



To: Julien Reid  
Chair, IAIS Market Conduct Subcommittee

cc: Peter Cooke, IAIS Secretariat

Date: 26<sup>th</sup> August 2013

Subject: GFIA Comments on IAIS Issues Paper on Policyholder Protection Schemes

Dear Chair Reid,

The Global Federation of Insurance Associations (GFIA), through its 35 member associations, represents insurers that account for 87% of total insurance premiums worldwide. On behalf of GFIA, I am responding to your request for comments on your Issues Paper on Policyholder Protection Schemes.

We very much appreciate the opportunity to provide input on this paper.

### **General Comments**

We commend the IAIS for a thoughtful paper. A Policyholder Protection Scheme (PPS) is a last-resort mechanism that can play a valuable consumer protection role when supervisory regime safeguards are insufficient. The paper provides a useful overview of the features and functions of a PPS, while acknowledging that specific features need to take into account the legal and regulatory systems and culture of each jurisdiction. The paper recognizes that solvency regimes do not create a zero-failure environment and recognizes that, just as balance is needed in creating a viable solvency regime, so too, is balance needed in designing a PPS that does not cause distortions in the marketplace. In developing this paper, it is clear that efforts have been made to reflect other international publications, such as OECD's *Policyholder Protection Schemes: selected considerations*, released earlier this year, for the sake of consistency.

Our comments are relatively minor and are designed to clarify or reinforce various points in the paper. We discuss several below and have also attached a document which correlates specifics to particular paragraph references.

### **Specific Comments**

#### *Costs*

A number of issues and risks (e.g. moral hazard, possibility of arbitrage, market concentration, cross-border and group issues) are discussed in some length in the paper as well as options to mitigate them. The issue of cost, however, is mentioned only briefly in paragraph 22 which states "*Jurisdictions should also weigh the costs of a PPS against the benefits, bearing in mind that these costs will ultimately be passed on to policyholders and could affect the competitiveness of member insurers.*"

It is important that a balance be struck to ensure insurers can offer affordable, yet sufficiently safe, insurance products. Given the importance of this balance, we would suggest that paragraph 22 be slightly modified and that its point be incorporated into paragraph 5, and we have provided possible additional language in the attached.

#### *Impact on developing countries*



While the description of existing PPSs and case studies is useful, concern was expressed that this reflects a developed world perspective and, as such, the paper may not sufficiently consider the role and costs of a PPS in developing countries.

*European Union references*

There is no EU legislation on PPS. In a number of example boxes (e.g., under paragraph 36, 58, 68, 70, 81 and 86), individual EU member countries are cited. However, in a few instances, the example references are to the EU rather than specific countries. This could be misleading. It is recommended that these be changed. We provide specifics in the attached document.

*Other*

Several other clarifying suggestions are included in the attached.

**Conclusion**

We wish to reiterate how much we appreciate the opportunity to provide input. The industry strongly supports the work and efforts of IAIS.

Sincerely,

Frank Swedlove  
Chair, Global Federation of Insurance Associations

GFIA Contact:

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## Template for comments on draft Issues Paper on policyholder protection schemes

This ICP material is presented for consultation with IAIS Members and Observers.

The deadline for comments is Tuesday 20 August 2013.

Comments should be sent to the Secretariat (peter.cooke@bis.org).

Name/organisation	Paragraph reference	Comment	Proposed resolution (for use of the Secretariat only)
GFIA	5	<p>Recognizing that protection comes at a cost, it is important that a balance be struck to ensure insurers can offer affordable, yet sufficiently safe insurance products. This is recognized briefly in paragraph 22. We suggest reinforcing it by amending paragraph 5 as follows:</p> <p><i>Solvency regimes do not create a zero-failure environment and may not protect consumers from losses in the event of a failure. When failures do occur, governments can come under strong pressure to provide a safety net. In light of this, many jurisdictions have established one or more policyholder protection schemes (PPSs) to provide a minimum layer of protection to policyholders in the event that the safeguards within the supervisory regime are insufficient. However, in the same way as prudential regimes, policyholder protection schemes must strike a balance between protection and insurers' ability to offer affordable, yet sufficiently safe insurance products as protection comes at a cost (to policyholders, businesses, governments and/or taxpayers).</i></p>	
GFIA	22	<p>Costs may not always be passed on to policyholders (e.g., some jurisdictions provide a "premium tax offset" to insurers for the levies that a member pays to its PPS). Thus, we suggest a minor alteration to paragraph 22, as follows:</p> <p><i>Jurisdictions should also weigh the costs of a PPS against the benefits, bearing in mind that these costs <u>may</u> ultimately be passed on to policyholders and could affect the competitiveness of member insurers.</i></p>	
GFIA	27, 57	<p>Given that there is no EU legislation on PPS, we suggest that examples regarding EU countries should be specific to those countries rather than simply using the descriptor "EU". This is already done in several cases, but is not done in paragraphs 27 and 57.</p>	

Name/organisation	Paragraph reference	Comment	Proposed resolution (for use of the Secretariat only)
		<p>The European Union description is appropriate in paragraphs 89 and 105 because it refers to a specific EIOPA report.</p>	
GFIA	38	<p>Paragraph 38 about clear and transparent documentation states that "PPSs normally document intervention guidelines that are followed when an insurer experiences difficulties... Intervention powers should be in a publicly available statement of a PPS's mandate and powers."</p> <p>This gave rise to some concern that this could be interpreted to require intervention powers. If the intent is to require that intervention guidelines be documented where such exist, we would suggest that paragraph 38 be clarified by adding the phrase, "<i>where the PPS has intervention powers</i>".</p>	
GFIA	81	<p>Questions have arisen about whether or not paragraph 81 requires that the PPS be subrogated to the rights of the policyholder, or whether the intent is that the PPS clearly specify its subrogation rights 'only when it is subrogated to the rights of policyholder'.</p> <p>We would suggest adding the phrase "<i>where the PPS is subrogated to the rights of policyholder</i>" in this sentence.</p>	
GFIA	85	<p>The involvement of a PPS before insolvency proceedings should be considered carefully in light of the existing solvency regime. In Europe, for example, Solvency II foresees supervisory intervention when insurers no longer meet the capital requirement thresholds. The intervention intensifies when an insurer's financial situation continues to deteriorate with the aim to capture any ailing insurers before a serious threat to policyholders' interests occurs. A last-resort intervention step is to transfer all the insurer's liabilities to another insurer and the license will be withdrawn or the insurer will be closed to new business and its in-force business will be liquidated thus minimising any disruption or loss to its policyholders. We suggest amending paragraph 85 as follows:</p>	

Name/organisation	Paragraph reference	Comment	Proposed resolution (for use of the Secretariat only)
		<p><i>Often a PPS's involvement in the case of a troubled insurer occurs before insolvency proceedings begin. The effective intervention of a PPS can help to reduce the cost of an insurer solvency if appropriate in light of the existing prudential regime and the supervisor's intervention powers.</i></p>	
GFIA	91	<p>The paragraph states that "Claims handling between the PPS and policyholders in the host jurisdiction could be facilitated by a PPS in the host state, serving as a point of contact...These arrangements should be set out in an agreement between both PPSs."</p> <p>We wonder if the point needs to be made that cross-border cooperation between PPSs needs the cooperation of its supervisors within the scope of legal systems of each jurisdiction, e.g., through an additional phrase like <i>"on the premise of compliance with legal systems of each jurisdiction and the cooperation among supervisors...."</i></p>	
GFIA	98	<p>Paragraphs 96 - 98 acknowledge that international insurance groups may participate in PPSs in multiple jurisdictions that it may be difficult for consumers to understand coverage levels for different products within an insurance group, and that, in paragraph 98, "Where relevant, PPSs should document how they will coordinate with other protection mechanisms for insurers that are part of a financial group."</p> <p>Concerns have been expressed that the use of the word "coordinate" could be interpreted as requiring the application of the same coverage level among all PPSs, which we do not believe to be the intent. This could mean, for instance, that in the event of the failure of an international insurance group, host jurisdiction coverage levels would apply in all jurisdictions, even if they are higher than levels in other jurisdictions.</p> <p>Some clarity as to what is intended by "coordinate" could avoid this misinterpretation.</p>	
GFIA	116	<p>Paragraph 59 states that it is important that a balance is found between what can be expected by policyholders and what a PPS can be expected to cover. We suggest this consideration should</p>	

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		<p>also be reflected in the conclusions and therefore propose amending paragraph 116 as follows:</p> <p><i>Where they exist, PPSs are part of the financial safety net, providing <u>pre-determined levels of protection to policyholders in the event of an insurer's insolvency. They aim to provide benefit not only to individual policyholders but also to society and the economy, by promoting confidence in the insurance industry. PPSs can support the IAIS's objectives of developing and maintaining fair, safe and stable insurance markets for the benefit and protection of policyholders and contributing to global financial stability.</u></i></p>	
GFIA	117	<p>Paragraph 17 discusses that a PPS may cause moral hazard issues for insurers as well as policyholders. The conclusions however only explicitly refer to reduced discipline in relation to insurers. We therefore suggest amending paragraph 117 as follows:</p> <p><i>The features of a PPS aim to meet public objectives and mitigate risks. When designing a PPS, factors such as how it will be funded and the kinds and extent of claims it will cover need to be considered. A PPS should be designed in light of the nature of the insurance industry in the jurisdiction, as well as the jurisdiction's cultural and legal framework. However, consideration should also be given to features that could give rise to risks such as reduced discipline <del>in the insurance industry</del> and moral hazard <u>for insurers and policyholders</u>, arising, for example, where high or no limits apply to the PPS's coverage. The costs of a scheme will also be a factor in an overall assessment of the contribution that a PPS may make in a jurisdiction.</i></p>	