

GFIA Comments regarding Confidentiality of Information for the 15 January 2013 ComFrame Dialogue

The Global Federation of Insurance Associations (GFIA) appreciates the constructive efforts by the IAIS and national supervisors to foster a gap-free supervisory system through initiatives such as the development of new Insurance Core Principles, the establishment of supervisory colleges, the Multilateral Memorandum of Understanding on Cooperation and Information Exchange, and the ComFrame workstream. We also appreciate the opportunity to offer our recommendations on confidentiality of information for your consideration in advance of the upcoming ComFrame Dialogue.

Strong confidentiality protections are an essential precondition to information exchange at every stage of the process contemplated by ComFrame, from the identification of internationally active insurance groups (IAIGs) to the assessment of an IAIG's strategies and procedures in sensitive and proprietary areas such as group structure, strategy, governance, enterprise risk management, and financial condition. Since public exposure of proprietary information may result in significant harm to insurance groups from both a regulatory and economic perspective, confidentiality protections are necessary to protect groups as well as confidence in the supervisory system. These protections must apply fully to all individuals or entities that are given access to confidential information, including but not limited to insurance supervisors (whether as part of the on-going supervisory process, supervisory review process, or peer review process); supervisors in other financial sectors; and government bodies responsible for the legislation of financial market institutions.

The ICP confidentiality guidance is generally high-level and does not discuss the reasons for confidentiality protection or specific items that need to be protected. Since the July 2 ComFrame draft includes a number of items in both Modules 2 and 3 that are likely to contain proprietary information and require protection (such as ORSA reports, the IAIG Profile, contingency and business continuity plans, group-wide risk assessment, etc.), specific protection of these items is needed in ComFrame (which of course does not exclude the need for protection of other proprietary information).

While we support the existing confidentiality protections in ComFrame, we have a number of concerns about their efficacy as drafted. Our comments in the attached template highlight specific areas where we believe changes to the existing text will help to strengthen these protections.

TEMPLATE FOR CONCRETE EXAMPLES OF CONFIDENTIALITY ISSUES OR NECESSARY ENHANCED TEXT BASED ON 2 JULY 2012
WORKING DRAFT OF COMFRAME

Draft ComFrame Reference ¹	Organisation	Issue or Enhanced Text
M2E9-2		Strong confidentiality protections are particularly essential for the extensive, sensitive, and potentially open-ended information contemplated by this standard, which requires the reporting of "information on qualitative and quantitative elements set out in Module 2 that is necessary to conduct the appropriate supervision of the IAIG, including information requested on an as needed basis."
M3E2-3		When insider trading laws prohibit unauthorized sharing of confidential information, more certainty that supervisors will protect this information is essential.
M3E2-3		Companies whose confidential information has been subjected to unauthorized disclosure should be notified immediately of the breach.
M3E2-3-4		A specification should be added to require a validation demonstrating the ability of government bodies responsible for the legislation of financial market institutions to handle confidential information. This is already required for sharing information with supervisors in other sectors (see M3E2-3-3-1).
M3E2-3-6		The first sentence of this parameter should be deleted, in order to avoid creating the impression that confidential information may be inappropriately compromised, undermining the admonition in M3E2-3 that "Involved supervisors shall take all necessary actions to protect confidential information. The inability to exchange information on a confidential basis is not to be a barrier to the ongoing efficient and effective supervision of IAIG's. Workable solutions for the confidential exchange of information need to be identified.
M3E2-4-1		Supervisors should maximize the use of confidential information already in their possession before requesting additional confidential information.
M3E4-4-5		Confidentiality agreements should be negotiated in a timely fashion, and companies subject to supervisory colleges should be able to access them.

¹ Standard, Parameter or Specification. Please indicate precisely where enhanced text should be included or where the issue you are raising is relevant within ComFrame.

Draft ComFrame Reference ¹	Organisation	Issue or Enhanced Text
M3E2-5-1		When a jurisdiction providing information has stronger confidentiality protections than the jurisdiction receiving the information, the stronger protections of the providing jurisdiction should apply. This is an important issue which would benefit from further analysis and consideration, in particular in the context of Multilateral Memorandums of Understanding or/and when designing other formal bilateral or multilateral information sharing agreements.
M3E2-5-1-1		This specification should be amended to require the supervisor who has received the confidential information to consent to any application by the affected IAIG to intervene in any action to preserve the confidentiality of the information provided. There is already a similar allowance for the supervisor who provided the information.