



# IAIS

INTERNATIONAL ASSOCIATION OF  
INSURANCE SUPERVISORS

Public

## **Frequently Asked Questions on the IAIS Multilateral Memorandum of Understanding (IAIS MMoU)**

**December 2021**

**About the IAIS**

The International Association of Insurance Supervisors (IAIS) is a voluntary membership organisation of insurance supervisors and regulators from more than 200 jurisdictions. The mission of the IAIS is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability.

Established in 1994, the IAIS is the international standard setting body responsible for developing principles, standards and other supporting material for the supervision of the insurance sector and assisting in their implementation. The IAIS also provides a forum for Members to share their experiences and understanding of insurance supervision and insurance markets.

The IAIS coordinates its work with other international financial policymakers and associations of supervisors or regulators, and assists in shaping financial systems globally. In particular, the IAIS is a member of the Financial Stability Board (FSB), member of the Standards Advisory Council of the International Accounting Standards Board (IASB), and partner in the Access to Insurance Initiative (A2ii). In recognition of its collective expertise, the IAIS also is routinely called upon by the G20 leaders and other international standard setting bodies for input on insurance issues as well as on issues related to the regulation and supervision of the global financial sector.

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## Acronyms

### General

|                 |   |
|-----------------|---|
| <b>AML</b>      | Anti-money laundering   |
| <b>CFT</b>      | Combating the financing of terrorism  |
| <b>CMG</b>      | Crisis Management Group   |
| <b>ComFrame</b> | Common Framework for the Supervision of Internationally Active Insurance Groups |
| <b>IAIG</b>     | Internationally Active Insurance Group  |
| <b>IAIS</b>     | International Association of Insurance Supervisors                              |
| <b>ICP</b>      | Insurance Core Principle  |
| <b>MMoU</b>     | Multilateral Memorandum of Understanding  |
| <b>MoU</b>      | Memorandum of Understanding   |

### IAIS Committees, Subcommittees and other groups

|             |   |
|-------------|---|
| <b>ExCo</b> | Executive Committee                     |
| <b>HLC</b>  | High Level Committee                    |
| <b>IAC</b>  | Implementation and Assessment Committee |
| <b>MPC</b>  | Macprudential Committee                 |
| <b>PDC</b>  | Policy Development Committee            |
| <b>SWG</b>  | Signatories Working Group               |

## 1 Introduction

These Frequently Asked Questions (FAQs) provide information on the background, features and procedures of the IAIS MMoU and are based upon the discussions held in the now defunct IAIS Supervisory Cooperation Subcommittee and the Signatories Working Group (SWG).<sup>1</sup>

## 2 Background & policy information

### 2.1 What is the IAIS MMoU?

The IAIS MMoU is a global framework for cooperation and information exchange between insurance supervisors.

Like any other Memorandum of Understanding (MoU), it is a statement of its signatories' intent. In this case, the intent is to cooperate in the field of information exchange and to follow agreed procedures for handling information requests.

The IAIS MMoU requires a supervisor's jurisdiction to have legislation in place that meets a common standard. This imposes an obligation on a supervisor to maintain information it receives in its statutory role as confidential, in order to allow such information to be shared in furtherance of administering its regulatory duties and functions and to assist other supervisors in fulfilling similar duties and functions under their domestic laws (see 3.1 et seq.). Therefore, under the IAIS MMoU, the intent is to assist supervisors in facilitating the protection of the confidential status of information received and shared by them in fulfilling their statutory mandates. Essentially, the IAIS MMoU provides a process for signatory authorities to confidently share information with one another, based upon them all administering similar confidentiality regimes in their respective jurisdictions.

Supervisors may not accede to the IAIS MMoU simply by signing it. Firstly, they must undergo a rigorous assessment of their confidentiality regimes (the "validation process" or "application process"). This assessment is achieved by benchmarking an applicant supervisor's domestic confidentiality laws against minimum standards required by the IAIS MMoU framework (in particular Annex B).

The way in which the IAIS MMoU benefits its signatories is that upon accession, each signatory may rely on one another's compliance with the strict confidentiality regime imposed under their respective domestic laws, which each signatory would have previously confirmed, evidenced and had reviewed by the SWG, before acceding to the IAIS MMoU (see 4.2). Thus, signatories may exchange relevant information with and provide assistance to other signatories freely, thereby promoting the financial soundness and stability of cross-border insurance operations for the benefit and protection of policyholders.

The application and review of a jurisdiction's confidentiality laws is carried out under the auspices of the SWG. Further, as signatories must continually adhere to the IAIS MMoU's standards, monitoring compliance of signatories to the IAIS MMoU also falls within the remit of this group.

### 2.2 What are the objectives of the IAIS MMoU?

The IAIS MMoU benefits supervisors by establishing a formal basis for cooperation and information exchange between signatory authorities regarding the supervision of insurers where cross-border aspects arise. All signatories to the IAIS MMoU must undergo a validation of their laws and regulations to demonstrate compliance with the strict confidentiality regime

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<sup>1</sup> The SWG is the group in which all admitted signatories to the IAIS MMoU participate.

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of the IAIS MMoU. This process ensures that the IAIS MMoU removes hurdles to the effective exchange of supervisory information by verifying that a supervisor meets the requirements for admission, including those with respect to confidential treatment of information. Therefore, when signatories need to exchange confidential information, they need not independently verify whether each counterparty has the appropriate provisions and procedures in place to protect the confidentiality of such information (eg confidentiality requirements based on the principle statement and standards of Insurance Core Principle (ICP) 3 (Information Sharing and Confidentiality Requirements)).

### **2.3 Why was the IAIS MMoU developed?**

Close cooperation and information exchange amongst insurance supervisors are extremely important factors for supervising insurers, including insurance groups and Internationally Active Insurance Groups (IAIGs) in an effective and strengthened manner while preserving financial stability. This is particularly underscored in the context of supervision of insurers that have extensive cross-border operations. Thus, the IAIS MMoU was developed to promote close cooperation and information exchange by providing a set of defined international standards relative to confidentiality regimes that insurance supervisors must comply with to become signatories.

By joining the IAIS MMoU, signatories commit to:

- Providing each other with the fullest assistance possible consistent with their functions, subject to domestic Applicable Law;<sup>2</sup>
- Considering requests from one another seriously and reply without undue delay;<sup>3</sup> and
- Relying on each other's compliance with the strict confidentiality regime.<sup>4</sup>

The IAIS MMoU may also greatly facilitate effective cooperation and information exchange within supervisory colleges (see 2.7).

Staff of signatory authorities will benefit from the legal certainty that comes with authorities' compliance with the IAIS MMoU regime.

### **2.4 Is the IAIS MMoU legally binding?**

The IAIS MMoU itself is not an international treaty or law. It is an arrangement amongst insurance supervisors in order to facilitate the exchange of information between themselves in the discharge of their supervisory responsibilities. It does not create any legally binding obligations, modify, or supersede any jurisdictional law, or create any directly or indirectly enforceable rights. Nevertheless, the IAIS MMoU incorporates monitoring mechanisms to ensure ongoing compliance by signatories with requirements under the IAIS MMoU (see 2.9 and 2.10)

### **2.5 Does the IAIS MMoU affect other agreements?**

The IAIS MMoU is not intended to affect other multilateral or bilateral agreements.<sup>5</sup> It is common practice that supervisors are signatories to more than one agreement with other jurisdictions regulating information exchange. In some instances, these may go wider than the IAIS MMoU, for example by covering group supervision arrangements. In other instances the scope of the IAIS MMoU may be wider than existing agreements between supervisors as the

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<sup>2</sup> IAIS MMoU, Article 4, Provision 2.

<sup>3</sup> *ibid.*

<sup>4</sup> IAIS MMoU, Article 4, Provision 3.

<sup>5</sup> IAIS MMoU, Article 3, Provision 6.

IAIS MMoU also covers areas such as reinsurance, intermediaries and Anti-money laundering and combating the financing of terrorism (AML/CFT) matters.<sup>6</sup>

## 2.6 What types of information can be exchanged under the IAIS MMoU?

The IAIS MMoU does not specify or limit the form or type of confidential information which may be shared amongst supervisors, for example, information requests in relation to the supervision of insurers, regulated entities, and persons. However, all signatories must have a legitimate interest in the information requested. Information related to emerging topics such as climate risks, cyber security and pandemic risks would also fall into the realm of information exchange under the IAIS MMoU, where it meets the aforementioned criteria. It should be noted that the IAIS MMoU does not apply to publicly available information, which does not need to be shared through the IAIS MMoU's confidentiality protocols.

## 2.7 Does the IAIS MMoU apply to the exchange of information within supervisory colleges?

Yes. The IAIS MMoU is applicable to the exchange of information within supervisory colleges, including those established for IAIGs.

All signatories to the IAIS MMoU undergo a validation of their laws and regulations to demonstrate compliance with the strict confidentiality regime of the IAIS MMoU (see 4.2). For this reason, if all relevant parties are signatories to the IAIS MMoU, it is the preferred framework for multilateral information exchange.<sup>7</sup> Where a supervisory college includes non-signatories to the IAIS MMoU, then such members of the supervisory college should enter into a similar long-term agreement covering information exchange and confidentiality, which could be included in the college coordination agreement.<sup>8</sup>

Likewise, signatories may consider applying the IAIS MMoU to the exchange of information within other types of coordination arrangements,<sup>9</sup> such as a Crisis Management Group (CMG).

## 2.8 Can signatories exchange information outside the scope of the IAIS MMoU?

Yes. The IAIS MMoU does not affect the freedom of signatories to cooperate and exchange information on a formal or on an informal basis, to the extent permitted by applicable domestic law.

## 2.9 What mechanisms are in place to ensure signatories' ongoing compliance with the IAIS MMoU regime?

The SWG oversees ongoing compliance with the IAIS MMoU regime. Where SWG members observe that a signatory is not acting in accordance with provisions set forth under the IAIS MMoU,<sup>10</sup> then that issue could be subject to a review by the SWG. Such a review could be triggered by a request from an affected signatory. Based upon the results of the review undertaken, the SWG may determine that there has been a demonstrable change in the

<sup>6</sup> IAIS MMoU, Article 3, Provision 4.

<sup>7</sup> ICP 3.2.2.

<sup>8</sup> ICP 25.6.8. The Application Paper on Supervisory Colleges describes the processes and practices related to the establishment and functioning of supervisory colleges including perspectives of information exchange and is available at the following link: <https://www.iaisweb.org/page/supervisory-material/application-papers>

<sup>9</sup> Coordination arrangements are mechanisms to foster cooperation and coordination between involved supervisors with regard to the supervision of insurance groups, as well as to promote common understanding, communication and information exchange. One form of coordination arrangements is a supervisory college.

<sup>10</sup> For example, see IAIS MMoU, Article 4, Provision 2, which stipulates: "Subject to domestic Applicable Law, the Signatory Authorities under this MMoU will provide each other with the fullest assistance possible consistent with their regulatory functions. They will consider requests from one another seriously and reply without undue delay."

willingness or ability of that signatory to meet the provisions of the IAIS MMoU. In such an instance the SWG will inform the Implementation and Assessment Committee (IAC) and the High Level Committee (HLC) that appropriate remedial measures should be applied.<sup>11</sup> Upon the written recommendation of the SWG, the HLC may apply such remedial actions as are deemed appropriate in order to encourage the signatory's compliance with the provisions of the IAIS MMoU or it may terminate the signatory's participation in the IAIS MMoU, according to the procedure as set forth in Article 9, Provision 7 of the IAIS MMoU (see 2.10).<sup>12</sup>

The SWG will not make a recommendation to the IAC nor to the HLC until it has first provided appropriate notice to the signatory and the signatory has had an opportunity to make representations to the SWG.<sup>13</sup>

Where there have been substantial changes in relevant domestic legislation, signatories are required to notify the IAIS Secretariat, who shall then inform all signatory authorities of these changes, as soon as practically possible.<sup>14</sup>

In connection with the foregoing, where a signatory undergoes a reorganisation, the signatory shall, as early as possible, notify the IAIS Secretariat in writing to provide all necessary information in order for its succeeding authority (or authorities) to continue their participation in the IAIS MMoU. The Secretariat shall then inform all signatory authorities of its reorganisation for review and approval (see 4.5).

## **2.10 Can a signatory's participation in the IAIS MMoU be terminated?**

A signatory's participation in the IAIS MMoU may be terminated in exceptional cases. Examples of such cases include, but are not limited to, where a signatory is held to have abused provisions of the IAIS MMoU for its own or a third party's purpose, and where a signatory contravenes the confidentiality regime of the IAIS MMoU.<sup>15</sup> Based on such grounds, if the SWG determines that there has been a demonstrable change in the willingness or ability of a signatory authority to meet the provisions of the IAIS MMoU, it will inform the IAC (or its successor) and the HLC that appropriate remedial measures should be undertaken, (see 2.9).<sup>16</sup> As a last resort, the HLC may terminate the signatory authority's participation in the IAIS MMoU.

## **2.11 Where can I find the official text of the IAIS MMoU and its annexes?**

The text of the IAIS MMoU, its annexes and a list of signatories can be found on the IAIS website [www.IAISweb.org](http://www.IAISweb.org) under [MMoU](#).

## **2.12 Which supervisory materials and other IAIS documents are relevant to supervisory information exchange in an international context?**

- ICP [3](#) (Information Sharing and Confidentiality Requirements), ICP [25](#) (Supervisory Cooperation and Coordination) and the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) material integrated therein;

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<sup>11</sup> IAIS MMoU, Annex C, Part B, Provision 15.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> IAIS MMoU, Annex C, Part B, Provision 14.

<sup>15</sup> IAIS MMoU, Article 9, Provision 7.

<sup>16</sup> IAIS MMoU, Annex C, Part B, Provision 15. The HLC is composed of the Chairs of the ExCo, IAC, MPC and PDC (or their successors).



- IAIS MMoU with Annex A (List of Signatory Authorities), Annex B (IAIS MMoU Confidentiality Regime), Annex C (Application and Accession), and Annex D (IAIS MMoU Request Sheet);
  - Annex C sets out the requirements for applications, in particular with a view to documentation purposes, and describes how the IAIS MMoU processes are monitored;
  - Annex D is suggested, but not mandatory to use when exchanging information; and
- Administration and Accession Procedures of the IAIS MMoU. This document describes, among others, the role of involved bodies (the SWG, IAIS Secretariat and the HLC) and the validation process as well as the decision and mediation procedures, (available to IAIS Members only).

### 3 Confidentiality and Disclosure

#### 3.1 What are the cornerstones of the IAIS MMoU confidentiality regime?

- Applicants must demonstrate that all persons gaining access to shared information in the course of their duties are bound by a legal obligation of professional secrecy.<sup>17</sup> The professional secrecy requirements apply to any person currently or previously employed by or acting on behalf of a signatory authority (see 3.2);<sup>18</sup>
- The exchange of confidential information shall serve no other purpose than those directly related to the fulfilment of a signatory authority's supervisory functions (valid purpose);<sup>19</sup>
- The obligation of professional secrecy means that all confidential information received may not be divulged to any person or authority whatsoever, except in clearly defined circumstances and subject to requirements;<sup>20</sup>
- Confidential information originating from another signatory authority must remain subject to equivalent confidentiality protections;<sup>21</sup> and
- Any passing on of confidential information in breach of professional secrecy must be unlawful in the relevant jurisdiction of the signatory authority.<sup>22</sup>

#### 3.2 How is confidentiality of information maintained under the IAIS MMoU?

The confidentiality of any non-public information exchanged under the IAIS MMoU is ensured by pre-existing domestic legislation in each signatory jurisdiction that meets or exceeds the requirements set out in the IAIS MMoU. The "obligation of professional secrecy," means, that all persons gaining access to confidential information in the course of their duties remain bound to maintain its confidentiality.<sup>23</sup> These requirements apply to any person currently or previously employed by, or acting on behalf of, a signatory authority,<sup>24</sup> including active staff, retirees/pensioners, temporary workers, part-time workers, and consultants. Should a

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<sup>17</sup> IAIS MMoU, Annex B, Part A, Provision 4; IAIS MMoU, Annex C, Part C, Provision 16(b).

<sup>18</sup> IAIS MMoU, Annex B, Part A, Provision 6.

<sup>19</sup> IAIS MMoU, Annex B, Part A, Provision 3.

<sup>20</sup> IAIS MMoU, Annex B, Part A, Provision 5.

<sup>21</sup> IAIS MMoU, Annex B, Part A, Provision 7.

<sup>22</sup> IAIS MMoU, Annex B, Part A, Provision 8.

<sup>23</sup> IAIS MMoU, Annex B, Part A, Provision 4.

<sup>24</sup> IAIS MMoU, Annex B, Part A, Provision 6.

signatory authority pass on confidential information, which has been provided under the IAIS MMoU to a third party, eg other domestic bodies competent in the financial services field, such as central banks, then the signatory authority shall ensure that these requirements also apply to the third party (see 3.4).

Signatories must have domestic legislation in place, that makes it unlawful for any person to pass on confidential information in breach of the obligation of professional secrecy.<sup>25</sup> As part of the validation process, the validation teams assess an applicant jurisdiction's laws and regulations to determine how a breach of the confidentiality regime will be sanctioned.

### **3.3 Does a signatory who receives a request for confidential information have any discretion in deciding whether to share the information?**

When confidential information is requested, a signatory is entitled to determine, in its sole discretion, whether or not to share such information. Article 6(3) of the IAIS MMoU sets out criteria that the requested authority may consider before sharing confidential information.<sup>26</sup> These criteria are:

- Whether the request conforms with the IAIS MMoU;
- Whether compliance with the request would be so burdensome as to disrupt the proper performance of the requested authority's functions;
- Whether it would be otherwise contrary to the essential interest of the requested authority's jurisdiction to provide the information requested;
- Any other matters specified by the applicable domestic law of the requested authority's jurisdiction (in particular, those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
- Whether complying with the request may otherwise be prejudicial to the performance by the requested authority of its functions.<sup>27</sup>

Where a request is consistent with the IAIS MMoU, the expectation is that the requested information will be provided (ie that discretion will be exercised in favour of sharing information, subject to the exceptions in the IAIS MMoU).

### **3.4 To what extent can confidential information received under the IAIS MMoU be disclosed to third parties?**

Before a signatory shares information with a third party, including another signatory, it must obtain the prior explicit consent from the signatory that provided the information.<sup>28</sup> Passing on of confidential information shall be decided on a case-by-case basis.<sup>29</sup>

Confidential information may only be passed on to a third party, if they are bound by professional secrecy rules that are at least equivalent to those set out in Annex B, Part A of the IAIS MMoU.<sup>30</sup> If the third party is an IAIS MMoU signatory, the statutory confidentiality requirements will have been reviewed and approved as equivalent to the threshold conditions

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<sup>25</sup> IAIS MMoU, Annex B, Part A, Provision 8.

<sup>26</sup> In this document, "requesting authority" and "requested authority" have the following meanings, consistent with the terminology of the IAIS MMoU:

- "Requesting authority" – a signatory making a request under the IAIS MMoU; and
- "Requested authority" – a signatory to whom a request is made under the IAIS MMoU.

<sup>27</sup> IAIS MMoU, Article 6, Provision 3.

<sup>28</sup> IAIS MMoU, Annex B, Part B, Provision 9.

<sup>29</sup> IAIS MMoU, Annex B, Part B, Provision 10.

<sup>30</sup> IAIS MMoU, Annex B, Part A, Provision 7.

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required under the IAIS MMoU, during the validation process. A verification might also have been provided, in connection with another long-term information sharing agreement. Alternatively, if the third party is another competent authority within the same jurisdiction, there may already be established procedures in place governed by domestic law. In other situations, case-by-case verification may be necessary.

Where the conditions above are satisfied, and the third party has committed to protecting the confidentiality of the information and to using the information for no other purposes than those specified in the request, the signatories may consent to passing on of information where it will assist signatories in the fulfilment of their supervisory functions; and other competent domestic bodies in the financial services field, including central banks, law enforcement agencies and relevant courts in the performance of their duties.<sup>31</sup>

Specified purposes under the IAIS MMoU cover in particular requests in relation to:

- Licensing;
- Fit and proper criteria;
- Ongoing supervision including auditing matters;
- Resolution and liquidation;
- Criminal and regulatory proceedings; and
- The administration of guarantee funds.<sup>32</sup>

Furthermore, signatories shall generally consent to the passing on of confidential information, where the regulated entity to whom the information relates explicitly agrees, in accordance with the requirements of the signatories' domestic legislation.<sup>33</sup>

### **3.5 Who may challenge a requested authority's decision to share confidential information?**

The ability to exchange confidential supervisory information between supervisors is an integral part of supervisory work as long as such occurs in accordance with the requirements of the signatories' domestic legislation, which has been verified as part of the validation process to be in compliance with the IAIS MMoU.

However, it cannot be ruled out that regulated entities may assert that the criteria applied to the IAIS MMoU exchange of information process has not been met. In this scenario, the domestic laws of the requested signatory may determine the manner in which a challenge may occur and how such a challenge shall be resolved.

An objection by a signatory that information was not shared in accordance with the IAIS MMoU criterion, is not legal in nature, as the IAIS MMoU does not create enforceable legal obligations. This type of objection would be considered by the SWG, and if appropriate by the HLC, if an SWG member claimed that there has been a demonstrable change in the willingness or ability of a signatory authority to meet the provisions of the IAIS MMoU (see 2.10).<sup>34</sup>

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<sup>31</sup> IAIS MMoU, Annex B, Part B, Provision 11.

<sup>32</sup> IAIS MMoU, Annex B, Part B, Provision 12.

<sup>33</sup> IAIS MMoU, Annex B, Part B, Provision 13.

<sup>34</sup> IAIS MMoU, Annex C, Part B, Provision 15.

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### **3.6 How is confidential information protected if the laws applicable to the requested authority are more stringent than the laws applicable to the requesting authority and there is a request to the latter authority to pass on confidential information?**

It is important to recognise that despite potential differences, both legal regimes have been found to meet the defined minimum standards of the IAIS MMoU, otherwise the respective supervisors would not be signatories.

In order to pass on information to another signatory authority, prior explicit consent needs to be obtained from the authority where the information originates.<sup>35</sup> Should the authority where the information originates believe that the information would not be dealt with properly by the requesting authority, or any further requesting authorities, it can decline to give its consent to the passing on of the information.

Compliance with the confidentiality and prior consent requirements is an integral part of the strict confidentiality regime of the IAIS MMoU.

### **3.7 What happens when a signatory is required to disclose confidential information provided to it under the IAIS MMoU to other local, regional, state, federal or international law enforcement or regulatory officials who have authority over the regulated entity?**

In circumstances where it is necessary for a signatory to disclose confidential information provided under the IAIS MMoU to other local, regional, state, federal or international law enforcement or regulatory officials who have authority over the regulated entity, it must:

- Promptly notify the signatory that has supplied the information;
- Obtain prior consent; and
- Prior to passing on the information, ensure that each recipient agrees to maintain the confidential status of the information provided and has the legal authority to do so.<sup>36</sup>

An authority may be compelled to disclose information by a court exercising criminal, civil or administrative jurisdiction. If the court issues a subpoena to an authority to produce documents in its possession, the authority would be expected to comply with the court order. In some jurisdictions, Parliamentary Committees or Congressional Committees also have the power to subpoena authorities and seek information.

A signatory that has received a court order is required to notify the requested authority that provided the information, that it has been served with a subpoena and must seek the requested authority's consent to comply with the subpoena. Where consent is given, the information can be disclosed. Where consent is not given, the requesting authority is required to use all reasonable means under its domestic laws to resist the subpoena ("all reasonable legal means").<sup>37</sup> The means that actually are available for use by the applicant are assessed during the validation process.

In addition, if a requesting authority, at the time of making a request, intends or expects that confidential information provided by a requested authority under the IAIS MMoU is likely to be disclosed to other local, regional, state, federal or international law enforcement or regulatory officials who have authority over the regulated entity, such an intention or expectation must be indicated in the request.

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<sup>35</sup> IAIS MMoU, Article 4, Provision 4; IAIS MMoU, Annex B, Part B, Provision 9.

<sup>36</sup> IAIS MMoU, Article 5, Provision 9.

<sup>37</sup> IAIS MMoU, Article 5, Provision 10.

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### **3.8 What happens if confidentiality laws applicable to different signatory authorities conflict with each other?**

During the application process, a supervisor's legal regime is assessed to ensure that it meets a defined minimum level as set out in the IAIS MMoU. As long as this minimum threshold is met, differences in local or regional approaches to professional secrecy are irrelevant for purposes of the IAIS MMoU. Usually, differences in the underlying confidentiality laws are likely to be immaterial, but on rare occasions, it may be necessary to consider the gaps between the scope of the confidentiality protections provided by the requested and requesting authorities.<sup>38</sup>

The IAIS MMoU commits each requesting authority to hold all information received under the IAIS MMoU as confidential (see also ICP 2.7.1).<sup>39</sup> Information must be treated as confidential if it is confidential under the domestic law of the requested authority.<sup>40</sup> Some jurisdictions have incorporated this principle into their domestic law. However, other jurisdictions do not have such laws, or limit their scope to specified classes of information. In such cases, the duty of the requesting authority to protect all information it receives includes the duty to refrain from requesting information that it does not have the power to protect.

### **3.9 What actions should signatories take in case of a breach of confidential information exchanged under the IAIS MMoU?**

All signatories must have domestic legislation that makes it unlawful to pass on confidential information in breach of the obligation of professional secrecy (see 3.1). In case confidential information exchanged under the IAIS MMoU is either inadvertently or wilfully breached, involved signatories should promptly take appropriate actions in accordance with their domestic laws or internal procedures. In general, the requesting authority would inform the requested authority of the breach of confidential information as soon as possible and liaise with the requested authority on any remedial measures. The requesting authority may, or could even be obliged under domestic laws to, inform supervised entities of the breach.

## **4 Accession and Validation Process**

### **4.1 Who can become a signatory to the IAIS MMoU?**

Participation in the IAIS MMoU is open to any insurance supervisor which is an IAIS Member.<sup>41</sup>

### **4.2 What are the requirements for becoming a signatory to the IAIS MMoU?**

A signatory authority must fulfil all accession requirements as defined in the IAIS MMoU and its annexes. The IAIS MMoU validation process requires an applicant to demonstrate, amongst other things, that confidential information originating from another jurisdiction will remain subject to the same confidentiality protections and that all persons gaining access to this information in the course of their duties are bound by an obligation of professional secrecy.

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<sup>38</sup> ICP 3.1.1 describes various categories of confidential supervisory information, however, the precise boundaries between public and confidential information vary from jurisdiction to jurisdiction. For example, it is generally agreed that certain financial information must be protected, while other financial information must be publicly disclosed, but some particular items of financial information might be considered public in some jurisdictions and confidential in others.

<sup>39</sup> IAIS MMoU, Article 5, Provision 4.

<sup>40</sup> IAIS MMoU, Article 5, Provision 5.

<sup>41</sup> IAIS MMoU, Annex C, Part A, Paragraph 1; consistent with the current version of IAIS By-Laws (published in November 2018), the first sentence of this paragraph should be read as: "All insurance industry supervisors who are IAIS members are eligible to become a Signatory Authority to the MMoU at any time".

If an applicant is unable to satisfy the requirements of the IAIS MMoU because of obstacles under its laws or procedures, it will need to remove such obstacles by amending its laws and procedures to ensure consistency with the IAIS MMoU. If it fails to do so, it will not be admitted as a signatory. In order to successfully complete the validation process, the validation team must recommend that the application be approved and the SWG must unanimously approve the application.

In order to prepare for any legislative or regulatory changes deemed necessary by the validation team, an applicant may ask that its application be suspended for up to six months.<sup>42</sup> Upon request, this suspension may be extended for a further period of up to six months, but if a period expires without a request from the applicant to extend it, the application will be treated as withdrawn.<sup>43</sup>

### 4.3 How is the validation process structured?

The validation process consists of the following steps:

1. A supervisor submits an online application including relevant supporting material, such as supervisory legislation.
2. The IAIS Secretariat checks whether the application is complete (preliminary screening).
3. When the application is complete, the SWG will assign a validation team to review the material and prepare a proposal for admission to the SWG. The validation team consists of several insurance supervisors from different geographic locations selected on the basis of their knowledge and experience.
4. When the validation team has prepared its report, the SWG will have 20 business days to express its approval or disapproval.

If the SWG approves the application, the HLC, composed of the Chairs of the IAIS Executive Committee (ExCo), the IAC, the Macroprudential Committee (MPC) and the Policy Development Committee (PDC) (or their successors), may endorse the application for admission, in which case the applicant is admitted to the IAIS MMoU.

5. If the SWG makes comments or has questions with respect to the application content or review process, the validation team shall provide a response, addressing these points to the SWG within 30 business days. The SWG will then have 20 business days to respond to the information provided by the validation team. Where the SWG remains of the view that the applicant has not satisfied the criterion required by the IAIS MMoU, the validation team may review and discuss the application for an additional 30 business days, to achieve a consensus, liaising as necessary with the applicant and the relevant members of the SWG. Once this period has ended, the validation team shall provide a final report.
6. Following the review of the final report and if the SWG does not agree to approve the applicant as a signatory, the validation team will advise the applicant as to:
  - What changes are, in view of the SWG, required for the applicant to become a signatory; or
  - That it may activate the mediation process. In this case, a reviewing validation team appointed by the Chair of the IAC will review the outstanding issues and

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<sup>42</sup> IAIS MMoU, Annex C, Part A, Provision 10.

<sup>43</sup> IAIS MMoU, Annex C, Part A, Provisions 10 and 11.

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submit a recommendation. Where the reviewing validation team and the SWG cannot reach a consensus after this process has been undertaken, the HLC will act as an arbiter.

More information about the validation process is available in the Administration and Accession Procedures of the IAIS MMoU, (available to IAIS Members only).

To the extent possible, a supervisor who intends to apply for IAIS MMoU Accession is encouraged to notify the Secretariat as to when the Member intends to submit an application. This prior notification would allow the SWG to better plan the overall management of the validation process, including arrangement of a validation team.

#### **4.4 What is the time for completing the validation process?**

There is no fixed time for the completion of a validation, but the SWG and the validation teams endeavour to complete a validation within one year. The timeframe can be longer or shorter depending on the circumstances. In practice, there are various validation processes that have taken longer. In these cases, special circumstances have arisen, for example, a requirement that the applicant waits for a change in legislation before it proceeds. The process may also require an applicant to comply with additional information or meeting requests from the validation team, which could also result in a delay.

#### **4.5 What procedures apply if a signatory authority undergoes reorganisation subsequently after acceding to the IAIS MMoU?**

If a signatory authority is renamed, restructured or merged with another authority, the conditions for its legal successor to participate in the IAIS MMoU are detailed in Part D of Annex C of the IAIS MMoU. Likewise, if a signatory authority is split up, each succeeding authority may participate in the IAIS MMoU subject to the same conditions.

Specifically, in these types of cases, the signatory authority needs to notify the Secretariat, as early as possible, of the nature of the measures affecting the authority's legal regime, confirm in writing the legal successor's obligations and purview, including confirmation of the successor body's eligibility for signatory authority status, and provide supporting information and documents.<sup>44</sup> Upon receipt of this information, the Secretariat will share the submitted information with all signatories to inform them about the transfer of the signatory status.

Participation in the IAIS MMoU is limited to insurance supervisors which are IAIS Members (see 4.1). In this respect, continuation of a supervisor's participation in the IAIS MMoU requires a seamless transition of IAIS membership to the legal successor(s). If the IAIS membership rests or is suspended in order to clarify legal issues, a legal successor will not be able to exert the rights and obligations which accrue from the signatory status until its membership has been confirmed.<sup>45</sup>

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<sup>44</sup> IAIS MMoU, Annex C, Part D, Provision 20.

<sup>45</sup> IAIS MMoU, Annex C, Part D, Provision 21.