance function to discharge its responsibilities properly, an insurer ensures that the following conditions are satisfied taking into account the nature, scale and complexity of the risks inherent in its business:

- the compliance function has authority to undertake any examination of policies and procedures at its own initiative
- where appropriate a compliance officer is appointed and is responsible for the compliance function and for any reporting as to compliance required by the supervisory function⁵
- the compliance function reports without delay any major compliance problems to any supervisory function or to the board
- the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

Access to the organisation

137. The compliance function has the necessary authority, resources and access to all relevant information.

138. The compliance function has access to any staff member at any time

Independence

139. Where appropriate to the nature, scale and complexity of the risks inherent in its business the insurer the compliance function operates independently which means that the relevant persons involved in the compliance function are not involved in the performance of any of the services or activities they monitor and that the compliance function is not placed in a position where there is a possible conflict of interest between its compliance responsibilities and the insurer's normal business activities.

⁵ In this context, the "supervisory function" is that part of the firm's senior management systems and controls which oversees the activities of senior personnel – likely to be the Board or a Committee of the Board.

Appointment

140. Where appropriate to the nature scale and complexity of the risks inherent in the business of the insurer, insurers have procedures in place to appoint the key functionaries.

Qualifications

141. The compliance function is staffed by personnel possessing the appropriate integrity, competence, experience and qualifications taking into account the nature, scale and complexity of the insurer concerned.

142. The insurer satisfies itself that the relevant personnel are fit and proper, including that they are able to demonstrate relevant experience and expertise, and that they possess the professional and other qualifications appropriate to fulfilling the compliance function.

143.

144. Insurers ensure that there is an initial and on-going assessment of the fitness and propriety of the key functionaries (key function holders).

Reporting to the supervisor

145. The insurers submit to the supervisory authority the information necessary to assess the compliance function.

Internal Audit

Internal audit function

146. Insurers provide for an effective internal audit function.

147. The term 'internal audit function' refers to the generally understood concept of internal audit within an insurer, that is, the function of assessing adherence to and the adequacy and effectiveness of internal controls, processes, reporting procedures and policies.

148. The internal audit function establishes, implements and maintains an audit plan to examine and evaluate the adequacy and effectiveness of the insurer's systems, internal control mechanisms and arrangements. The internal audit function ensures that all activities are reviewed within a reasonable period of time. The internal audit plan is submitted for approval to the board.

149. The internal audit function issues recommendations based on the result of work carried out in accordance with the above and verifies the compliance with those recommendations.

150. The findings and recommendations of the internal audit are reported to the board. The report covers at least any major shortcomings with regard to the compliance with internal processes, procedures and policies, as well as any deficiencies with regard to the efficiency and suitability of the internal control system. It includes recommendations on how to remedy inadequacies and how past recommendations have been implemented.

151. The board determines the actions to be taken with respect to each of those findings and recommendations. The board ensures that these actions are carried out.

Independence

152. The internal audit function is objective and independent from the operational functions and activities of the insurer.

153. In order to ensure its independence from the organisational activities, the internal audit function has an appropriate standing within the organisation and carries out its assignments with impartiality. The internal audit function is able to exercise its assignments on its own initiative in all areas of the undertaking. It is free to express its findings and to disclose them and its appraisals to the board.

Access to the organisation

154. The internal audit function has a complete and unrestricted right to obtain any information relevant for the performance of its tasks. This includes the prompt provision of all necessary information, the availability of all essential documentation and the ability to look into all activities and processes of the undertaking, relevant for the discharge of its responsibilities, as required in the performance of its tasks, as well as having direct communication with any member of the insurers' staff.

Written policies

155. Insurers have a written policy on the internal audit which covers at least the objective and scope of the internal audit function, its status within the insurer and the competences and responsibilities. The written policy contributes to the efficient implementation of the internal audit and supports the internal control framework.

156. The written policies are subject to prior approval by the board. They are reviewed at least annually.

Appointment

157. Where appropriate to the nature scale and complexity of the risks inherent in the business of the insurer, insurers have procedures in place to appoint the key functionaries. Where appropriate to the nature, scale and complexity of the risks inherent in the business of the insurer, the internal audit function may be commissioned to a third party.

Qualifications

158. The internal audit function is staffed by personnel possessing the appropriate integrity, competence, experience and qualifications taking into account the nature, scale and complexity of the insurer concerned.

159. The insurer satisfies itself that the relevant personnel are fit and proper, including that they are able to demonstrate they have relevant experience and expertise, and possess the professional and other qualifications appropriate for discharging the internal audit function.

160. Insurers ensure that there is an initial and on-going assessment of the fitness and propriety of the key functionaries (key function holders).

Reporting to the supervisor

161. The insurers submit to the supervisory authority the information necessary to assess the effectiveness of the internal audit.

The Actuary

Role of the Appointed Actuary

162. Insurers have somewhat conflicting obligations. While one of their obligations is to maximise return to shareholders within the defined risk profile, they also have the obligation to protect the interests of policyholders.

163. The primary responsibility of an appointed actuary is to protect the interests of policyholders. To protect the interests of the policyholders (including policyholders' reasonable expectations of the future dividends) in the short term and in the long term, it is important to ensure that the insurer measures and manages its risk and capital proper to remain its financial soundness. Thus, in many jurisdictions, broad responsibilities of the appointed actuaries are set out to ensure that appointed actuaries provide professional advices and/or certification to the board of directors with regard to the following issues:

- Estimation of policy liabilities in accordance with the valuation framework set up by the insurers
- Identification and estimation of material risks and appropriate managements of the risks.
- Financial condition testing
- Investment strategy and asset-liability management
- Regulatory capital assessment and economic capital assessment
- Appropriateness of premium rates (and surrender value)
- Management of participating fund (including analysis of material effects caused by business strategies)

164. In some jurisdictions, the insurer is required to appoint an Actuary for participation contracts as well.

Discussion Point:

Do appointed actuaries perform other roles and responsibilities?

What actions can the insurers and/or supervisors take against appointed actuaries that have not performed their duties appropriately?

Qualifications of appointed actuaries

Competency and Experience

165. In many jurisdictions, supervisors require appointed actuaries to meet certain minimum requirements, for instance, minimum number of years of working experience in actuarial functions, professional qualifications and membership to actuarial associations. To ensure that the appointed actuary possessed the necessary qualifications and by extension, the right level of competency, many insurers/regulators require the appointed actuary to be a Fellow or member of an Association recognised by the International Actuarial Association. In some jurisdictions, insurers are required to disclose the qualifications of their appointed actuaries to justify that the appointed actuaries have the necessary knowledge and experience that commensurate with the nature, scale and complexity of the insurers' businesses.

Discussion Point:

Should the IAIS prescribe the minimum qualifications of an appointed actuary?

Access to information

166. It would be necessary for appointed actuaries to have adequate knowledge of business strategy of the insurers so that they are able to evaluate appropriately the pricing and dividend distribution, investment and reinsurance strategies. To ensure that appointed actuaries have access to such information, some jurisdictions require insurers to allow appointed actuaries the right to attend all board meetings and meetings of other relevant committees, or the budget to engage external parties for professional assistance where necessary. Other jurisdictions grant appointed actuaries the powers to interview any managers and divisions that produce work which are relevant to the appointed actuaries' functions.

Adequate frameworks and procedures on

167. Pricing: If a jurisdiction is imposing pricing regulations, insurers would need an appropriate framework and proper procedures in place for the development and pricing of their insurance products. An appointed actuary has to be able to propose appropriate premium rates and pricing for all products are appropriate and the pricing of insurance products adhere to the internal framework. An appointed actuary should ensure that risks to policyholders are appropriately disclosed. An appointed actuary should also ensure that the reserving for products is adequate.

168. Policyholder dividends: appointed actuaries would be able to propose an appropriate amount of policyholder dividends to be allocated to participating policyholders, taking into account amongst other factors, the need to ensure fairness and equity among different cohorts of policyholders and the future financial condition of the participating fund.

169. To protect the policyholders' interests appropriately, it is important for appointed actuaries to express their opinions on how the assets of an insurance fund are to be invested.

Discussion Point:

If the insurer decides not to heed the appointed actuary's advice and makes a decision that is detrimental to the policyholders' interest, what should be done to protect policyholders' interest appropriately and by whom? What can the appointed actuary do?

Continuous Education

170. As insurance products evolve with innovation, globalisation and changing needs of policyholders, it is important for appointed actuaries to continuously upgrade their skills to keep pace with industry changes to enable them to perform their responsibilities appropriately. Thus, Actuarial Associations should consider new products and new risks that are introduced and emerged into the industry in the continuous education programmes.

Discussion Point:

Are continuous education are mandatory for appointed actuaries?
Do you think examinations are necessary as part of continuous education?
How do we ensure that continuous education works as intended?

Peer Reviews / Independent review of the appointed actuaries' work

171. Some jurisdictions require independent third parties, such as external auditors or validation actuaries, to review and report on the appropriateness of the appointed actuary's functions periodically. Other jurisdictions establish some quality control functions in the actuarial associations to review the competency of the individual appointed actuaries.

Discussion Point:

Is there a need to conduct an independent review of the appointed actuaries' work?
If yes, how regularly should this be done?
Who should perform this review?

Independence of appointed actuaries

172. An appointed actuary is one of the key players in ensuring independent checks and balances on management. An appointed actuary should act independently and not be influenced by demands from the managements, such as to be involved in making a more favourable accounting result for the insurer.

Appointment of appointed actuaries

173. In many jurisdictions, the appointed actuary is appointed by the insurers' board of directors and the appointment of an actuary requires approval from supervisors and/or shareholders during shareholders' meetings.

Discussion Point:

In appointing an actuary, what are the assessment criteria used by insurers' board of directors?

In approving an appointment of an actuary, what are the assessment criteria used by supervisors?

Does the approval by supervisors provide assurance on the independence of appointed actuaries?

Are there any other mechanisms to enhance the independence of the appointed actuary at his/her appointment?

Reporting lines

174. To ensure that board members have sufficient information about the appointed actuaries' opinions, in many jurisdictions, appointed actuaries are given direct access to board members so that they are able to provide their professional advice to the board. In addition, in some jurisdictions, appointed actuaries are also given direct access to the regulator. In some jurisdictions, the appointed actuary has the duty to report to the regulator if he/she is aware that the insurer has failed to take appropriate steps to rectify a matter which has material adverse effect on its financial condition within a reasonable time. This allows regulators to take timely actions to address any shortcoming in an insurer that could potentially undermine the interests of policyholders. These reporting regulations could encourage that appointed actuaries would express their own opinions regardless of the management preference and also board of directors considers appointed actuaries' opinions appropriately.

Discussion Point:

Are there any other mechanisms with regard to the reporting line which would strengthen the independence of appointed actuaries?

Performance Measurement, Appraisal and Dismissal

175. In many jurisdictions, performance evaluation of appointed actuaries would be undertaken by the board of directors. In some jurisdiction, this is conducted by a Board Committee, usually the Audit Committee, which comprises mainly independent board members. Some jurisdictions require dismissal of appointed actuaries to be publicly disclosed or reported to the supervisors.

Discussion Point:

Are there any other practical mechanisms with regard to performance measurement, appraisal and dismissal?

Budget

176. In many jurisdictions, the board may approve the budget of the appointed actuaries. In some jurisdictions, the budgets for appointed actuaries are decided by the Audit Committee with consultation with the insurers' internal auditors and not management.

Discussion Point:

Should appointed actuaries have the right to decide its own budget, like the internal auditors?

What measures can be put in place to provide more support to the appointed actuaries?

Conflict of interests

177. Some jurisdictions disallow appointed actuaries to be concurrently the Chief Executive Officer (CEO) or take on multiple roles, such as in areas of marketing and M&A strategy. Such multiple roles may have different objectives and KPIs which may put the appointed actuaries in conflict of interest situations. For instance, a CEO who is responsible for maximising the equity holder interest has different interests compared to an appointed actuary who is responsible for the validation of the policyholder dividends.

Discussion Point:

Are there any other cases of conflict of interests related with actuarial functions?

For insurers with small operations, it may not be possible to avoid double hatting of functions. In this regard, what measures can be taken to manage such conflict of interests situations?

178. In some jurisdictions, an appointed actuary is also an employee of the insurer ("in-house appointed actuary"). In such situations, notwithstanding supervisory frameworks that are put in place to ensure the independence of the appointed actuary, there is perception that the appointed actuary is beholden to the insurer's management and his/her opinions may be affected by the management's preferences. On the other hand, an in-house appointed actuary may understand the business models and risks better than third party actuarial firms. The in-house appointed actuary may be able to identify the important issues more effectively. There are pros and cons to each approach and insurers would have to consider them carefully in deciding whether to have an in-house appointed actuary or an external appointed actuary.

Discussion Point:

Is it preferable for insurer to hire appointed actuaries from external firms, such as actuarial consulting firm?

Where the actuarial function is outsourced to these external firms, do the insurer review the multiple appointments of the actuary and ensure that there are no conflict of interests arising from the multiple appointments?

External Auditor

Role of the external auditor

179. The role of the external auditor is to provide an audit opinion of the insurers' financial statements and other operations. The external auditor is one of the key players in ensuring independent checks and balances on management.

Qualifications of the external auditor

Competency

180. The external auditors for insurers should have adequate resources with specialised knowledge, such as understanding the work of the actuarial function, so that it can review and validate insurers' liability and risks appropriately.

181. In some jurisdictions, insurers are required to disclose that their external auditors have the necessary knowledge and experience that commensurate with the nature, scale and complexity of the insurers' businesses.

Discussion Point:

Do supervisors evaluate whether external auditors have adequate knowledge and resources (e.g. actuarial knowledge) to perform the insurance audits?

Peer Review or Independent Review of the work of the External Auditor

182. In some jurisdictions, the Public Accountants Association / groups would have set out guidelines for peer review to ensure the quality of the work of the external auditor.

Discussion Point:

Should there be a process set up to review the work of the external auditor?
Who should perform this review?

Independence of the External Auditor

183. An external auditor is another key player in ensuring independent checks and balances on management. An external auditor should act independently and not be influenced by demands from the managements.

Appointment of External Auditors

184. In many jurisdictions, the external auditor is appointed by the board of directors and in some jurisdictions, the appointment of external auditor requires approval from supervisors and/or shareholders during shareholders' meetings. Some jurisdictions require insurers to rotate their external auditor periodically (e.g. at least once every

certain number of years). Other jurisdictions require the insurers to disclose their policy on the external auditor's appointment.

Discussion Point:

In appointing an external auditor, what are the assessment criteria used by the insurers' board of directors?

In approving an external auditor, what are the assessment criteria used by supervisors?

Does the approval by supervisors provide assurance on the independence of external auditors?

Are there any other mechanisms to enhance the independence of the external auditor at its appointment?

Reporting lines

185. To enhance the overall governance functions, external auditors report their findings and assessment to an independent board committee, such as the Audit Committee and supervisors and not to the management of the insurer in some jurisdictions.

Discussion Point:

Are there any other mechanisms with regard to the reporting line to strengthen the independence of the external auditor s?

Performance Measurement, Appraisal and Dismissal

186. In many jurisdictions, performance evaluation of external auditors would be undertaken by the board. In some jurisdictions, an independent board committee such as the Audit Committee, which comprise mainly independent board members, is responsible for the evaluation. Some jurisdictions require dismissal of external auditors to be publicly disclosed or reported to the supervisors.

Discussion Point:

Are there any other practical mechanisms with regard to performance measurement, appraisal and dismissal of external auditors?

Conflict of interests

187. Some jurisdictions disallow the insurers' external auditors or their related parties to concurrently perform non-audit work for the insurers. In most jurisdictions, the Public Accountants Association/groups would have set out guidelines or rules on such conflict of interests situations.

188. Other jurisdictions impose auditor rotation policy to cap the number of years an insurer can continuously appoint an external auditor. In other cases, audit staff of the external audit firm are prohibited from joining the insurers or the subsidiaries that he/she had previously audited after his/her retirement.

189. In some jurisdictions, insurers are required to disclose that the independence of their external auditors.

Discussion Point:

Are there any other cases of conflict of interests related with external auditors?

Audit Fees and Audit Scope of work

190. In many jurisdictions, the board may approve the audit fees for the appointment of external auditors. In some jurisdictions, the audit fees are decided by the Audit Committee with consultation with the insurers' internal auditors and not management. Some jurisdictions require the audit fees to be disclosed in the annual reports.

191. In some jurisdictions, the scope of work to be performed by the external auditors is reviewed and approved by Audit Committee and not management.

Discussion Point:

Who approves the audit fee and scope of work of the external auditor?

Disclosure and Transparency

192. Empirical evidence indicates that high standards of transparency and disclosure can have a material impact on management of organisations. Disclosure helps public understanding of a company's activities, policies and performance with regard to environmental and ethical standards, as well as its relationship with the communities where the company operates. Disclosure and transparency, as well as proper auditing, serve as a deterrent to fraud and corruption, allowing firms to compete on the basis of their best offerings and to differentiate themselves from firms who do not practice good governance.

193. Transparency is a prerequisite for effective market discipline. The rationale for greater transparency is that companies, particularly financial institutions, present information asymmetries to the markets. Any company is better informed about its own operations than outsiders are. If the company publishes more information to facilitate the assessment of its assets and liabilities, its strategies and risk profile, markets can function more effectively. Markets contain disciplinary mechanisms, which stimulate sound management and adequate financial performance. For companies which are well-run, well-financed, and transparent, costs of raising capital will tend to decline. The reverse goes for ill-managed firms. More generally, well-run firms, by being transparent, can obtain better terms and conditions in transactions with informed and rationally-behaving market counterparties. In essence, this is market discipline.

194. Market discipline, however, works only if market participants have sufficient information, which enables them to assess companies' activities and their inherent risks. But more disclosure as such does not necessarily result in greater transparency. On the contrary, rather than just expanding their disclosures, firms should pay attention to the quality of information as well. In short, information disclosure needs to be timely, reliable, relevant and sufficient. Importantly, public disclosure of high quality information contributes to corporate governance. That is to say, the information can be used to hold directors and managers accountable for their decisions and the firm's performance. Transparency, in other words, serves the accountability of companies to their stakeholders.

195. One aspect of public disclosure which should not be overlooked is the costs involved. Information is not a free good. On the contrary, developing, implementing and maintaining up to standard information systems is costly and takes time. For that reason, disclosures, should, above all, require relevant information. However, there is a professional risk of an overdose of information, which must be heeded by both standards setters and regulators.

196. Issues that need to be addressed on transparency and disclosure are:

- disclosure policies
- disclosure communication channels
- assurance
- governance elements
- ad hoc requirements

Disclosure policies

197. Insurers should disclose at least information on their financial position and the risks to which they are subject. Over the recent years many companies have developed disclosure policies on e.g.:

- What information to disclose
- How to disclose this information
- The frequency of disclosure
- The due process of developing disclosures

198. In some instances companies have formed disclosure committees on their board to ensure compliance with the disclosure policies. Typically this committee is charged with supervising the company's financial and non financial disclosure process. It also ensures that information required to be disclosed is accumulated and communicated to management, so that decisions regarding disclosure can be made on a timely basis. Many boards today delegate oversight responsibility for the disclosure committee to the audit committee.

199. Quality elements addressed in the disclosure policies are:

- Relevance
- Timeliness
- Accessibility
- Comprehensiveness
- Meaningfulness
- Reliability
- Comparability
- Consistency

200. Items to disclose include:

- Company objectives
- Major share ownership and voting rights
- Members of the board and key executives
- Governance structure- in particular the division of authority between shareholders, management and board members
- The company's financial and operating results (audits should be conducted by an independent auditor in order to provide an objective assurance that the financial statements have been properly prepared and presented)
- Material issues affecting employees and other stakeholders
- Managerial compensation
- Related party transactions
- Foreseeable risk factors

Disclosure communication channels

201. Various channels exist that can be used for disclosure purposes, these include:

- Annual report
- Quarterly reports
- Specific frequent reports such as environmental reports or CSR reports
- Ad hoc statements

202. Different jurisdictions have different requirements on communication channels. Further more in most jurisdictions a distinction can be made between listed companies that have to comply with more demanding requirements and non-listed companies that in many instances are only required to publish annual reports. In many jurisdictions companies voluntarily exceed legal requirements on disclosures and comply with best practices instead of legal minimum standards.

Assurance

203. Disclosures need an additional level of assurance provided by the external auditor and/or the actuary. This is at least relevant for the annual financial statements but can be also applied to other financial and non-financial reports.

204. For more detail on this we refer to the section on external audit and actuary in this document.

Disclosure on governance

205. In many jurisdictions specific requirements for disclosures on corporate governance exist, such as:

- Governance structures
- Composition of the board (including committees)
- Profiles of specific functions
- Relevant charters of the board and its committees
- Remuneration policies and practices

Specific transparency requirements

206. Jurisdictions can have specific transparency requirements, for instance especially for financial institutions. This regards mostly only disclosure towards the relevant supervisor(s) but could also include disclosure to the market.

207. The recent turbulence on the financial markets has led to several examples of additional and/or more detailed information, such as disclosures on:

- Write offs
- Risk positions
- Risk management practices
- Accounting (valuation) policies

Relationship with the Stakeholders

Stakeholder law, theory, definition, types and analysis

For discussion, text not included in the current version:

Summary of issues

Noting that stakeholders with specific interests are defined by law e.g.

- Shareholders, creditors & directors - Company law
- Employees - Employment law
- Policyholders - Contract law
- Suppliers/outsourcers - a) Contract law, b) Human rights labour law
- Environment - Pollution law
- Those owed a duty of care - Common law

Considering that stakeholders with wider interests require appropriate corporate attention e.g.

- Government and government agencies including trade bodies
- Generic - Trading Partners/Customers – fair trading practices
- Trade Unions
- The community
- Pressure groups e.g. Amnesty International, Greenpeace (de facto)

Considering substantial overlaps between wider stakeholder interest and corporate social responsibility

Corporate stakeholder/CSR profiling may be a requirement within financial reporting.

- Noting a danger in expressing aspirations to enhance perceptions.
- Noting a danger in not meeting, or diverging from, those aspirations.
- Considering a need for clarity with fact
- Is CSR needed for the status quo or elevation?

Considering that the global trend in CSR is more advanced in Nordic and north European countries, and Australasia

Considering that elsewhere in the world, legal, cultural and social differences may prevail

But consider the value in accelerating the gradual international recognition of ISO14001 as a benchmark for CSR credentials

Needing to appreciate and adapt to the impact of major events even in developed societies

Noting a need for CSR to be included within a corporate risk management analysis – sometimes “what happens if you don’t” could create much more impact on the bottom line than “what happens if you do”.

N.B. the Corporate Governance questionnaire (S3) ‘Stakeholders’ focuses on policyholders and (S4) ‘Functions and Responsibilities of the Board of Directors and Senior Management’, 23a, b & c focuses on ethical conduct and corporate social responsibility.

Stakeholders

Background

The IAIS Insurance Core Principles and Methodology considers the term stakeholders, often in generic form, in the following ICPs:

1. Conditions for effective insurance supervision
2. Supervisory system
11. Corporate Governance
16. Winding up an exit from the market
26. Information, disclosure & transparency towards the market.

208. The term stakeholder, as traditionally used in the English language in law and notably gambling, is a third party who temporarily holds money or property while its owner is still being determined. More recently the term has become widely used in management. In a business context, a “stakeholder” is a person or organisation that has a legitimate interest in a project or entity. The new use of the term arose together with and due to the spread of corporate social responsibility ideas, but there are also utilitarian and traditional business goals that are served by the new meaning of the term.

209. In the traditional view of the company, the shareholder perspective which is the only one recognised in business law in most countries, considers the shareholders or stockholders are the owners of the company. The company has a binding fiduciary duty to put their needs first and to increase value for them. In older input-output models of the corporation, the firm converts the inputs of investors, employees, and suppliers into usable (saleable) outputs which customers buy, thereby returning some capital benefit to the company. By this model, companies only address the needs and wishes of those four parties: investors, employees, suppliers, and customers. However, stakeholder theory argues that there are other parties involved, including governmental bodies, political groups, trade associations, trade unions, communities, associated corporations, prospective employees, prospective customers, and the public at large. Sometimes even competitors are counted as stakeholders.

210. The stakeholder view of strategy is an instrumental theory of the corporation, integrating both the resource-based view as well as the market-based view, and adding a socio-political level. This view of the company is used to define the specific stakeholders of a corporation (the normative theory (Donaldson) of stakeholder

identification) as well as examine the conditions under which these parties should be treated as stakeholders (the descriptive theory of stakeholder salience).

211. A stakeholder is any person or organisation who can positively or negatively be impacted by, or causes an impact on the actions of, a company. Person, group, or organisation that has direct or indirect stake in an organisation because it can affect or be affected by the organisation's actions, objectives, and policies. Key stakeholders in a business organisation include creditors, customers, directors, employees, government (and its agencies), owners (shareholders), suppliers, unions, and the community from which the business draws its resources. Although stake-holding is usually self-legitimising (those who judge themselves to be stakeholders are de facto so), all stakeholders are not equal and different stakeholders are entitled to different considerations. For example, a firm's customers are entitled to fair trading practices but they are not entitled to the same consideration as the firm's employees.

212. Primary stakeholders are those ultimately affected, either positively or negatively by a corporation's actions. Secondary stakeholders are the 'intermediaries'; that is persons or organisations who are indirectly affected by a corporation's actions. Key stakeholders, who can also belong to the first two groups, have significant influence or importance in a corporation. Stakeholders may also be permanent or temporary as the term may be used to describe people who will be affected by an individual project, or who can influence it, and who may or may not be directly involved in doing the work.

213. Stakeholder analysis is a form of analysis that aims to identify the stakeholders who are likely to be affected by the activities and outcomes of a project, and to assess how those stakeholders are likely to be impacted by the project. Stakeholder analysis has the goal of developing cooperation between the stakeholder and the project team and, ultimately, assuring successful outcomes for the project.

214. A stakeholder analysis is performed when there is a need to clarify the consequences of envisaged changes, or at the start of new projects and in connection with general organisation changes. It is important to identify all stakeholders for the purpose of identifying their success criteria and turning these into quality goals.

Corporate social responsibility (CSR)

215. The EU definition of CSR is a 'concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.'

- A B Carroll noted that "it was Karl Marx who observed that those who ignore history are bound to repeat it. To make further progress towards a more socially responsible and sustainable business practices, we will need a mixture of new ideas about the future, and wisdom drawn from lessons of the past."⁶
- Gerard Fonteneau as advisor to the European Trade Union Confederation (ETUC) in 2003 summarised as follows: "It remains true that the constitution of countervailing powers in the companies – in all workplaces – is the prime goal.

⁶ Business & Society, 1999

Besides its profound democratic meaning, it would be the only way to legitimise and fasten the trust of the citizen in the company.”⁷

- In concluding a statement delivered at ‘Public Eye on Davos’ Irene Khan the then Secretary-General of Amnesty International asked: “Is CSR all PR? I suppose my short answer is if we don't want CSR to be PR then we must not only ask companies to commit voluntarily to human rights principles, but - given the unreliability of the market and the uncertainties of self-interest, we must insist on enforceable legal accountability. I don't underestimate the challenge for one moment - building agreement on legal accountability will not be easy, particularly in this difficult period of economic and political uncertainty. But human rights are not a luxury for good times - they must be respected and upheld at all times under all circumstances, by all actors, state and non-state. The key to our success will lie in the ability to forge an effective alliance.”⁸

CSR in practice

216. An influential report from the non-profit organisation AccountAbility produces a Responsible Competitiveness Index (RCI) and ranks Sweden as the country that is doing most to advance its business competitiveness through responsible business practices, ahead of Denmark, Finland, Iceland and the United Kingdom. In other words, Swedes know how to do business while taking climate change, gender, human rights and anticorruption into account.” There needn't be a conflict between compassion and competitiveness, and Sweden is a shining example of this,” says Zadek, who is seen as one of the architects of the CSR movement. He says that recent history plays a key role in Swedish companies' approach to responsible business. So much of this business responsibility comes from the way Swedish society has evolved since the World War II. “Fifty years of development have delivered a cohesive society where Sweden's business community is embedded in a set of social norms that the country is now exporting when it does business elsewhere.”

Examples of how voluntary interpretation produces different practical applications (and pitfalls)

Broad range and long term; essentially cautious

217. Swiss Re announced on 30 Oct 2003 at the Swiss Re Centre for Global Dialogue that it plans to become a greenhouse neutral company. Swiss Re will initiate a ten-year programme combining internal emissions reduction measures with an investment in the World Bank Community Development Carbon Fund. The voluntary initiative makes Swiss Re the largest global financial services company to set itself the goal to become greenhouse neutral. All Swiss Re locations will participate in the initiative. The programme will utilise the same methodology as Swiss Re offers to clients through its “Greenhouse Neutral” package in partnership with the Commonwealth Bank of Australia.⁹

⁷ Corporate Social Responsibility: envisioning its social implications – users.skynet.be

⁸ Taking stock: Corporate social responsibility and human rights - 24.01.03

⁹ www.swissre.com

Good intention but major oversight

218. "It's a shame it had to be the Gates Foundation that got it in the neck from the Los Angeles Times for failing to consider the damage inflicted on the very benighted families it is trying to help by polluting and exploitative multinational companies in which Bill and Melinda invest. The LA Times ran lengthy, hard-hitting and well-researched pieces pointing up the anomalies. It was powerful stuff."¹⁰

Not doing what you imply

219. Kellogg Company considers it has a rich history of corporate social responsibility. It believes in 'protecting our environment'. However "Kellogg is currently in the top 600 companies in total pollution according to a Lake City, Minnesota, source. The Kellogg Company in Minnesota alone releases over 49,000 pounds of pollution a year. The company is not only releasing chemicals into the air, but into the water as well, which causes many different problems. With different bodies of water being polluted, it kills off food sources, as well as hurting other companies."¹¹ Fortunately Kellogg do add "Our commitment to social responsibility is as strong today as it was when our company was founded. We are proud of our progress, but there is still much we can do."¹²

A CSR policy of supporting staff to support others – 'Volunteers in the City of London'

220. A recent article in The Sunday Times¹³ noted that "individual acts of volunteering by City employees is up 40% on a year ago. Advocates claim it improves employee engagement, raises morale and increases the sense of corporate belonging, ultimately helping a company's bottom line. The City's big guns are also putting pressure on small and medium sized client firms to follow their example. Volunteers gain a broader perspective and a more eclectic mindset that is likely to benefit them in their jobs. In addition volunteering improves the way companies are viewed by the broader community." The article concluded that "10 years ago businesses saw CSR as doing the right things; today they are more likely to be persuaded by commercial arguments, but more important still is that business supports it."

How the best CSR intentions are affected by global influences.

221. A CSR Wire survey summarised that major terrorism such as 9/11, global warming and the status of word communities all affect corporate thinking¹⁴. In recent days the price of oil and the upheaval in the financial markets may well be added.

¹⁰ In an article entitled "Sitting on the Gates" www.guardian.co.uk 18.01.07

¹¹ www.wikipedia.org

¹² www.kelloggcompany.com

¹³ The Sunday Times (UK) - www.timesonline.co.uk/appointments - 14.09.08

¹⁴ Survey - www.csrwire.org

Interaction with the Supervisor

222. The board is primarily responsible and accountable for the performance of an insurer. Likewise, shareholders hold the board accountable for governing the organisation effectively. A key role of supervisors is then to promote strong corporate governance by reviewing and evaluating the implementation of sound corporate governance practices. The element of corporate governance is therefore an important part of the interaction between insurer and supervisor.

223. To do so supervisors put explicit attention to corporate governance in their supervisory policies and strategy. Issues that need to be addressed include:

- Supervisors consider corporate governance as a key element of policy holder protection.
- Supervisors provide guidance to insurers on sound corporate governance and the pro-active practices that should be in place.

224. Supervisors also pay due attention to corporate governance in their normal day to day line supervision activities. Issues that need to be addressed in this respect include:

- Supervisors determine whether the insurer has adopted and effectively implemented sound corporate governance policies and practices.
- Supervisors assess the quality of insurers' risk, audit and control functions.
- Supervisors evaluate the effects of the insurer's group structure.
- Supervisors bring to the board of directors' and management's attention problems that they detect through their supervisory efforts.

225. Supervisors should specifically assess the functioning of the board as a whole. This includes more than a fit and proper test but also refers to an assessment of the functioning of the group of people and their dynamics. Although this is a difficult and sensitive area, supervisors should make sure they have the capacity and expertise to include this task in their supervisory practices.

Conclusions and Recommendations

226. To be included later.