



IAIS
Governance and Compliance Sub-Committee

by e-mail to
Lone.Moerup@bis.org

Brussels, 30 April 2009

**AMICE Comments during the public consultation on the
IAIS Issues Paper on Corporate Governance – v. 3.3**

Dear colleagues,

AMICE welcomes having the opportunity to contribute to the work of the Governance and Compliance Sub-Committee on the Issues Paper on Corporate Governance and, as an observer, having been involved in the earlier drafting stages of this work. After all, mutual and cooperative insurers represent more than 40 % of Europe's insurance undertakings and AMICE represents, directly and indirectly, some 2,000 of them.

Governance is a topic of highest interest to our members, the mutual and cooperative insurers in Europe. While acknowledging that insurance supervisors see it within their remit to expect sound corporate governance within the undertakings under their supervision and appreciating that the supervisory community makes an effort to streamline their expectations between jurisdictions, we would like to underline that any governance guidelines, recommendations and regulations for insurers should focus on requirements specific to insurers, their business, and their particularities. As IAIS is aware, there are only a few cases in Europe where mutual and cooperative insurers are subject to governance frameworks developed for listed companies (either as the consequence of a national decision to apply such a framework to undertakings at large or as the consequence of a listing of debentures). In general, corporate governance frameworks tend to be drafted with (public) limited companies in mind; we urge IAIS to remain aware of the specificities of governance within mutuals and cooperatives and to avoid unnecessary one-sidedness and inflexibility during its further work in the area. We welcome the fact that IAIS has produced an issues paper and encourage the non-prescriptive character of this document.

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This letter summarises the comments that AMICE’s Secretary General provided during the earlier drafting stages of the paper. We appreciate the cooperative character of the work and the open and broad consultation and are grateful for the extent to which our comments have been picked up so far. In the attached template, you will therefore find just a few additional and final remarks. We remain of course available for any further information or discussion on the issues.

In addition to the comments provided earlier and in the template attached to this letter, we would like to reiterate and emphasise our position as follows:

- As IAIS is aware, **mutual organisations do not have shareholders**. They are owned (or, as the terminology is in some jurisdictions, directed) by their members who are at the same time its policyholders, i.e. clients. It is appropriate that this is respected throughout the Issues Paper and we acknowledge in this context that many of our earlier comments have been taken on board.
- We appreciate that the Issues Paper now includes a **section on mutuals and cooperatives** and appreciate the numerous further references to these forms of business organisation and their specificities.
- We acknowledge the efforts made by the drafting team to include appropriate descriptions of different structures regarding managerial and supervisory functions in a company, notably **one-tier and two-tier board** systems.
- The issue of the **composition of boards and of the expectations as regards board members** is important to our members. IAIS has to bear in mind that member-policyholders’ representation on the board of “their” mutual is an important characteristic of mutuality. This element of (direct) democracy should not be jeopardised – neither by requesting full “independence” of (outside) board members (including prohibiting that they are clients or owners) nor by expecting high commercial and/or technical expertise from every single board member. We refer in this context to a discussion on the European level relating to the expectations in board members: this expectation should be that all individuals should be able to “contribute to the better overall functioning” of the board (see our comment on par. 225). Similar considerations have to be given to statutory employees’ representatives on (supervisory) boards.
- We note with appreciation that IAIS included in the Issues Paper comments on the prevalent **financial crisis** and to some of its reasons, as far as they are seen to be lying in the area of (inappropriate) governance. Clear language is necessary about the **conflicts of interest** that may arise in plc-type insurers, e.g. between (a) shareholders and policyholders (on the pricing of contracts, thus the creation of surpluses, and later on the distribution of such surpluses), and (b) between

management and policyholders in cases where management has reasons to pursue short-term interests. Where the dangers of short-termism are addressed, they cannot only be seen in the context of remuneration schemes that tie the remuneration of management to results in given period of time or to share-price performance, but also in the context of short-term (e.g. quarterly) reporting that has to regularly fulfil analysts' and investors' expectations.

- Finally, we have suggested in our earlier comments that reference to **comply-or-explain mechanisms** that are in existence in the field of corporate governance should be included in the paper (see our comment on par. 175/223 ff). We encourage IAIS to include such mechanisms in its forthcoming proposals on governance and to abstain, in the interest of "better regulation" from prescriptive, inflexible, and hence often inappropriate provisions. We appreciate also that the version of the paper under consultation now includes a section on **redress mechanisms**.

Before closing, we would like to repeat our availability for any further discussion on these and related issues and are looking forward to further constructive work.

Yours sincerely,



Gregor Pozniak
Secretary General

**AMICE Comments on IAIS/OECD Draft paper:
Issues paper on corporate governance**

Name	Paragraph reference	Comment	Resolution (for use of the Secretariats only)
AMICE	14	We welcome the reference to proportionality and believe this cannot be underlined enough.	
AMICE	28	<p>The phrasing of this paragraph should make it clear that being a policyholder – and policyholders could be seen as “direct stakeholders” (and in a mutual insurer may also be considered as “owners” in some jurisdictions) – does not prevent a Board member from being “independent”.</p> <p>The notion of “independence” relates to conflicts of interest.</p>	
AMICE	39-40	See our comments to paragraph 28	
AMICE	44, last sentence	We are not aware of any particular cases of this for mutual insurers and suggest deleting “most particularly for mutual insurers”	
AMICE	55, 2 nd sentence	<p>The phrase “Mutual insurers are owned exclusively by policyholder-members” does not reflect reality in all jurisdictions. We suggest “Mutual insurers are collectively owned (or controlled) by their members.”</p> <p>(Explanation: Since the member-policyholders of a mutual e.g. in France are not entitled to a part of the assets in the case of winding up, they are not regarded as “owners”; the term “controlled by its members” is commonly used.)</p>	
AMICE	55, last sentence	The policyholder does not only look for low cost but best value and best service which is what a (mutual) insurer aims to provide. We suggest “Mutuals are commonly not managed with the prime objective of maximising profit since they have no shareholders to remunerate.”	
AMICE	56, 2 nd sentence	The use of member representatives is not necessarily linked to the size of the mutual. We suggest “In some insurance mutuals, policyholders participate in general meetings indirectly through member representatives.”	

AMICE	57	We suggest adding “and vice-versa” at the end of the first sentence (meaning that it is a double characteristic: policyholders are the owners of/control the insurer, but at the same time the owners are policyholders themselves which makes them sensitive to product quality)	
AMICE	58	We suggest adding at the end “... to participate – directly or indirectly through members’ representatives – in general meetings.”	
AMICE	66	We suggest adding a sentence: “In mutual (and to a certain extent in cooperative) insurers, the conflict between policyholders and shareholders does not exist as mutuals do not have shareholders and are owned/controlled by their policyholders.”	
AMICE	70	We suggest amending the seventh bullet point: ... (e.g. benefits and risks associated with de-mutualisation, going public, or the creation of a holding company)	
AMICE	78/3	We suggest replacing “consumers” by “policyholders”	
AMICE	79	It is not only through remuneration that a company attracts competent management. We suggest replacing the first sentence by “Remuneration is one of the means a Board uses to attract and retain competent management.” ... (“most important” may be added)	
AMICE	80	Remuneration may be less important for the Board members of a mutual since it is already in their interest to look after the long-term interests of their insurer. In some jurisdictions there are even limits to the remuneration allowed for board members of mutuals.	
AMICE	85	Seems to be repetitive	
AMICE	86/1	“formed” or “informed” ?	
AMICE	87	The actuarial function should be added as an example of outsourcing which requires Board oversight.	
AMICE	90	Please insert “members” in the examples of stakeholders.	
AMICE	127	Sounds prescriptive	
AMICE	157	We suggest checking whether the term “appointed actuary” should stay here. It was widely deleted from 160 ff.	

AMICE	185	Is there a wording problem in this paragraph? The first half sentence includes "... the external auditor is appointed ... by the owners"; then we have an "although" and then "... in some jurisdictions the appointment requires approval from ... the owners ...". Is it intended to highlight the contrast between "appointed" and "approval of the appointment" ?	
AMICE	205/1	We suggest adding as the explanation of the reasons for "profitability" the possibility to give returns to policyholders and provide benefits and quality services.	
AMICE	214	Sounds prescriptive	
AMICE	225	For mutuals whose boards are composed of member-policyholders, the concept of assessing the functioning of the board as a whole is of high importance. If possible, this should already be mentioned earlier in the paper when the "fit and proper" requirements for board members are discussed. Policyholder board members contribute in our view considerably to the functioning of a board as a whole in determining and supervising the (typically policyholder-oriented) strategies of a mutual.	
AMICE	175 / 223 ff	We note that the principle of "comply-or-explain" appears only once in the paper (par. 175). We believe the "comply or explain" is a key element of a regulatory/supervisory and should therefore be prominently referred to in the section on interaction with the supervisor.	