



Issues Paper for Branches

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We thank you for your assistance in this regard.

Observer	Paper reference	Comment
International Global Federation of Insurance Associations (GFIA)	Global comments	<p>The Global Federation of Insurance Associations (GFIA) through its 32 member associations, represent insurers that account for around 87% of total insurance premiums worldwide. GFIA appreciates the IAIS's efforts to develop information and identify issues with respect to cross-border insurance activities and in this respect the work done by the IAIS through its workstream and evolving paper, "Issues Paper on Supervision of Cross-Border Operations Through Branches". The Issues Paper has now gone through three drafts and has developed a substantial body of information about supervisory treatment of branch insurance operations. The IAIS Survey and the supervisory responses represent a valuable contribution to knowledge about the operation of the global insurance industry and supervisory responses.</p> <p>Given the substantial global impact of the IAIS's work products, it is important that IAIS findings be neutral, supported by a factual record, and balanced, based on a widely-shared consensus of views of IAIS members. The greater portion of the current draft issues paper appears to satisfy this high standard. However, as we have indicated in prior comments, we are concerned by occasional indications of bias in the current exercise, manifested in a few of the paper's paragraphs. These include several findings which are unsupported or even contradicted by the IAIS Survey results and a generally selective and misleading characterization of relevant academic literature. We suggest that these concerns can be addressed by deleting or modifying the language in a few problematic paragraphs without a major overhaul of the paper.</p> <p>In our previous comments we noted that while the focus of the Issues Paper is on the branch form of legal entity, in order</p>

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		<p>to draw meaningful conclusions about the branch structure, it is necessary to compare it with alternative forms of legal entity by developing comparable factual information about such entities, e.g. subsidiaries, joint ventures etc. These various business models have operational and supervisory implications, and the academic literature tends to approach the subject on a comparative basis, with titles that use phrases like “Branch or Subsidiary?” To date, however, while this workstream has gathered extensive survey results and other information with respect to branches, the record is devoid of any empirical information about subsidiaries and other legal forms and the issues which they pose for supervisors.</p> <p>Accordingly, there is no basis for the workstream to draw any conclusions about the merits of the branch form relative to other forms of legal entity, including the subsidiary structure, from the operational perspective or the supervisory perspective. The relevant questions have not yet been asked or answered with respect to the alternatives to branches. We suggest that the IAIS either institute procedures to develop such information, or, alternatively, simply delete any language in the Issues Paper that compares the branch structure with any other form of entity because there is no basis for such a comparison in the record as developed. Such language appears, for example, in paragraphs 17, 18, 32, 62, 63, 94, 97 and 101.</p> <p>A related concern is that throughout the draft, various conclusions are drawn with respect to the operation of branches which are equally or even more applicable to subsidiaries, particularly in cross-border scenarios, a fact which is not stated (see e.g. para. 87, 88, 89 and 90). The net effect, therefore, is misleading even though the statements, standing alone, may well be accurate. This problem can be cured simply by stating, where relevant, that the same considerations apply to subsidiaries.</p> <p>In several paragraphs (44, 76, 85-86) we see statements about isolating branches from parent companies in insolvency scenarios as a current practice, yet the paper does not explore how branches and subsidiary models have been dealt with in practice in various jurisdictions in insolvency scenarios. For instance, in paragraph 44 the Issues Paper states “[A tied asset regime] helps isolate the branch from the Head Office should the company get into financial difficulties”. A more in-depth look at how this happens, with reference to real examples, would greatly help in building an empirical foundation for the paper. Further exploration is suggested by the title of Annex 4, but this has not yet been produced. Given concerns cited by supervisors on this subject, we believe the report would benefit from the inclusion of greater empirical work in this area.</p> <p>A number of provisions in the paper use the language of surmise – the words “may” and “potentially” are recurrent (see paragraphs 32, 38, 89 and 101). However there is no reference in the survey results, to any actual problems in the real world or to any other factor that might justify such speculation. Lacking support, such language does not have guidance value and should be deleted.</p>

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		<p>The academic literature on the branch/subsidiary issue states that from a supervisory perspective, neither form is clearly preferable. To the extent the IAIS paper purports to summarize the results of a literature search, that conclusion needs to be stated explicitly, as well as problems associated with subsidiaries identified in the academic work on the subject.</p> <p>Paragraph 94 suggests that three “conceivable measures” might make the supervision of foreign branches more effective, including “localization of foreign branches.” “Conceivable measures” reaches beyond the workstream mandate, and no evidence has been developed by the workstream or cited by the Issues Paper to provide a basis for the conclusion that “localization” would make supervision more effective.” This concern can be addressed by deleting the language in question.</p> <p>The issues paper notes (para. 18) that compulsory conversion from branch to subsidiary form of legal entity is inconsistent with GATS Article XVI, for jurisdictions that accepted such commitments. The Draft notes the so-called “Prudential Carve-Out” in GATS but does not acknowledge that a comparable prudential exception in the OECD Code of Liberalization of Current Invisible Operations prohibits “prudential” measures which discriminate against non-resident insurance companies. This language would prohibit signatories from requiring foreign branches to convert to other forms of legal entity.</p> <p>The work of the IAIS has provided supervisors with a consistent global basis for their activities and has promoted increased confidence in the supervision conducted in jurisdictions around the world that embrace IAIS principles. The Insurance Core Principles and other guidance developed by the IAIS reflect a process of careful deliberation and consultation based on actual supervisory experience and the principles of moderation – e.g., supervision should not go beyond what is necessary to achieve supervisory objectives. For this reason the IAIS should avoid adopting principles or setting standards if there is a risk that in the long term they might affect stakeholders confidence in the IAIS itself, its principles and its processes.</p> <p>The IAIS represents insurance supervisors from over 200 jurisdictions, a significant portion of which are developing economies to whom branches represent real advantages. In the current exercise 33 jurisdictions have submitted questionnaire responses, and of these, a very small subset appear to regard the branch structure as problematic but have developed little or no empirical information to support their perspective. The task of the IAIS is to espouse principles representing best practices that are of benefit to broad range of its membership and therefore it is important that any IAIS recommendation should be more representative than is the case here with respect to branch/subsidiary conversion. We urge the IAIS to limit its findings in this exercise to conclusions which can be supported by its Survey results, the academic literature, and the historical record.</p>