

IAIS Consultations

Print view of your comments on "Application Paper on the Composition and the Role of the Board" - Date: 13.08.2018, Time: 17:30

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Treat my comments as confidential	No

Question	
	Q1 General comments on the Application Paper
Answer	<p>GFIA appreciates the opportunity to comment, and the work and objective of the draft application paper on the composition and role of the Board. However, there are many aspects of the paper that are unnecessarily intrusive.</p> <p>The format chosen for the paper (as described in paragraph 8) is very clear and efficient for the intended use of the paper, and the links made to ICPs 5 and 7 are helpful for assessing the underlying requirements together with the proposed supervisory practices. In respect to the latter, GFIA would stress that further comments on the mentioned ICPs may be provided in response to the ongoing ComFrame consultation.</p> <p>On content, GFIA would like to convey the following general observations:</p> <ul style="list-style-type: none">-GFIA especially appreciates the comments of the chairperson during the introductory stakeholder call and recommends that the substance of those comments be included in the paper. In part, they were to the effect that this paper presents a box of tools for supervisors to consider using with respect to particular circumstances and companies as needed and appropriate. GFIA understands that to mean there is no suggestion that any or all of the tools must be used, and that should be clarified in the paper.-There are a number of places where the word "should" is used in the paper. Again, based on the call, GFIA is of the view that this was not intended, so in all cases "may" should replace "should" with the exception of direct quotes from ICPs (paragraphs 25 and 51).-GFIA suggests that the application paper includes a reminder for supervisors of the need to take a proportionate approach in their application of requirements to insurers. While this is reflected in part in the examples from the DNB and PWC in the annexes, it would be helpful if the paper provided a more objective framework for the application of proportionality.-Applying some of the tools would be so intrusive as to blur the line between the supervisor and the private, supervised insurer, to the detriment of both (examples listed below). The paper should also make clear that a more intrusive approach might be justified for a company in receivership or liquidation, but not for a financially sound company with good management.-Regarding the proposed attendance of Board meetings, such intrusive involvement in the Board's functioning could lead to legal exposure for supervisors deemed to have acquiesced to, participated in, or led deliberations and decisions that subsequently prove to be problematic in at least on major jurisdiction's legal system.-There is a risk that line between regulatory oversight of Boards and Board intrusion could be blurred since supervisors would be able to: contribute their views and suggestions on issues they think the Board should consider; conduct interviews with all Board members to ascertain the Board decision-making process; and attend Board meetings as an observer and review agendas and minutes (or have a third party behavioral expert attend).

-Supervisors would be allowed to suggest how a Board should be organising itself and documenting Board processes and procedures. Such suggestions include: requesting Boards to establish a nomination policy or committee; challenging the number of Board members; reviewing the amount of onboarding/training; directing internal audit activity on Board versus management roles; and instructing that the Chair or CEO should not be a member of a committee. In GFIA's view, these items should be within the purview of the Board itself without regulatory interference.

-Supervisors would also be allowed access to internal audits and board evaluations/self-assessments. However, such access could chill candid feedback on Board self-evaluations.

-Supervisors would be able to weigh in on the adequacy of a Board's minutes, including conducting "interviews with Board members to validate and corroborate that the minutes are an accurate reflection of the Board discussions and decision-making". Such supervisory activities would be overly intrusive, and there is no single standard on the adequacy of minutes.

-While it is appreciated that a clear distinction between supervision and regulation is difficult to achieve, GFIA would highlight that some of the measures proposed in the draft application paper would require legislative/regulatory basis (eg paragraph 60). It is not clear whether an IAIS application paper with the stated scope of providing "further advice, illustrations, recommendations or examples of good practice to supervisors on how supervisory material may be implemented" is the tool to propose such measures.

-As referenced several times in the draft paper, there is often an overlap between national company law and proposed (insurance-specific) governance measures. GFIA would underline that, in such cases, supervisors will apply the recommended measures only within their respective legislative frameworks.

-While GFIA generally agrees with the distinction between formal and behavioural aspects of the proper functioning of a Board, a number of supervisory practices proposed on the latter (under 9) seem to be overly intrusive and not necessarily fit-for-purpose. Some of the challenges listed under 9 can indeed raise significant governance concerns, however, the supervisory methods to identify and address such scenarios require further elaboration in GFIA's view. In particular, the attendance of supervisory staff in Board meetings is inappropriate, unless it follows the explicit invitation from the insurer.

-There seems to be a lack of methodology and objective criteria relating to supervisory verification of the appropriateness of Board functions, as well as a lack of objective reference for proportional application (eg, ceiling versus floor).

-The paper does not adequately distinguish between the functioning of Boards at the entity level operating in a single jurisdiction as opposed to Boards at the group and/or holding company level operating across multiple jurisdictions. This could be mitigated by an explicit reference to the proportionate application of the proposed measures by supervisors, as proposed above.

-It also appears to be silent on the role of the insurance supervisor versus public company authorities as to composition and role of the Board. This could be addressed by adding a preamble that clarifies the role of each and states that supervisors should defer to the laws and regulations of their local jurisdiction.

-Supervisor contact with the Board should be as a whole, or with the Chair/Lead Director on behalf of the Board, and on a formal basis or in writing to ensure appropriate records are taken and clear audit trails.

Q2 General comments on Section 1: Introduction

Answer

Q3 Comment on Paragraph 1

Answer

Q4 Comment on Paragraph 2

Answer	In the context of the overall ComFrame review and introduction of the IAIG-relevant requirements into ICPs 5 and 7, it would be useful to clarify whether the proposed material should be applied in the supervision of non-IAIGs only, or in implementing the governance regime applicable for IAIGs as well as non-IAIGs.
	Q5 Comment on Paragraph 3
Answer	GFIA appreciates the recognition in this paragraph of different types of Board and corporate structure.
	Q6 Comment on Paragraph 4
Answer	While GFIA would generally be supportive of this paragraph's introductory content and of the overall procedures to clearly remain in the hands of the Board, it is not clear what is meant by the very last sentence, ie "whether or not its own dynamics and culture pose any particular risks to the organisation". A clarification or reference to the relevant later sections of the application paper would be helpful.
	Q7 Comment on Paragraph 5
Answer	An effective Board should be measured by whether an insurer meets its regulatory, policyholder and shareholder/member obligations.
	Q8 Comment on Paragraph 6
Answer	Communication ensures transparency and is positive for all stakeholders involved. Two-way communication between the Board and the supervisor should be encouraged, however, supervisors should not overly intrude or intervene on a Board's ability to independently oversee the company and make business decisions.
	Q9 Comment on Paragraph 7
Answer	
	Q10 Comment on Paragraph 8
Answer	
	Q11 General comments on Section 2: Competence of individual Board members
Answer	
	Q12 Comment on Paragraph 9
Answer	Considering the referenced (current) wording of ICP 5.2 – ie "The supervisor requires that in order to be suitable to fulfil their roles, Board Members (individually and collectively) [...] possess competence and integrity" – the notion elaborated on in paragraph 10 should also be clarified at ICP guidance level.
	Q13 Comment on Paragraph 10
Answer	
	Q14 Comment on Paragraph 11
Answer	

Q15 Comment on Paragraph 12

Answer

Q16 Comment on Paragraph 13

Answer

GFIA is of the view that – subject to full compliance with the applicable regulatory criteria on fitness and properness – it should remain a business decision who is appointed as a member of the Board. The following sentence could, however, indicate that the role of the supervisor in the selection process may go beyond ensuring that the ultimate choice ensures the undertaking's compliance with the governance standards applicable: "Those documents may provide together a useful basis for a discussion between the supervisor and the insurer."

Q17 Comment on Paragraph 14

Answer

GFIA takes the view that IAIS should avoid overly detailed theoretical approaches as they would not guarantee success, may provide false comfort and may lead to Board compositions that are not functional in practice.

Q18 Comment on Paragraph 15

Answer

The wording of the example "In certain cases, it could be an opportunity for the supervisor to encourage more competent members to be appointed to the Board" is not ideal. It enables bad supervisory practices focused on manipulating the composition of the Board. Supervisors should refrain from this. The number of Board members should further be a decision made by the company, not by the supervisor.

Q19 Comment on Paragraph 16

Answer

Q20 Comment on Paragraph 17

Answer

Q21 Comment on Paragraph 18

Answer

Q22 Comment on Paragraph 19

Answer

Q23 Comment on Paragraph 20

Answer

It would be helpful if an example (eg from the referenced McDonnell paper) could be included here to clarify what is meant by "after such changes" and the subsequent loss of required skills at Board level.

Q24 Comment on Paragraph 21

Answer	<p>Both paragraphs 21 and 22 include the word “should”, which GFIA views to be more mandatory than intended for a paper of this kind.</p> <p>GFIA appreciates the IAIS encouraging Boards to to develop proper training processes to ensure effectiveness of the Board in dealing with the pace of changes. The supervisor’s role overseeing rather than prescribing the training needs represents, in GFIA’s view, the right balance of responsibilities. GFIA would encourage the IAIS to choose the same approach across the scope of the application paper, including in relation to paragraph 15 for example.</p>
Q25 Comment on Paragraph 22	
Answer	<p>While GFIA does not necessarily disagree with encouraging a scheduled rotation of Board members in certain situations, it is worth noting that a level of stability in the steering and direction provided to an undertaking is valuable. In many jurisdictions, identifying qualified and willing candidates for Board positions can further be very difficult. Any supervisory intervention in that area should therefore balance the need for change with the need for stability, considering certain long-term strategies and projects for example.</p>
Q26 Comment on Paragraph 23	
Answer	<p>GFIA would be concerned with this paragraph if it implies that the supervisor could prescribe a particular talent management program for an insurer.</p>
Q27 General comments on Section 3: Diversity of competencies of the Board	
Answer	
Q28 Comment on Paragraph 24	
Answer	<p>It is not entirely clear where the list in footnote 8 links to and what it aims to suggest.</p>
Q29 Comment on Paragraph 25	
Answer	
Q30 Comment on Paragraph 26	
Answer	
Q31 Comment on Paragraph 27	
Answer	
Q32 Comment on Paragraph 28	
Answer	
Q33 Comment on Paragraph 29	
Answer	<p>The paragraph includes a “should” that is inappropriate. Similar to the IAIS’ proposal in paragraph 24, GFIA supports the balance struck in paragraph 29 between responsibility and self-assessment of the Board and external supervisory oversight and interference.</p>
Q34 Comment on Paragraph 30	

Answer	GFIA would note that a grid/matrix approach, observed by the IAIS as supervisory practice in the Dutch market, may not be suitable and proportionate for all jurisdictions.
	Q35 Comment on Paragraph 31
Answer	
	Q36 Comment on Paragraph 32
Answer	GFIA appreciates that this aspect of diversity will be difficult for supervisors to assess and would suggest that in some cases there could be a link to the issues described under section 9 of this application paper, on behavioural aspects. Interviews and examination of minutes may be good tools to collect further indications of a lack of diversity becoming prevalent in the Board's decision-making, however, the causal effect on the undertaking's governance would also have to be assessed and likely over a longer assessment period of the respective Board constitution. More formal considerations on the enforcement of diversity at Board level – where the respective jurisdiction includes such – may be more practicable/efficient from a supervisory perspective.
	Q37 Comment on Paragraph 33
Answer	
	Q38 Comment on Paragraph 34
Answer	
	Q39 Comment on Paragraph 35
Answer	<p>GFIA would suggest that the diversity of competencies at the Board level and in Senior Management is best evidenced by each individual's qualifications in terms of education, knowledge and experience. This is demonstrated and documented in CVs and other information that is already submitted to supervisors. Interviews of Board members can be burdensome, time-consuming and disruptive for both, company and supervisor. The examination of Board and committee minutes is overly intrusive.</p> <p>GFIA is further concerned that this paragraph suggests supervisor meetings with individual Board members. Supervisory contact with the Board should be as a whole, or with the Chair on behalf of the Board, and on a formal basis to ensure appropriate records are taken.</p>
	Q40 General comments on Section 4: Allocation of the roles and responsibilities
Answer	
	Q41 Comment on Paragraph 36
Answer	
	Q42 Comment on Paragraph 37
Answer	
	Q43 Comment on Paragraph 38
Answer	
	Q44 Comment on Paragraph 39
Answer	

	Q45 Comment on Paragraph 40
Answer	
	Q46 Comment on Paragraph 41
Answer	Insurers already have a corporate structure in place that is well-defined and known to the regulator. Requiring an insurer to prepare a separate “responsibilities map” so it can be validated against a framework or matrix on a regular basis can be time consuming and burdensome. A Board’s responsibilities should be primarily judged by the results of the company and the meeting of their obligations.
	Q47 Comment on Paragraph 42
Answer	
	Q48 Comment on Paragraph 43
Answer	This paragraph should be clarified to add that a request for internal audit reports or a direction that an internal audit be undertaken, can only be made where the supervisor possesses the power to require internal audit reports or that the undertaking conducts extraordinary internal audit reviews on specific topics (refer also to comment on paragraph 64). In addition, there should be a process for sharing any reports with the supervisor.
	Q49 Comment on Paragraph 44
Answer	GFIA generally agrees that supervisors should encourage the resolution of any overlap of roles and responsibilities but would stress that not all overlaps between the roles and responsibilities of the Board and Senior Management necessarily lead to conflicts and/or governance concerns.
	Q50 Comment on Paragraph 45
Answer	
	Q51 General comments on Section 5: Delegation of activities and tasks of the Board
Answer	
	Q52 Comment on Paragraph 46
Answer	
	Q53 Comment on Paragraph 47
Answer	It is not entirely clear what the IAIS’ expectations on the Board in terms of “assist with the balance of power and the effective discharge of its duties” are. In addition, GFIA would suggest that the use of “should” is inappropriate in paragraphs 47, 48, 49, 51, and 52 and 56.
	Q54 Comment on Paragraph 48
Answer	
	Q55 Comment on Paragraph 49
Answer	

Q56 Comment on Paragraph 50

Answer

Q57 Comment on Paragraph 51

Answer

GFIA notes that not all jurisdictions empower supervisors to direct an insurer to put in place a delegation policy.

Q58 Comment on Paragraph 52

Answer

While GFIA agrees that this could be a challenge encountered by supervisors, policies not being monitored and reviewed on a regular basis should be a more general area of supervisory scrutiny (not limited to policies on the delegation of activities and tasks).

Q59 Comment on Paragraph 53

Answer

Q60 Comment on Paragraph 54

Answer

There should be a process for sharing any reports with the supervisor.

Q61 General comments on Section 6: Combining the roles of the Chair and the CEO

Answer

GFIA would suggest that this section be redrafted to be more balanced. This could be done by softening the language (eg replacing “should” with “could”), acknowledging that both split and combined roles have pros, cons and challenges, and including mitigation strategies for each role.

It is further appropriate that this section does not purport to require a separation of the Chair and CEO roles as in some cases, such as for smaller companies, there may be a case for combining these roles. However, the application paper should present a more balanced picture, recognising that there are positives and negatives to both approaches, and including mitigation strategies for dealing with challenges arising when the roles are split as well as when the roles are combined.

Q62 Comment on Paragraph 55

Answer

Q63 Comment on Paragraph 56

Answer

Q64 Comment on Paragraph 57

Answer

The number of independent Board members should be the company’s decision, not the supervisor’s decision. In addition, a link to the IAIS’ definition and/or understanding of “independent members” would be appreciated here.

Q65 General comments on Section 7: Being a Board member of multiple entities within the same group

Answer

Q66 Comment on Paragraph 58

Answer	
	Q67 Comment on Paragraph 59
Answer	Boards often address and adequately resolve potential conflicts of interest.
	Q68 Comment on Paragraph 60
Answer	<p>It is not clear what the benefit of the first sentence in this paragraph is. It lists good regulatory practices over which supervisors, who are the addressees of this draft paper, will in most cases not have direct influence. GFIA believes paragraph 60 to be generally over-prescriptive regarding the role of the supervisor. A reference to the respective ComFrame provision instead would be preferable.</p> <p>GFIA takes the view that it goes beyond the remit of insurance supervisors to require some (or even the majority) of Board members to be non-executive (first bullet point; see also comment in response to paragraph 77), or to require specific permission for multiple Board positions to be held within the same group (second bullet point).</p> <p>On the fourth bullet point, ie determining the maximum number of mandates to be held by persons who already perform a similar role in other entities within the same group, it should be clarified that any such supervisory determination would be on a case-by-case basis. The decision would have to be proportional to the group and individual concerned. A one-size-fits-all approach would not be appropriate.</p>
	Q69 General comments on Section 8: Access to information
Answer	
	Q70 Comment on Paragraph 61
Answer	
	Q71 Comment on Paragraph 62
Answer	
	Q72 Comment on Paragraph 63
Answer	
	Q73 Comment on Paragraph 64
Answer	<p>As per the comment provided on paragraph 43, GFIA would clarify that not all jurisdictions may give the supervisor the power to instruct specific internal audit reviews to be conducted. Notwithstanding the existence of such empowerment in local regulations, supervisors should be able to assess existing internal audit reports on the Board's decision-making process, where these have been conducted and there is an indication that there may be governance concerns. Nonetheless, the second bulleted point is overly prescriptive, in using the term "instructing". In addition, there should be a process for sharing any reports with the supervisor.</p> <p>Conducting interviews with Board members to ascertain the decision-making process and the quality of information received can be burdensome and time-consuming. Reviewing the minutes of the Board and related materials should be more than sufficient in most cases.</p>
	Q74 Comment on Paragraph 65
Answer	
	Q75 Comment on Paragraph 66

Answer	
	Q76 Comment on Paragraph 67
Answer	
	Q77 Comment on Paragraph 68
Answer	Conducting interviews with Board members to validate and corroborate the accuracy of Board minutes can be burdensome and time-consuming. The supervisor should engage with the Board as a whole, or with the Chair on behalf of the Board, rather than with individual Board members, and must ensure that there are appropriate records of meetings.
	Q78 Comment on Paragraph 69
Answer	GFIA agrees that insurer and supervisor should engage in a dialogue to determine the appropriate level of detail of the minutes according to the expectations of the supervisor. This can be efficient in the sense that a well-communicated and clear reflection of the meeting in its minutes would mitigate the potential need for supervisors to join meetings in person. However, it should be clarified that the main purpose of documenting Board meetings in minutes is not to enable supervisors to enforce governance provisions but to ensure the documentation of efficient and transparent decision-making procedures within the entity. The level of detail of the minutes should therefore serve this purpose first, while providing appropriate levels of insight to supervisors where required.
	Q79 General comments on Section 9: Behavioural aspects of the Board's functioning
Answer	The application paper attempts to provide guidance relating to Board members' behaviour (eg, "groupthink") that lack objective criteria, which is problematic.
	Q80 Comment on Paragraph 70
Answer	This chart seems to imply that for a Board to achieve adequate deliberation and exchange of ideas, conflict and/or dissent are necessary. There is no single measure of the amount of conflict necessary to allow a Board to successfully fulfil its role.
	Q81 Comment on Paragraph 71
Answer	The list and description of behavioural conditions in this paragraph appears to be fairly abstract, however, the reference made to the 2013 paper suggests that leadership issues identified were the sole cause for the subsequent failure of the insurers concerned. While GFIA has no strong reservations against including this paragraph in the application paper, it is not convinced supervisors will benefit much – at least without also studying the referenced Brown/Balasingham paper.
	Q82 Comment on Paragraph 72
Answer	
	Q83 Comment on Paragraph 73
Answer	
	Q84 Comment on Paragraph 74

Answer

The first bullet point is not entirely clear but seems to indicate that supervisors should convey their views directly to the dominating Chair/CEO.

Regarding the second bullet point, the supervisor should engage with the Board as a whole, or with the Chair on behalf of the Board, rather than with individual Board members, and must ensure that there are appropriate records of meetings.

The option for supervisors to attend Board meetings in person, included in the fourth bullet point, is overly intrusive. The presence of supervisors has the potential to interfere with the objectivity of the meeting. To guarantee the independence of both Board and supervisor, the use of this proposed tool should be avoided. It is further unclear in the context of 9.1, whether the purpose of this attendance would be for the supervisor to gather evidence on the inappropriate dominance of the Chair/CEO or to change that alleged behaviour by observing (and thereby evidently influencing) the discussion and decision-making process. In any case, this measure, including the suggestion that the supervisor could have a behavioural expert attend a Board meeting, does not constitute a common supervisory practice in jurisdictions and Insurance Europe doubts that it would be effective to address the issue of dominance long-term. The IAIS should consider deleting the fourth bullet point.

Q85 Comment on Paragraph 75

Answer

GFIA disagrees with the notion that it is good practice that the Chair of the Board be a non-executive and not serve as chair of any Board committee. It is incorrect to assume that an individual cannot successfully serve in both capacities or act in the best interest of the company.

Q86 Comment on Paragraph 76

Answer

Q87 Comment on Paragraph 77

Answer

Overall, GFIA is of the view that this paragraph is too prescriptive for the purposes of an IAIS application paper.

The alternative proposed in the first bullet point – ie that the Chair/CEO should be prohibited from becoming a member of a Board committee – seems to be overly intrusive and should not form part of the general supervisory tool-set for governance issues.

In relation to the second bullet point, GFIA believes that it goes beyond the remit of insurance supervisors to require some (or even the majority) of Board (committee) members to be non-executive or the chairmanship to be assigned to a non-executive director (see also comment in response to paragraph 60).

Regarding the proposed attendance of Board committee meetings, please refer to the comments provided in response to paragraph 74.

Q88 Comment on Paragraph 78

Answer

Q89 Comment on Paragraph 79

Answer

Q90 Comment on Paragraph 80

Answer

As stated above, there is an implication that for a Board to achieve adequate deliberation and exchange of ideas, conflict and/or dissent are necessary. There is no single measure of the amount of conflict necessary to allow a board to successfully fulfil its role.

Q91 Comment on Paragraph 81

Answer	<p>As per the comments provided above, GFIA would strongly suggest that the participation of supervisors in Board meetings is neither appropriate nor efficient to avoid a “groupthink” tendency in Board meetings. The presence of a representative from the insurer’s supervisor will in all likelihood influence the natural behaviour of the group and the debate and not enable the supervisor to assess the usual interaction and group dynamic. As mentioned in comment 84, supervisors should not use this tool in order to ensure their independence from the Board.</p> <p>Interviews with Board members could also be burdensome and time-consuming.</p>
	Q92 Comment on Paragraph 82
Answer	<p>As per comments provided on paragraph 57 above, it would be helpful to clarify the meaning of “independent members” of the Board in the last bullet point of paragraph 82.</p>
	Q93 Comment on Paragraph 83
Answer	
	Q94 Comment on Paragraph 84
Answer	
	Q95 Comment on Paragraph 85
Answer	<p>The scenario described in this paragraph should be specified to apply in jurisdictions where the positions of the Chair and CEO may not be combined.</p>
	Q96 General comments on Conclusion
Answer	
	Q97 Comment on Paragraph 86
Answer	
	Q98 Comment on Paragraph 87
Answer	<p>GFIA is of the view that the IAIS could elaborate more throughout the application paper on some of the tools listed in the paragraph, eg succession policies, self-assessments, profile for new candidates, independent Board members, and information flows. The paper should also clarify that the supervisor may not dictate outcomes and that all tools should be applied only as appropriate and in a proportionate manner given the particular circumstances of the company and jurisdictional law.</p>
	Q100 Comment on Paragraph 89
Answer	<p>As per the comment provided above, GFIA disagrees that observing Board meetings would be an appropriate or efficient tool to ensure Board functioning.</p>
	Q101 Comment on Paragraph 90

Answer Please refer to the comments made in respect of section 9 in response to the proposed tools in the context of behavioural aspects of the Board functioning.

Q102 Comment on Annex I

Answer

Q103 Comment on Annex II

Answer
