



The Role of the Insurance Industry Association

Brad Smith and Diana Keegan

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GLOBAL CAPITAL MARKETS
DEVELOPMENT DEPARTMENT

FINANCIAL AND PRIVATE SECTOR
DEVELOPMENT VICE PRESIDENCY



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THIS ISSUE

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The *Primer Series on Insurance* provides a summary overview of how the insurance industry works, the main challenges of supervision, and key product areas. The series is intended for policymakers, governmental officials, and financial sector generalists who are involved with the insurance sector. The monthly primer series, launched in February 2009 by the World Bank's Insurance Program, is written in a straightforward, non-technical style to share concepts and lessons about insurance with a broad community of non-specialists.

The Non-Bank Financial Institutions Group in the Global Capital Markets Development Department aims to promote the healthy development of insurance, housing finance, and pension markets, and to expand access to a broad spectrum of financial services among the poor. These markets provide opportunities for household investment and long-term savings, and can buffer the poor against the risks of sickness, loss of breadwinner, catastrophic events, and other misfortunes.

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Foreword

With local and global companies operating in virtually every nation large and small, the insurance industry is truly universal, through the risk protection products and risk management services it offers, it touches almost every aspect of human endeavor from the most fundamental to the most complex. Because the fundamental franchise of insurance is based on trust and the utmost good faith, at the retail level the industry is highly regulated. As with all regulatory systems, a healthy and dynamic insurance regulatory system will comprise checks and balances to mediate the voices of regulator, regulated and the consumer such that the right level of regulation is achieved. This system of checks and balances will necessarily create a dynamic tension between the regulator and the regulated influenced, by many variables which will change over time as the system re-calibrates to meet new demands for different equilibriums dictated by a changing marketplace.

The essential goal of this debate is how to achieve the right mix of regulation and freedom to innovate to assure that the system remains in tune with the demands of the social, economic and political environment as it evolves through time. The insurance industry association plays a vital role with other stakeholders in achieving the right balance in an evolution toward better insurance regulation.

Central to the association should be a strong belief in the benefits that the industry brings to individuals, businesses and society as a whole to share risk, mitigate adversity and marshal capital for economic and individual development and resilience in the face of hardship. The insurance industry association should be an unapologetic advocate to all stakeholders that the assumption and management of risk is benefi-

cial and that the insurance industry should be an important component of national social and economic life. The insurance association should be a force in the community and a resource to all.

As many insurance markets are increasingly considered a sub-sector of an ever consolidating financial services industry, the role of the insurance industry association has remained critical to representing the unique role that risk assumption plays. While financial services industry umbrella associations may develop to represent the interests of domestic and international conglomerates, the role of the insurance industry association as a distinct representative voice remains critical and should be understood by policy makers and the industry itself.

The Role of the Insurance Industry Association

Brad Smith and Diana Keegan

Introduction

The scope of products and services offered by the insurance industry is as broad as the professional skills and expertise it possesses are deep.. In nearly every country there are numerous industry and professional associations that represent the interest and organize the activities for these industry segments. Professional standards organizations such as actuarial and accounting bodies and educational organizations for underwriters, risk managers, brokers and information technology officers, to name only a few, provide training and in many cases accreditation services recognized by law or regulation. Likewise in many markets, sophisticated for-profit service providers play important roles in such areas as data collection, fraud prevention, and risk mitigation.. Insurance industry associations are comprised not of individuals, but of designated representatives of the member companies of the sector which the association represents.

These segments are also diverse including life, property and casualty, health, reinsurance, brokers and agents and mixes of all of the above. Some countries have comprehensively representative industry associations, or federations which represent the industry in its entirety, while others are fragmented with each sector or sub sector represented by a separate body.. The purpose of this publication is to address the role of the industry representative of the underwriting or risk-bearing entities.. This is not to diminish the importance of the other industry segments, but to focus on the segment with the bulk of industry capital expenditure which is most directly regulated. Other sub sectors and professions are addressed in other modules of the World Bank's Primer Series.

Most national industries are organized (either informally or within an overarching body) along the lines of long term (e.g., life, annuity and pension), short term (e.g., property, casualty health), reinsurance and intermediation (e.g., brokers and agents).. Some jurisdictions have separate organizations to represent companies based on their legal form, e.g., stock, mutual or fraternal, but this is the exception.. Most national insurance associations extend membership opportunities to all companies authorized by the regulator to do business, regardless of domestic, foreign, public or private ownership, but in a significant minority of markets there are multiple associations representing domestic and foreign-owned companies.. There are advantages and disadvantages to all formulations, with specific sub-sectoral organizations being more focused and agile than umbrella organizations, and with widely representative organizations able to set a comprehensive industry agenda and mediate industry priorities.. Unless restricted by local laws or regulation, the insurance industry marketplace can be dynamic with new organizations being created to meet market demands and old moribund organizations being absorbed or ceasing operation.

Insurance industry trade associations have a wide variety of organizational forms, staff sizes, budgets and management expertise to lead diverse operational and business models dedicated to achieving national and industry goals.. All national insurance industry associations operate under applicable national laws which can include aspects of antitrust (competition policy), tax, consumer protection, privacy, and freedom of speech statutes.. Most jurisdictions recognize the role of industry associations under law with allowance of association fees and dues as a business deduction.. Some national insurance laws contain specific provisions for the organization of insurance associations which dictate their role and organization.. Some national insurance laws have created “industry associations” which fall under the leadership of the insurance regulator and create more of an industry consultation mechanism than an independent body representing the industry.

The strategic and tactical timeframes in which trade associations plan and operate can also vary considerably, from being reactionary to regulatory and market developments to conducting long range planning and public awareness campaigns. Many associations include a strategic planning committee to look at medium and long-term trends so as to position the industry and association with adequate resources and policy positions to be able to stay relevant to regulators and other stakeholders. This can be especially important in legislative debates dealing with fundamental issues such as regulatory reform and tax policy.

In addition to the internal association budget, management and governance issues the central functional roles for most insurance asso-

ciations are easily divided into the following areas of core and additional functional roles.

Core Roles—

- Policy Formulation
- Advocacy Legislative / Executive, Regulatory / Technical and Judicial
- Public and Press Relation and Education

Additional Roles—Insurance trade associations may take on a wide variety of other services through their association structure or through an affiliated body, such as a for-profit company or a charitable foundation. Illustrative examples include:

- Industry and product statistical compilation and publication
- Conferences, networking and professional development
- Risk management services (catastrophe education, product safety, etc.)
- Regulatory compliance services
- Fraud prevention
- Web portal product distribution
- Collective bargaining with industry unions
- Affiliate memberships for industry services and product providers
- Both statutorily recognized and voluntary standards setting and self regulation.

More information is provided on each role in the following sections of this publication, however, a note of importance before proceeding: an association's balancing of core activities and additional functions should not create any conflict of interest which jeopardizes its role as an industry policy development and advocacy mechanism. Outlined below are several critical pre-conditions which must be in place to avoid such conflicts.

Rule of Law: The proper functioning of any trade or representative association is predicated on a legal environment that recognizes rule of law and competition policy.

Transparent Organization and Operation: Associations should be organized according to articles of incorporation and bylaws that are approved by appropriate governmental authorities at inception with regular review of compliance and oversight by designated authorities (e.g., governance, audit, tax). Membership affiliation should be publicly available through open publication to consumers, non-affiliated companies and civil society.

Anti Trust/Competition Policy: Insurance trade associations should have clearly defined antitrust / competition policies that set out clear procedures to avoid any activity that may limit competition. There should be regular procedures to outline the appropriate limits of member discussion and staff training to oversee compliance. Outside counsel should be consulted in the formulation of the guidelines and used as necessary for regular review and advice.

Open and Voluntary Affiliation: Companies should not be required under law, regulation or supervisory pressure to join an association unless policy makers provide clear rationales that are consistent with the core principles of appropriate global standards setting bodies such as the International Association of Insurance Supervisors. Conversely, membership should be open to all similarly situated companies approved by the regulatory authority to conduct substantially similar lines of business. Comprehensive trade associations must be inclusive and representative of the diverse opinions of the industry.

Economically Based Fees: Membership fees should be based on standard criteria that are equally applied to cover operational and contingency costs to fulfill objectives set by the membership.

Governance and Management Controls: As with any organization, proper board governance and management controls are important, and should include clear policies on employment and compensation, audit as well as oversight of affiliated activities.

Core and Additional Functional Roles of an Insurance Association

Policy Formulation

Before a trade association can represent the industry and advocate on legislation, regulation or technical matters, the association must have a clear understanding of the issues under consideration and what positions the membership agrees to pursue. This requires a clear understanding of the subject matter, the ability to explore options for resolution, and mechanisms for reaching agreement.

Most associations establish a committee structure that allows them to focus member and staff expertise to develop policy. This structure typically reports to the board of directors or to an executive committee for ratification but may require a vote of the entire membership. Committees are typically formed and dissolved at the direction of the board according to need, although some committees can be in existence for many years.

The scope of the committee mandates are typically summarized in a clear mission statement which is often linked to a specific governmental or market activity such as solvency reform or consumer education. Reaching consensus can often be difficult and time consuming. Debate amongst members and the procedures for taking decisions should be clear and understood by all at the outset. Many associations follow policy formulation protocols based on governance and parliamentary standards such as those followed in their legislatures, or global standards such as Robert's Rules of Order.

Many associations have staff dedicated to support individual committees especially those where the work is technical in nature (e.g., accounting, actuarial, risk management), for some associations this may not be an option, and then the committee chair and members are more active in coordinating activities. Some associations will have "policy research" staff which can support many committees in conducting policy formulation, and in developing materials that can be used in the advocacy process.

Advocacy—Legislative/Executive, Regulatory/Technical and Judicial

Most industry associations consider acting as advocate for their members as their chief mission. The role of the industry association as an advocate for the industry varies significantly depending upon the type of government, and advocacy may take many forms. Some recommendations follow:

Representing the industry before legislative and executive branches of government on general business and/or insurance specific matters such as legal reform, tax policy, or corporate governance. This advocacy can be undertaken by member company representatives, trade association staff or retained experts. Insurance associations may work independently on priorities that are directly related to the specific sector they represent, but on broader issues may find it more efficient to work in coalition with other interested groups, either formally through an umbrella association, or informally through an *ad hoc* coalition.

Advocacy to legislatures and executive branches should be undertaken with knowledge of all applicable laws on ethics, conduct and disclosure as well as international anti corruption and anti bribery standards. This may include regular public reporting on expenditures and priorities. Qualified professional legal advice should be sought as appropriate.

Mechanisms to pursue an advocacy agenda vary greatly depending on jurisdiction and industry, but central to any advocacy agenda is the clear communication of the issue and identification and commu-

nication of the necessary actions which the industry is seeking the legislature or executive agency to undertake. This may include actually drafting sample legislative or administrative language which would implement the desired result. Outcomes are often the result of negotiation and compromise and can result in unexpected tradeoffs, so industry advocates should have a broad knowledge of the industry agenda under consideration by policy-makers.

Depending upon the governmental and legislative model, the industry association may be consulted by the legislative committees of jurisdiction or the applicable governmental agency. These relationships are typically built over time and depend on organizational and individual trust and respect. Many associations along with academic and think tank experts are considered by policy-makers as information resources and problem solvers.

In systems where the government and/or legislature does not have a policy of regulatory transparency, industry should consider how best to undertake structural reforms to promote governmental mechanisms that allow for their perspectives to be heard and included in the decision making process.

Tax Policy. One almost universal area of focus for the insurance industry is tax policy, which heavily impacts all product segments. Industry associations should look to build strong expertise in developing policy expertise to promote governmental tax policy that recognizes the public policy benefits of risk protection products and supports the development of the insurance industry. In systems where the regulatory authority has the mandate of supporting the development of the industry, the industry association should work with the regulator on these efforts. In systems where the regulator is limited in the scope of its authority, the industry association should work to have its authority expanded to include a market development mandate.

Regulatory and Technical Advocacy. On matters of solvency, market conduct, disclosure and underwriting, the insurance association should be considered by the regulator as an indispensable resource which should be included at every stage in the rule promulgation process. To undertake this, the association should establish internal committees that can focus industry expertise along specific lines to advise the regulators on distinct topics (e.g., a solvency committee on solvency issues, an accounting committee on accounting issues).

As compared to representation before policy decision makers, representing the industry before regulators and supervisors can be conducted at a much greater level of detail and can include more quantitative elements such as aspects of accounting, actuarial and risk management. In many jurisdictions industry and professional groups

such as actuarial associations serve as research and advisory bodies to regulators on both a formal and informal basis.

When not all companies in the market have the same level of technical resources, technical advocacy can present a unique set of challenges. This can be clearly demonstrated in instances where global companies wish to leverage expertise gained in other markets to introduce new products or underwriting methods. One solution is the employment of neutral experts, such as actuarial firms to represent the association in the discussions with regulators. Other options include consulting with counterpart associations with relevant expertise, or for the regulators to undertake a dialogue with counterpart regulators in markets with relevant experience.

Technical advocacy can include the physical sciences as well, such as engineering, which can be important in advocating for stronger building codes, occupational safety requirements and physical security standards. Depending on the sophistication of the risks, technical advocacy can include literally, “rocket science” to advice on satellite risks!

Legal Advocacy. Upon occasion the industry association must become the legal advocate on behalf of the industry by undertaking legal action independently or joining with member companies or like-minded stakeholders as “friends of the court”. Before any such action is undertaken the insurance industry association should follow a clear and balanced process where all members have an opportunity to understand the implications and give voice to any concerns before any decision is made. As another area where legal expertise may vary dramatically between members, it may be appropriate for the industry association to retain neutral expert counsel on behalf of the membership as a whole.

Transparency, Due Process and Full Representation. Transparency and open administrative procedures support rule of law, market development and sound markets. In order to maintain the integrity of the advisory process the industry association should allow all interested members to participate in the committee process. The industry association should also serve as a conduit to educate all its members on the critical issues under consideration by the regulator. Regulators upon occasion may contact individual companies for select advice and it is the role of the industry association to assure that all companies which may be potentially affected are represented. The industry association should work to assure that regulators are not selective in their consultation, and that disparate views are informed and included in the discussion. As an example of industry principles on transparency, see Annex 1, “Global Policy Principles to Promote Sound Markets”.

Crisis Management. At times of crisis, the relationship between regulators and the industry association can become critical. Prior

preparation, such as mock disaster drills and simulations can greatly improve efficiency and functionality, but all contingencies cannot be foreseen and strong working relationships between industry leaders and government policy makers are critical. Because of the unique role of the insurance industry and its place in society as a “white knight” at times of crisis, how the industry performs can help or harm the industry for years to come. While individual company performance will vary depending upon their management, resources and concentration of risk, the insurance association should have adequate resources and internal and external communications channels to properly function and strongly represent the industry to the government, media and public.

Public and Press Relation and Education

No less important than other core functions of an insurance association are public and press relations. Industry associations provide consumers, the general public, the media and other leaders with information on the role of the insurance industry in daily life, the economy, and industry perspectives on issues in the news. This outreach can be defensive, explaining the industry’s position to media who are not familiar with a particular product of action, or proactive, in building public awareness about products and services.

Like other aspects of relations with regulators, the industry association may work with the regulator in systems where the regulator has a market promotion function. This can include public service campaigns on fire prevention, earthquake and storm preparation and survival, and on broader initiatives such as an “insurance awareness day”. As with most industry activities, the scope of such outreach is only limited by the imagination and funding. In some aspects of public awareness outreach, insurance associations may find that they are able to access funding from charitable foundations or governmental entities which support insurance products as a public policy priority.

Like other association activities, public affairs and press relations activities should be driven by interested members through an appropriate committee structure. The importance which members place on public perception and the reputation of the industry as a whole cannot be overstated. Some illustrative examples:

- Maintaining public websites to serve as resources for the media and public on insurance issues. These can include basic information on industry products and services or sophisticated analytical

tools to help potential customers determine what level of risk protection products they need.

- Producing educational materials for school aged children and training materials for teachers to offer basic insurance education as part of life skills or home economics curricula.
- Offering expert speakers to affinity groups such as civic groups, religious groups, retired persons groups and others on trends in insurance products and other useful information such as disaster preparation, hazards of drunk driving and workplace safety.
- Organizing and funding stand-alone research organizations to promote independent, credible research on industry priorities such as auto and product safety, retirement security and home and business safety and security.
- Organizing public service campaigns to remind consumers to change batteries in smoke detectors twice a year, or to promote the use of seat belts.
- Commissioning of research on industry priorities and publication of the results for use by member companies, such as an annual report on national retirement savings and how consumers can provide for extended retirement through the purchase of an annuity.

Almost all insurance associations require press relations resources to be able to react at time of public interest or concern as a support for their advocacy efforts, but the exact expertise and mechanisms vary according to the needs of the market (e.g., education on flood insurance in a flood prone region). Resources for more ambitious projects tend to be available at times of strong industry earnings, and associations should consider public affairs when conducting a strategic plan so that resources can be included in long range budgets when available.

Additional Association Activities and Services

Insurance industry associations like the markets which they represent are diverse and constantly evolving. Member needs and expectations require constant monitoring and creative responses. Association leadership and managers have to balance needs and contingencies against resources on a regular basis to stay relevant and in the best position to help support a prosperous industry. Illustrative examples of some of these additional activities are:

- **Industry and product statistical compilation and publication:** Many insurance associations produce “insurance year books”, which provide statistical reports on their industry segments (e.g., growth, per capita spending, investment returns, and loss experience). Some associations have sophisticated information services which aggregate industry information (e.g., investment by detailed category, detailed loss experience), available for a fee.
- **Events:** Most insurance industry associations organize industry conferences, seminars and professional networking events. Regular purpose driven gatherings help to support policy development and are opportunities to leverage member participation for advocacy with policy makers, regulators and the media. Events can also generate revenue that can support other association activities, and some associations use event fees as a major supplement to dues.
- **Risk management services:** Some associations provide disaster analysis and underwriting data, based on modeling, e.g., flood, earthquake, fire, medical.
- **Regulatory compliance services:** Some associations provide notification and analysis of regulatory changes to members to avoid duplicative staff costs for the members. The sophistication of these services can vary greatly, including online services, compliance requirements for use in newly authorized products, and support for individual company issues.
- **Fraud prevention:** Some associations provide fraud prevention services including databases of claims filing, certificates of coverage for drivers and vehicles and stolen vehicle tracking, sometimes on a cross border basis.
- **Web portal product distribution:** Some associations manage public web portals or other intermediary mechanisms which provide customers with information on members’ products and services and allow for linking to member sites to purchase products.
- **Collective bargaining with industry unions:** Where authorized by law, associations may serve as the industry coordinator in collective bargaining negotiations with industry unions.
- **Industry standards and self regulation:** Some associations provide statutorily recognized and voluntary industry standards setting and self regulation. Depending upon the jurisdiction and object of standard-setting/regulation, this may be optional or mandatory and subject to the direction and oversight of the regulator. For more information on self regulation, see the “Special Note on Self Regulation” appended to this Publication

Association revenue streams are constantly under pressure because of industry consolidation and competition. Associations should consider how best to meet the core priorities of their membership through regular dues and at the same time allow for the special needs of individual members through optional fee based services and products. Many associations also have established related organizations that are for profit and charitable to be able to harvest other industry funds. One way to optimize available resources is to include member company leaders in the planning process.

Conclusions—Priorities and Resources

Insurance trade associations can play many different roles in supporting the orderly development of the insurance market. These roles can be carried out by individual functional associations (life, health, non-life), by an integrated industry association or by a mixture of organizational structures. Many markets around the world use trade associations as a cost efficient means of coordinating appropriate industry activities in a manner that does not harm competition, but that improves the professional standards and operations of the industry and helps members to comply with regulations and laws. One critical function of an industry association is to develop industry priorities and be a strong advocate for those priorities with regulators, legislators and with the public. Industry association positions must be permitted to develop free of regulatory pressure, so as to maintain a proper balance of opinion and to avoid any bureaucratic self-interest. Advocacy activities tend to be largely reactive to defend industry priorities or proactive to promote industry priorities. Associations should consider developing a strategic plan to help position the industry to meet long term goals.

To best represent the interests of the industry as a whole, and maintain the support of members, associations should have a well-developed policy formulation and implementation structure which focuses member company resources, including expertise. Focus can be achieved by creating committees of various professional skills (e.g., risk managers, accountants, actuaries) or by product or subject (e.g., auto, disclosure, anti-money laundering).

Like most other institutions, associations operate with finite funding and other resources and one of the most important tasks of the association's leadership and management is to set priorities for the expenditure of resources. Associations should also look to non-dues revenue streams to supplement dues-based fees and should consider access to

charitable and government funding for some public service functions. For non-core services, associations should consider additional user fees or the creation of for-profit affiliates.

Beyond individual national insurance associations are broader business groups which can support industry specific advocacy efforts and lead on broader issues of interest to the business community. Globally there are also international insurance standard-setting organizations, such as the International Association of Insurance Supervisors (IAIS) which is comprised of national insurance regulators and supervisors of over 180 countries. The IAIS can provide assistance in governmental policy development on prudential, regulatory and governance matters.

Another resource which national industry associations may call upon is counterpart associations in like-situated markets which may have valuable experience and research to share. Current lists of insurance associations around the world and contact points can be found at the IAIS website, which is accessible by most national regulators and multilateral institutions. Likewise virtually every region of the world has some type of formal or informal organization of national insurance associations such as the Comité Européen d'Assurance (CEA) in Europe, FIDES in Latin America, the Fédération Française des Sociétés d'Assurances, which supports French language countries, and the Canadian Life and Health Insurance Association which has begun to organize activities for a loose network of national insurance associations. There are also globally recognized insurance research organizations such as the Geneva Association and internationally focused university insurance centers such as Peking University in China, Funenseg in Brazil, ITAM in Mexico, and Georgia State University in the United States. All of these bodies can be located on the internet.

Annex 1—Promoting Sound Markets (Presented by Insurance Industry Association Observers and the Geneva Association to the 2008 IAIS Annual Conference

Introduction

Sound regulatory and supervisory processes are key to sound insurance markets. We offer these Principles to encourage IAIS to begin discussing, within its membership and within members' governments, how to promote the critical aspects of a well functioning insurance regulatory and supervisory regime—*independence, accountability, transparency, integrity, and market responsiveness.*

Today's environment of rapid change means that regulators and supervisors must establish and maintain process standards as well as content standards. As it becomes ever more apparent that content cannot remain static, the process of regulating and supervising becomes ever more important. We believe that a broad focus on the viability of insurance markets is the key challenge for IAIS in the coming decade. We urge IAIS members to begin to address that challenge—that is, how to promote and maintain a sound insurance market that can meet consumer and business needs into the future. In particular, in the short-term we urge an expansion of the Insurance Core Principles with respect to regulatory and supervisory processes. We also urge, among other things, that the Core Curriculum materials and related training materials be similarly expanded. In the longer term, we will urge IAIS to endorse guidance and standards on best-

practices in supervisory processes for insurance, to reinforce its content standards and to assist its members in practical implementation.

We believe our recommendations are fundamental to the current and near-term IAIS work-stream. IAIS members, in the survey for the current Roadmap, said they wanted IAIS to focus on practical application of its standards and guidance, on implementation impacts, and on preconditions to good supervision. The current Roadmap begins to address those member needs. We believe that further discussions about the processes of regulating and supervising are key to supporting IAIS members' needs, going-forward.

A 'Sound Insurance Market'

A sound insurance market finances personal and commercial risks with private capital. It promotes economic growth, allocates capital effectively and efficiently, reduces volatility in capital flows, encourages investment and savings, and contributes to global financial stability. A sound insurance market balances consumers' need for reliable, best-in-class protection with insurers' need to attract and retain capital to finance that protection. A sound insurance market promotes timely innovation by insurers to provide best-in-class products to meet consumer and business needs and assures that purchasers may rely on that protection.

A sound private insurance market has many social benefits, including (a) compensation for loss from private sources, freeing up government funds for other priorities; (b) improved health and safety through economic incentives, expert loss prevention services, and public education and advocacy; and (c) investment in infrastructure.

Technical solvency of individual insurers is a precondition to a sound insurance market, but it does not alone create one. Economists have recently been focusing on the quality of a nation's institutions as a fundamental precondition to national economic growth and financial stability. They believe that good governance on the part of financial sector supervisors is closely linked to financial stability and growth. The International Monetary Fund (IMF), the Organization for Economic Co-operation and Development (OECD), and the World Bank each has comprehensive programs to encourage and support governments in developing, articulating, and adhering to recommended principles of regulatory governance.

According to the World Bank, governance "consists of the traditions and institutions by which authority in a country is exercised." Governance is, in other words, the whole range of societally agreed upon

rules for the relationship between the public and the private sector. Each society must articulate its own rules, since governance depends on public support of the institutions that enforce them.

There are core principles of governance that underpin any effective regulatory institution, whatever the society's specific rules. We urge that the IAIS begin a discussion of how to apply these principles to insurance regulation and supervision, for the benefit of its current and future members and their constituencies.

Principles for Promoting Sound Insurance Markets

Principle 1: Government policies should be supportive of the growth of the private insurance sector.

Insurers are financial intermediaries that use private capital to finance consumer and business risks of financial loss, for a profit to the providers of that capital. Insurers compete with each other and with other types of financial intermediaries for that investment capital.

Governmental or regulatory policies that discourage capital inflow to private insurers, or raise their costs relative to other financial intermediaries, reduce private insurers' capacity to meet consumer and business needs for risk financing. Such policies dampen economic growth and reduce financial security.

Governmental and regulatory policies that promote capital inflow to private insurers, or level their capital costs relative to other financial intermediaries, promote private insurers' capacity to meet consumer and business needs for risk financing. Such policies promote economic growth and financial security. It is therefore critical that insurance supervisors—Recognize the macro-economic effects of their decisions; Eliminate unnecessary regulatory barriers to trade; Implement a non-discriminatory regulatory framework; Create incentives for desired behaviors; Facilitate data collection and sharing among insurers; and Promote public financial education.

Principle 2: An insurance supervisor should work to establish effective and efficient insurance regulation.

Regulation is a dynamic, long-term, multi-disciplinary process, with the goals of improving a nation's economy, enhancing its ability to adapt to change, and securing its citizens' financial well-being. A sound regulatory policy complements a nation's economic and competition

policy and, in doing so, promotes the public interest. Insurance supervisors do not generally have the authority to establish economic or competition policy for their governments. Their governments' policy-makers and financial regulators do, however, require their informed input on promoting sound insurance markets. In particular, insurance supervisors should advocate policies that permit insurers to attract and retain capital as well as policies that allow purchasers to rely on their insurance.

It is therefore critical that insurance supervisors— Assist their governments in designing insurance regulation attuned to basic principles of economics and insurance; and Conduct open, transparent, ongoing, and meaningful consultation with industry and other stakeholders, routinely.

Principle 3: An insurance supervisor should have clearly articulated processes and procedures, based on best practices.

The international community has emphasized the important role of international standards in strengthening the international financial architecture. Such standards not only help jurisdictions identify weaknesses that may contribute to economic and financial vulnerability but also foster market efficiency and discipline. They ultimately contribute to a global economy that is more robust and less prone to crisis. At the national level, international standards provide a benchmark that can help guide policy reform.

The quality of regulatory governance is key to attracting and retaining capital investment in the private insurance market. Transparency is an essential feature of good regulatory governance. Both the IMF and the OECD have programs to promote transparency as a policy objective.

The IMF and OECD have articulated other principles of regulatory governance, in addition to transparency. They include consideration of alternatives to regulation, such as self-regulation; regulatory impact assessments; cost-benefit analysis; public registries of regulations and business formalities; prospective enforcement; and abundant public input. It is therefore critical that insurance supervisors—Ensure that the formulation and implementation of insurance regulatory policy, as well as the supervisory process itself, are transparent and nondiscriminatory; Use best-in-class quantitative and qualitative practices for regulatory impact analysis and cost-benefit analysis; Articulate any standards or expectations clearly and well in advance of their application; Administer proportionate and prospectively oriented enforcement; Assure notice and reasonable opportunity to comment, as well as

the right to review by an independent third party; Disclose all activities (other than those related to the financial distress of a particular insurer); and Hold themselves accountable to their stakeholders as well as their governments.

Conclusion

Technical solvency of individual insurers does not create a sound insurance market. Regulatory and supervisory processes themselves can either foster or discourage an efficient, fair, safe, and stable insurance market. We believe therefore that is not sufficient for the IAIS to attend only to the technical solvency of individual insurers. We believe that IAIS must, for its own benefit as well as that of its members and their constituencies, begin to turn its attention to regulatory and supervisory processes, rather than just the content of supervision.

IAIS members, in the survey for the current Roadmap, said they wanted IAIS to focus on practical application of its standards and guidance, on implementation impacts, and on preconditions to good supervision. The current Roadmap begins to address those member needs. We believe that further discussions about the processes of regulating and supervising are key to supporting IAIS members' needs, going-forward.

We view these Principles and IAIS members' goals as congruent and complimentary. We firmly believe that articulating the institutional processes that create and maintain a sound insurance market will further IAIS member goals.

We therefore recommend that the IAIS—Reflect this broader focus in the review of the Insurance Core Principles; Request a review of and report on relevant literature on regulatory governance; Expand the Core Curriculum materials to incorporate best-practices in supervisory processes; Incorporate an issues paper on supervisory processes in the new Roadmap; and Agree to undertake a Guidance Paper and ultimately a Standard on insurance supervisory processes.

See, e.g.,

<http://www.imf.org/external/np/mae/mft/code/index.htm>;

http://www.imf.org/external/pubs/cat/shortres.cfm?TITTLE=&auth_ed=&subject=Reports+on+the+Observance+of+Standards+and+Codes&ser_note=All&datecrit=During&YEAR=&Lang_F=All;

<http://www.oecd.org/dataoecd/24/6/34976533.pdf>; and

http://info.worldbank.org/governance/wgi/pdf/booklet_decade_of_measuring_governance.pdf

<http://info.worldbank.org/governance/wgi2007>

OECD Guiding Principles for Regulatory Quality and Performance 2005, p. 1, available at:
<http://www.oecd.org/dataoecd/19/51/37318586.pdf>.

World Bank Group, Reports on the Observance of Standards & Codes, at:
<http://www.worldbank.org/ifa/rosc.html>.

See, for example,

<http://www.imf.org/external/np/exr/facts/mtransp.htm> and

http://www.oecd.org/topic/0,333,en_2649_37421_1_1_1_1_37421,00.html

OECD Guiding Principles for Regulatory Quality and Performance 2005, pp. 4-5, available at:
<http://www.oecd.org/dataoecd/19/51/37318586.pdf>.

Annex 2—Special Note on Self Regulation

Trade Association or Self Regulatory Organization?¹

The origins of trade associations generally can be traced to the merchant guilds of the Middle Ages.ⁱ Traditionally, in the absence of specific regulation, trade associations were the industry congregation—its voice, its repository of collective wisdom, its source of education and training, standard setter and settler of disputes—and the industry regulator.ⁱⁱ The concept of self regulation in the financial services industry appears to arise in the early 19th century with the issuance of rules governing membership, trading and dispute resolution at the London and New York stock exchanges.ⁱⁱⁱ In the United States, the role of the business association as self regulatory organization flourished in the period of the two World Wars when in a situation of scarce supply the interests of public policy were seen to reside in the institution of fair competition, through the monitoring of prices and output, to remedy what had become aggressive, cut-throat competitive practices attributed to the implementation of the 1890 Sherman Act.^{iv} Since that time, it is only in the last decade that associations with a business interest in and/or which perform an advocacy role for the market they regulate have come under increased scrutiny.^v

1. For trade associations, see OECD, Directorate for Financial and Enterprise Affairs Competition Committee, Potential Pro-Competitive and Anti-Competitive Aspects of Trade/Business Associations, DAF/COMP(2007) 45, 04-Nov-2008, p.22, which suggests two types of trade associations: those that provide a forum for exchange of ideas and those that are charged with regulation of the industry/profession. For self regulatory organizations (SRO) see SIFMA Research Reports, Vol. II, No.1 (January 29,2007) p.18, which suggests that in spite of the important role played by self regulatory organizations (SRO) worldwide, there is no internationally accepted definition of an SRO, and suggests set of core characteristics.

In the financial services industry, the advantages and disadvantages of self-regulation have been the subject of much debate, increasingly so today when regulators' reliance on industry to police itself has been identified as at least one cause of the current crisis. Those that support self-regulation argue that self-regulation, which draws on industry consensus, expertise and experience, results in more efficient markets. Those that oppose self-regulation point to the potential for excessive industry influence on the development of regulation and the conflict of interest that arises from a coupling of business and regulatory functions.^{vi} These last, and conflicts that arise from an association's performance of both a regulatory and advocacy role, have led in many cases to the distinction of self regulatory organizations (SROs) as organizations of which the primary function is to regulate market participants, their markets and goods, and a preference for the delegation of these functions to a separate organization with independent governance and rule-making/implementing bodies.^{viii}

Insurance is a heavily regulated industry in developed markets and increasingly so in developing markets. As governments review existing regulation in light of the current financial crisis and equip their regulators with the latest skills and regulatory tools, it may be useful to note that trade-association sponsored self-regulation can serve a useful purpose in sectors or portions of sectors where regulation is absent or in need of reform, because industry agrees to voluntarily impose rules and meet minimum standards to meet consumer and regulatory demands in anticipation of regulation by governments.²^{viii} Under current circumstances, therefore, it is reasonable to suggest that while the role of regulation of insurance properly lies with a statutorily appointed regulator, necessarily limiting the self-regulatory role of an insurance association, an insurance association can play an important part in the formation of a regulatory regime that achieves a balance of industry innovation and consumer protection to ensure continual and appropriate revitalization of the market in response to consumer demand. Writings on the subject suggest that key to success will be good governance to avoid conflicts of interest, and fully transparent proceedings such that concerns of market participants and consumers about the suitability of industry involvement in insurance regulation are addressed. Indeed, a review of global practices shows that industry associations participate in the formulation of rule-making in roughly

2. It may be of additional importance to note that while affected in many significant ways, the present crisis did not arise in the insurance industry, and that while insurers have experienced varying degrees of difficulties as a result of the impact on cost of capital and asset values caused by the upheaval in capital markets they have remained relatively sound.

three ways: as an advocate and industry association; as (or as a member of) a formal or *ad hoc* advisory group; as a self-regulatory organization.

—As advocate and Industry Association

This form of involvement in rule-making is perhaps the most prevalent. As described elsewhere in this Publication, the primary role of an insurance association is advocacy on behalf of the industry it serves. As the insurance industry is a heavily regulated industry, advocacy efforts will usually involve gaining member company consensus on existing or proposed regulations that impact their business at home and abroad and ensuring that government agencies charged with rule-making and/or negotiation of international agreements are aware of these issues and their impact on industry. At times, insurance associations will form international alliances if regulatory issues affect the industry in more than one country and/or are of a nature that could violate one or more commitments under multilateral international agreements.

The scope is broad, and can run from regulations affecting product approval and policy language to rules on deferred taxation of foreign earnings and premium income.

—As (or as a member of) a formal or *ad hoc* Advisory Group

Given the complexities of the insurance business, regulatory agencies may seek to draw on industry expertise and experience, and obtain on a regular or *ad hoc* basis guidance and recommendations from insurance associations on behalf of their members, or from advisory groups which include associations and/or private sector insurers. Consumer advocates and academics may also be asked to join such groups.³ In addition, in certain jurisdictions, insurance associations may form separate advisory groups to provide consumers an opportunity to voice their opinions on the industry's operations.⁴

Whether the advice be sought by authority of statute, agreement, or informally, current trends are to have the group's operations conducted in accordance with written and publicized rules or bylaws governing authority, conduct and procedure.

3. The International Council of Securities Association recommends consumer inclusion as a self regulatory organization best practice.

4. The General Insurance Association of Japan (GIAJ) has established such a group, comprised of representatives of consumer groups and academics. The group is independent of GIAJ's main operations and submits proposals directly to the GIAJ Board of Directors. In the United States, the Insurance Information Institute (III) acts primarily as a consumer insurance information source.

An advisory group may be permanent⁵ or formed on an *ad hoc* basis to meet a particular temporary need.⁶ Insurance associations may constitute an advisory group or be a member of an advisory group.

—As a Self Regulatory or Quasi-Self Regulatory Organization.

In certain instances, regulators may be authorized by statute or may enter into agreements to delegate rule-making authority to specific groups or organizations. As mentioned above, international best practices today favor the clear separation of advocacy/business practice interests from any regulatory role an association may engage in. To date, given that the insurance industry tends to be heavily regulated, and given that self regulation tends to occur in the absence of other formal regulation,⁷ SROs relevant to the insurance sector tend to have only limited authority over one or more aspects of an insurer's business or products.⁸

In addition, there exists what we might describe as “quasi self regulatory organizations”, which are trade association groups that act under delegated authority to formulate rules on certain aspects of the insurance industry's business, but (consistent with the spirit of voluntary membership) are not empowered to sanction companies that do not choose to comply (ft note OECD p.39).⁹ Here the role of the SRO rule is to supplement existing rules and regulations and compliance “enforced” through a system of peer and consumer pressure; the deter-

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5. Two illustrative examples are the Korea Insurance Development Institute (KIDI), an association comprising insurance companies and academics with the mission of protection both insurance companies and their insured through application of analysis of managed information, and the III in the United States.
 6. Associations will often form task forces, or committees to address particular issues on which regulators, government agencies or consumer groups may have requested or made known a desire for more information.
 7. See Endnote VIII.
 8. For example, the Financial Industry Regulatory Authority (FINRA), the securities market regulator for NYSE and NASD members. FINRA has authority over certain aspects of the sale of variable insurance products but not over the insurance industry as a whole. The American Academy of Actuaries sets academic levels and professional standards required by United States regulators and regulators in other countries of actuaries practicing in their jurisdictions. LOMA is an internationally recognized insurance education institution which provides certifications in life insurance, financial services, annuities, management and reinsurance for insurance industry professionals throughout the world.
 9. For example, in Japan, the General Insurance Association of Japan (GIAJ) has established under specific authority two organizations charged with a) ensuring member company appropriate handling of consumer personal information under the Japan Personal Information Protection Law and b) investment/derivative related products dispute resolution under the Japan FIEL. In South Korea, the Insurance Business Law provides broad authority for the delegation of rule making authority to the insurance associations. This authority has been exercised on such matters as advertising and marketing. See also, OECD DAF/COMP(2007) p.39 which also refers.

rent is loss of consumer confidence, which can be a threat not just to the non-compliant company but to all insurers in the same class.¹⁰

In light of the general progression of thought on the appropriate role for SROs in the financial sector, if any form of self regulatory function is to be performed by an insurance association, and if the creation of a separate group with independent board and bylaws is not feasible, principles of good governance seem to dictate that firewalls be set up such that, if not physical, the separation is virtual, the process clearly transparent, and advice or opinion provided free from influence of any dominant stakeholder.), While always important, transparency (discussed below) here is critical.

—Transparency of Process

In all of the above instances of industry association involvement in the development of regulatory policy, transparency, equal opportunity to participate in associations and the development of a regulatory regime, and recourse to an independent arbitrator or court of law authorized to hear and resolve disputes will lend credibility to the process and enhance confidence and stability in the market place. In contrast, in the absence of transparent proceedings and due process, this important aspect of sound rule-making can reflect poorly on the credibility of both regulator and regulated and undermine the principles of market efficiency on which delegation is premised.^{11 ix}

A fully transparent process will ensure that all insurance companies, regardless of size, nationality or juridical form will be provided equal opportunity to participate in the discussion and advocacy effort.

To avoid the conflict that may arise from real or perceived market dominants' undue influence on insurance association views, all insurers should be provided the opportunity to join an insurance association and be accorded the same rights, privileges, and opportunities (including representation on boards and governance bodies of the associations) as others in their fee class, and all should be given a seat at the table such that each has a voice in the debate. What is more, all insurance associations, whether comprised of domestic or foreign market participants should be provided equal and adequate notice of opportunities for comment, equal consideration of substantive comments submitted.

10 This said, it has been suggested that where a legal system would permit judges and/ or legislators to look to industry practice to determine difficult questions before them, what begins as "practice" could become "jurisprudence" and/or law. In addition, most insurance associations' rules provide the association with the right to deny membership, or take measures against existing members if they do not meet the association's standards.

11 IAIS Insurance Core Principle 3.2 provides that "independence, accountability, transparency, and integrity interact and reinforce one another". It describes transparency as the vehicle for "safeguarding independence, ensuring accountability, and establishing and safeguarding integrity."

In addition, insurance regulatory information should be readily available and adequately publicized, including drafts of proposed changes to existing law and new regulations, such that all market participants have the opportunity to be fully informed.

Conclusion:

All points to a very important role insurance associations can play as the voice of an industry that will be one critical component in the world's recovery from the present crisis. Insurance provides families and businesses relief from risks associated with their daily endeavors. Insurance provides governments with alternatives to government sponsored social safety nets. And last but not least, insurers are the largest investors in the bond market, creating stability and patient capital that can emerge at a later date to fund government projects designed to jumpstart or fuel economies.

Even this brief scan of the history of the evolution of business or trade associations attests to the fact that it has been dynamic. Business associations, once considered the for a of closed corporate debate detrimental to consumer interests, have become the voice of industry in a growing trend toward transparent discussion of how to ensure open and fair competition for industry, consumer choice and protection. In sum, industry associations today are what we might call industry's response to both regulatory and consumer demands in an ever changing competitive marketplace, and such will be the case in the present century as insurance associations adapt to the new climate of change.

(Endnotes)

- i. OECD, Directorate for Financial and Enterprise Affairs Competition Committee, Potential Pro-Competitive and Anti-Competitive Aspects of Trade/Business Associations, DAF/COMP(2007) 45, 04-Nov-2008, pp 16-17.
- ii. OECD DAF/COMP(2007) 45, p 17.
- iii. SIFMA Research Report, Vol.II, No.1 (January 29, 2007),p.4.
- iv. OECD, DAF/COMP(2007) 45, p.18.
- v. SIFMA, pp.4,6; International Council of Securities Associations, Best Practices for Self-Regulatory Organizations, <http://www.icsa.bz/pdf/ICSABestPracticesSRO.pdf>, p.2.
- vi. SIFMA, p 4.
- vii. SIFMA, pp 6-7,13 ; ICSA, pp. 2-3,7.
- viii. Duke University Fuqua School of Business Nicholas School of the Environment, <http://www.nicholas.duke.edu/csi/projects.html>; ICSA, p.1.
- ix. ICSA, pp. 7-8.