



**IAIS**

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INTERNATIONAL ASSOCIATION OF  
INSURANCE SUPERVISORS

**APPLICATION PAPER  
ON THE REGULATION AND SUPERVISION OF  
MUTUALS, COOPERATIVES AND COMMUNITY-  
BASED ORGANISATIONS IN INCREASING  
ACCESS TO INSURANCE MARKETS**

**SEPTEMBER 2017**

## **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 in nearly 140 countries. 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.

## **About IAIS Application Papers**

Application Papers provide additional material related to one or more ICPs, ComFrame or G-SII policy measures, including actual examples or case studies that help practical application of supervisory material. Application Papers could be provided in circumstances where the practical application of principles and standards may vary or where their interpretation and implementation may pose challenges. Application Papers can provide further advice, illustrations, recommendations or examples of good practice to supervisors on how supervisory material may be implemented.

This paper was prepared by the Financial Inclusion Working Group in cooperation with the Access to Insurance Initiative.

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**Application Paper on Regulation and Supervision of  
Mutuals, Cooperatives and Community-based Organisations  
in increasing access to Insurance Markets**

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## List of acronyms

A2ii	Access to Insurance Initiative
AMICE	Association of Mutual Insurers and Insurance Cooperatives in Europe
CAGR	Compound annual growth rate
CGAP	Consultative Group to Assist the Poor
IAIS	International Association of Insurance Supervisors
ICMIF	International Cooperative and Mutual Insurance Federation
ICP	Insurance Core Principle
IFSB	Islamic Financial Services Board
ILO	International Labour Organization
MCCO	Mutual, Cooperative and Community-based Organisation
MCR	Minimum Capital Requirement
MIN	Microinsurance Network
NGO	Non-Governmental Organisation
P&L	Profit and Loss
PCR	Prescribed Capital Requirement
SMIU	Small mutual insurance undertaking
UN	United Nations

# 1. Introduction

1. The International Association of Insurance Supervisors (IAIS), through the Insurance Core Principles (ICPs),<sup>1</sup> provides a globally accepted framework for the supervision of the insurance<sup>2</sup> sector. Its mission 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;<sup>3</sup> and to contribute to global financial stability.

2. There is a general recognition that enhanced access to insurance services helps reduce poverty, improve social and economic development and supports major public policy objectives such as improving health conditions for the population, dealing with the effects of climate change and food security. However, globally a large number of people remain unserved or underserved by insurance. Insurance supervisors are increasingly looking for an appropriate balance between regulation, enhancing access to insurance services and protecting policyholders. The “mutual model,” featuring mutuals, cooperatives and community based organisations (MCCOs), is one avenue which can potentially enhance access to insurance for un(der)served households and firms, thereby enhancing access to insurance more generally. This statement does not suggest that supervisors should give preferential treatment to MCCOs. It in fact suggests that when seeking to enhance access to insurance all avenues should be explored, including using MCCOs.

3. It should be noted that “inclusive insurance” and “access to insurance” are not issues limited to emerging markets and developing economies. The terms inclusion and access are often used synonymously representing a concept broader than microinsurance<sup>4</sup>. They relate to all insurance products aimed at the excluded or underserved market, rather than just those aimed at the poor or a narrow conception of the low-income market, while microinsurance is specifically aimed at low-income populations. Any type of insurer regardless of its size and legal form can contribute to the enhancement of access to insurance.

4. **About this paper.** The purpose of this paper is to provide application guidance on the way the ICPs could be applied in a proportionate manner which should contribute to removing unnecessary barriers by disproportionate regulation and supervision, while at the same time ensuring appropriate policyholder protection. While descriptions and examples of how MCCOs operate and are supervised are provided from both developed and developing market perspectives, the primary focus of this paper is for insurance supervisors who are seeking to enhance financial inclusion in developing markets.

5. A diverse range of institutions are commonly described as MCCOs, including mutuals, mutual benefit organisations, cooperatives, friendly societies, burial societies, fraternal societies, community-based organisations, risk pooling organisations and self-insuring schemes.

6. MCCOs can have an important role in inclusive insurance markets. As outlined in the 2010 IAIS Issues Paper on the Regulation and Supervision of Mutuals, Cooperatives and other Community-based Organisations in increasing access to Insurance Markets, their member-based nature raises a number of issues that may require a dedicated regulatory and

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<sup>1</sup> The complete set of ICPs including introduction, Principles, Standards and Guidance can be found on the public section of the IAIS website (<http://www.iaisweb.org/ICP-on-line-tool-689>). The reference to specific ICPs, Standards and Guidance in (the footnotes of) this paper may change as a consequence of ICP revisions.

<sup>2</sup> Insurance refers to the business of insurers and reinsurers, including captives.

<sup>3</sup> The IAIS Glossary defines a “customer” as a “policyholder or prospective policyholder with whom an insurer or insurance intermediary interacts, and includes, where relevant, other beneficiaries and claimants with a legitimate interest in the policy”. The glossary does not define “policyholder” although earlier papers had noted that “Policyholders includes beneficiaries”.

<sup>4</sup> Microinsurance is a business line for the low-income segment contributing to access and an inclusive insurance market.

supervisory response. Many MCCOs operate as insurers; however, some also provide administrative, educational and distribution services. Not all MCCOs need to function as underwriters (in a formal or informal way). Some MCCOs can be considered “aggregators”, i.e. entities that bring together people for non-insurance purposes (for example retailers, service providers, utility companies, membership based organisations or civil society organisations). These “aggregators” are then utilised by insurers, with or without the intervention of agents or brokers, to distribute insurance and - depending on the model - fulfil additional functions such as administration and/or claims pay-outs.<sup>5</sup>

7. MCCOs have several specific features that distinguish from insurers that are share companies, such as the fact that MCCOs are member-owned and involve their members/policyholders in the governance of the organisation (see paragraphs 26 onwards). Their ability to operate independently as stand-alone entities in remote and rural areas without long distribution lines makes them a potentially important business model for improving access to insurance. MCCOs can also develop beyond rural areas to become mainstream insurers serving all the population, filling a gap for those who are un(der)served both in rural and suburban areas. MCCOs can overcome geographic, cultural, service and product design challenges which other insurers might not be able or willing to address in order to provide insurance to low income populations.

8. MCCOs typically collect the premiums from their members and pay out any claims itself. Therefore, in principle, funds are retained and redistributed within the entity. Members will pay premium or contributions into a pool held by the MCCO. These payments are used to cover the expenses such as claims made by members, the funding of provisions, and the financing of various operating costs. As an MCCO<sup>6</sup> does not generate profits to be paid out to shareholders as dividends, any surplus is reinvested in the MCCO or possibly paid out or used for the benefit of its members. However, if the financial results of the MCCO show a deficit the members may – in accordance with the provisions in the articles of association or by-laws - be called to make supplementary payments. In a case whereby calls for supplementary payments are not included in the articles of association or by-laws, or cannot be met, the entitlement to loss compensation may be reduced to meet the available funds.

9. This typical mode of operation has developed over time as MCCOs often originate from solidarity and charity initiatives amongst social or professional groups where in the case of a misfortune or event – like a fire at a farm or a death of a breadwinner – a collection would be taken up for the benefit of those affected by the incident. In the course of time, these practices have been professionalised and MCCOs nowadays generally base their business on sound insurance technical methods and practices including for premium calculation.

10. The extent to which a legal entitlement exists may be a reflection of an evolution of an MCCO, for example from an informal charity to a licensed MCCO. The report “Evolving Microinsurance Business Models and their Regulatory Implications | Cross-country synthesis note 1”<sup>7</sup> of the Access to Insurance Initiative (A2ii) states: “The local self-help model represents the origin of insurance in many societies. It develops in the absence of appropriate or accessible formal alternatives, where people do not trust formal options, or when individuals prefer self-sufficiency based on solidarity. Strong community ties are generally a pre-requisite to the development of the local self-help model.”

11. The year 2012 was proclaimed by the United Nations as the International Year of Cooperatives (Resolution 65/184). General Assembly Resolution 66/123 recognises that

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<sup>5</sup> See paragraph 32, second bullet, of the Issues Paper on Conduct of Business in Inclusive Insurance

<sup>6</sup> There maybe hybrid forms of MCCOs where part of the capital is supplied by shareholders who may be cooperatives themselves.

<sup>7</sup> Source: Access to Insurance Initiative, 2014. Evolving Microinsurance Business Models and their Regulatory Implications | Cross-country synthesis note 1, p.20; Available at: [https://a2ii.org/sites/default/files/reports/2014\\_08\\_08\\_a2ii\\_cross-country\\_synthesis\\_doc\\_1\\_final\\_clean\\_2.pdf](https://a2ii.org/sites/default/files/reports/2014_08_08_a2ii_cross-country_synthesis_doc_1_final_clean_2.pdf)

cooperatives in their various forms (including healthcare, housing, credit, agricultural products) “are becoming a significant factor of economic and social development and contribute to the eradication of poverty”<sup>8</sup> and refers to cooperatives as “sustainable and successful enterprises that contribute to employment generation, poverty reduction and social protection, across a variety of economic sectors in urban and rural areas”. The UN Secretary General reported that cooperatives “through mutual companies, (...) provide social security protection in the form of property / casualty insurance, medical insurance, and life insurance.”<sup>9</sup>

12. In the Pittsburgh Communiqué (September 2009), the G20 noted that the leaders committed to “improving access to financial services for the poor” including to “support the safe and sound spread of new modes of financial service delivery capable of reaching the poor”. The experience of a number of countries has been that MCCOs can be one way to achieve these objectives as an active part of the market. For example, in January 2015 the Chinese Insurance Regulatory Commission issued a pilot scheme for the development of mutuals in China. The scheme aims at extending insurance protection to more Chinese people by using the advantages of mutuals as non-profit bodies with a strong participation of members in the governance.

13. It is recommended that supervisors, regulators and policymakers consider this guidance (1) for the proportionate application of the ICPs to MCCOs and (2) for identifying and removing unnecessary barriers in disproportionate regulation and supervision, while at the same time ensuring the appropriate level of policyholder protection.

14. The paper does not address the special case of insurers formed to provide Takaful. The IAIS and the Islamic Financial Services Board (IFSB) have jointly issued the paper Issues in Regulation and Supervision of Takāful (Islamic Insurance) (August 2006) as well as the Paper on Issues in Regulation and Supervision of Microtakāful (Islamic Microinsurance) (November 2015). The IAIS continues to collaborate with the IFSB with respect to standards development.

15. Throughout this paper, examples or observed responses have been included for illustrative purposes only and should not be considered to provide preferred solutions or best practices in addressing the issue(s) concerned.

16. **Structure of the paper.** This Paper is structured as follows:

- Section 2 provides a description of the main features and background of the MCCO sector. This should assist in providing an adequate understanding of the context in which the ICPs could be applied in a proportionate manner as described in paragraph 8 of the Introduction to the ICPs. For that purpose this section provides a definition of MCCOs and describes the key defining characteristics and range of organisational forms. Also, Federations, Associations, Groups and Apex organisations that are sometimes used are discussed as these might affect the application of some ICPs and call for specific guidance. Finally in this section details on the quantitative size of the MCCO sector are provided.
- Section 3 deals with relevant ICPs and contains the application guidance. After a general section on proportionality, the ICPs are for this purpose clustered into: Formalisation and Licensing; Corporate Governance; Capital Requirements and Capital Resources; Portfolio-transfers, mergers, demutualisation and winding-up; Supervision general, Supervision and Supervisory Review.

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<sup>8</sup> <http://www.un.org/en/events/coopsyear/index.shtml/>  
<http://undesadspd.org/Cooperatives/UNDocumentsonCooperatives.aspx>

<sup>9</sup> “Cooperatives in social development and implementation of the International Year of Cooperatives”, 13 July 2012 ([68/168](#))

## 2. Description of the MCCO sector

17. This section provides a description of the main features and background of the MCCO sector, which should assist in an adequate understanding of the context in which the ICPs could be applied in a proportionate manner, in particular in order to further enhance access to insurance. There is particularly a clear distinction in the legal form between MCCOs and share companies. Supervisors should be familiar with this distinction.

### 2.1 General Definition of MCCOs and Key Defining Characteristics

18. MCCOs exist across the world, both in the developing as well as in developed economies. In developing countries, at times they may appear as voluntary associations for pooling money to share risk or to assist each other during adversity, such as death. In the developed countries, MCCOs retain their typical characteristics, while operating and competing in the same markets as commercial insurers. A range of financial services including insurance, pensions, savings and credit are provided through them either to their members or to the public.

19. There is no universal definition of mutuals. The European Commission provides a useful reference point for defining Mutuals.<sup>10</sup> “(Mutuals are) *voluntary groups of persons (natural or legal) whose purpose is primarily to meet the needs of their members rather than achieve a return on investment.*” It has also defined mutuals as: “*enterprises providing life and non-life insurance services, complementary social security schemes, and small value services of social nature*”.<sup>11</sup>

20. It is relatively easier to define the cooperatives. The most commonly agreed upon definition is from the World Cooperative Monitor (2014)<sup>12</sup> stating that a cooperative is “*an autonomous association composed mainly of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise which acts according to internationally agreed upon values and principles as outlined by the International Co-operative Alliance. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership*”.

21. The Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE)<sup>13</sup> defines “Mutual and cooperative insurers, i.e. *insurers in the legal form of a mutual or a cooperative, as owned or controlled and governed by their members. Their objective is to insure their members, natural or legal persons, against risks they face.*”

22. The International Cooperative and Mutual Insurance Federation (ICMIF) has provided a description of mutual microinsurance. According to ICMIF<sup>14</sup>: “*Mutual microinsurance is a mechanism to protect people against risk in exchange for payments tailored to their needs, and in a manner where they participate in the design, development, management and governance of such product, services or institutions. Mutual microinsurance is deemed to be inclusive as it encompasses all types of low income or marginalized groups which may not fall under the conventional microinsurance definition*”.

23. Therefore, it is clear that different definitions have extended the definitional scope of MCCOs to include organisations that operate on mutual/cooperative principles without being

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<sup>10</sup>

<http://www.europarl.europa.eu/document/activities/cont/201108/20110829ATT25422/20110829ATT25422EN.pdf>

<sup>11</sup> <https://ec.europa.eu/growth/sectors/social-economy/mutual-societies/>; See also the Study by the European Commission on the current situation and prospect of the mutuals in Europe

(<http://ec.europa.eu/DocsRoom/documents/10390/attachments/1/translations>)

<sup>12</sup> Published by the International Cooperative Alliance (ICA).

<sup>13</sup> AMICE Facts and Figures 2012

<sup>14</sup> ICMIF 5-5-5 Mutual Microinsurance Strategy 2016



restricted by legal definitions - of which there is a wide variety across the globe, some of which are particular to one country alone. Through the review of the above definitions, it is possible to derive some key defining characteristics of those MCCOs which are involved with insurance in one or another form, namely:

- **Member ownership:** At least some of the beneficiaries of the services provided by the organisation are, by virtue of their membership, also owners of the organisation or have powers similar to those held by owners in shareholder organisations<sup>15</sup>.
- **Democracy:** By exercising ownership type powers, the members form the general assembly of the organisation and, through this forum, can exercise democratic rights on ultimate decision making such as the election of directors to the governing board.
- **Solidarity:** The extent to which members are seeking a beneficial outcome where the beneficial outcome is reliant on the membership of the group. This concept is particularly relevant to the issue of capital.
- **Created to serve a defined group and purpose:** The organisation is established and members become affiliated with the organisation through a common goal, purpose, or characteristic.
- **Not-for-profit:** The profit (or surplus) or loss (deficit) is accrued to the members. In the case of losses, there can be a variety of treatments depending on the regulation in each jurisdiction.

## Membership

24. The element of member participation in the nature of ownership of the entity does suggest room for differences in the regulatory arrangements or supervisory focus. In particular, when only policyholders - and no shareholders - exist in an insurance company, the existence and management of any conflicts of interest are resolved solely in the interests of policyholders, whereas it is not as clear how conflicts of interest are addressed between the interests of shareholders and policyholders in a share company.<sup>16</sup>

25. There is, however, a complicating feature. In some cases, either legally or in practice, not all policyholders may have the same rights and the same effective representation on the board of directors. In some entities, mainly larger MCCOs, there is a feature of partial ownership where some of the policyholders are members and owners whilst others are not. This could be based on the need for regulatory compliance or a business strategy. In such partial member ownership situations, there is a potential conflict between the member owners and the other policyholders who do not have ownership rights. In other cases, one or more categories of policyholders may be entitled to different ownership rights than others. It is possible that although the legal equivalence may exist between groups of members, there may be decisions required in the management of the organisation that have to weigh competing interests between groups of members - such as those with one type of insurance, and others with a different type or, in entities where insurance is not the core business purpose, and between those with insurance and those without insurance. In such situations, depending on the orientation of the decision making body, it may be that some potential conflicts would arise that need to be balanced.

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<sup>15</sup> Member ownership in MCCOs is not identical to shareholder rights and obligations although it may carry many of the same opportunities such as the right to vote at annual meetings or appoint board members. Most critically, member rights in MCCOs are not usually able to be sold / transferred at will as is the case for shareholders.

<sup>16</sup> Note that, in line with the broader definition used in the ICPs, policyholders includes beneficiaries. In particular, third party liability claimants are third parties but the protection of an insurance supervisory framework remains applicable and it is intended that it be read accordingly. With respect to any regulatory and supervisory adjustments for MCCOs, it needs to be recognised that third party beneficiaries are not usually members of a mutual organisation but the protection of the regulatory and supervisory framework should extend to them.

## **Democracy**

26. MCCOs are usually governed by boards elected or appointed by the membership in some fashion or another. This means in principle that members have the right to be involved in the selection of the board, to participate in meetings of the general assembly of the membership, and make such decisions as the articles of association allocates to the general assembly.

27. In smaller MCCOs, achieving the democratic objective is easier than in larger ones. For larger or more geographically dispersed groups, MCCOs sometimes adopt a sub-electoral process such as on a regional basis or by groups of policyholders or by type of product or service, or some other means of ensuring that the voice of the members is represented at the general assembly. Some UK friendly societies operate governance via a 'delegate' system: local branches nominate an individual to take forward their views to the mutual's General Meetings. The delegate is expected to represent the interests of all the members in the branch. These processes can reinforce the process of democracy and strengthen the functioning of the democratic process even in very large organisations. Equally, it is important that such processes do not prevent the voice of ordinary members from being expressed at meetings. The manner in which the democratic process is put into effect can also be determined in association with the history or nature of the membership or the defined group and purpose that forms the organisation.

28. As the effectiveness of the democratic process of the membership decreases, there is an increasing potential for particular groups to capture the democratic process. The most usual concern is that the management might carry a greater weight than is desirable, thus creating an agency problem. In addition, the same result may occur between various groups of members where the access to the democratic process can be variable between them. One special case of different groups of members might exist when the state is a member of the organisation – a feature of some historic arrangements that continues in some jurisdictions.

29. A sound democratic process also depends on both the access of members to the voting process as well as their being informed and able to make the relevant decisions that come before them. The process of informing members of the content and timing of matters that they are to consider is as important as the process by which they actually can attend and exercise their voice.

30. It should be noted that while "democracy" is a characteristic of MCCOs, this does not reduce the need for independent supervision to protect policyholders from a prudential and conduct of business perspective, and to promote financial stability.

## **Solidarity**

31. MCCOs have, in most cases, a mutual or self-help origination and they provide a source of risk pooling for the membership as is already mentioned in paragraph 8. The consequence of this can be two sided. Although members benefit from the diversification of the risk pool, they may also collectively underwrite the performance of the pool with the implication that members will make additional contributions in the event that the financial performance of the pool requires such contributions. This concept, sometimes officially stated in the articles governing the MCCO and sometimes implied, is referred to as solidarity.

32. Solidarity can differ from the stock company equivalent where shareholders might be prepared to support losses but would not generally be required to do so further than a defined amount and could be considered to do so on commercial terms. For a MCCO, however, the decision to pay further amounts may be made on both commercial and other more social reasons reflecting the sense of solidarity between members of the group.

33. The strength of solidarity can vary and is closely linked to the other aspects discussed in this section.

34. Related to the issue of solidarity is the question around benefits being guaranteed; meaning in this respect the extent to which a possible claim is legally enforceable, or can be mitigated, or is subject to a decision by the MCCO. Various options can occur:

- A claim is discussed by the group without any legal entitlement to compensation. The MCCO or the MCCO's Board or a council in the MCCO will discuss the merits of the claim with consideration for the member's personal need for assistance. This lack of legal entitlement to compensation may be grounds not to consider the specific MCCO as an insurer for the purpose of insurance regulation and supervision.
- Alternatively, the MCCO could limit any formal claim according to available funds in the MCCO – therefore limiting the legal entitlement of the member<sup>17</sup>. Since there is in principle a legal entitlement to compensation, there are grounds to assume the existence of an insurance contract and a need to protect the interests of the customers involved.

### **Discretionary Mutuals: examples from the United Kingdom and Australia**

A discretionary mutual is a mutual which does not engage in or carry out insurance or reinsurance business; where a member who suffers a loss resulting from a “qualifying” risk or contingency (i.e. one previously specified by the mutual as one which it may indemnify members against), can apply for a grant of assistance to meet all or part of the costs associated with such loss. The member, however, has no contractual or other form of legal or equitable right to receive any compensatory payment. The mutual has absolute discretion whether to indemnify a member, on the mutual principle, who suffers a loss resulting from a “qualifying” risk or contingency.<sup>18</sup>

#### Examples of discretionary mutuals:

- The Military Mutual

Established in 2010 with no shareholders, The Military Mutual (TMM) is run for the benefit of its members, meaning that surpluses can be used to support military community and causes.

TMM offers a range of policies that cater to the needs of serving members, reservists and veterans from the Royal Navy, Army and Royal Air Force.

- The NFRN Mutual

The NFRN Mutual was established in 1999 offering cover to newsagents and other retailers, providing an alternative to conventional insurance. They were created by retailers for retailers to provide Members with competitive cover, good service and a sympathetic claims settlement ethos. The NFRN Mutual is a limited company.

- Unimutual

Unimutual is a member-owned company limited by guarantee. Unimutual Limited's AFS Licence became operational on 31 December 2003. Unimutual is a discretionary mutual authorised to issue its own financial product, which is membership of the mutual and risk protection offered to Members. Membership of the mutual and the protections offered to the Members are subject to the discretion of the Unimutual Board. Under its AFS Licence,

<sup>17</sup> Alternatively, to enable payment of claims the MCCO's internal regulation or by-laws may give it the legal possibility to collect (additional) premiums / contributions from the members, so-called members' calls (see paragraph 108).

<sup>18</sup> Study on the current situation and prospects of mutuals in Europe, Final Report, Panteia, November 2012

Unimutual is also authorised to provide financial product advice and deal in general insurance products for wholesale clients. This means that, for risks for which it does not provide discretionary protection, Unimutual is licensed to arrange insurance for Members.

Since its small beginning in 1990 with four universities, Unimutual has grown to become the major provider of asset and liability risk protection to the higher education and research sector. Membership is now comprised of the majority of Australian universities, together with associated entities ranging from small residential colleges and conservatoria of music to large research entities.

- Benenden

Benenden Healthcare Society Limited an incorporated friendly society, registered under the Friendly Societies Act 1992. The core element of its standard product is a discretionary healthcare product. The product includes tuberculosis cover, which is provided on a contractual basis, and which amounts to around 1% of premium income. With regard to regulation, the discretionary and contractual elements of the product are treated differently. The Society's contractual business (the provision of tuberculosis benefit) is authorised by the Prudential Regulation Authority, and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The remainder of the Society's business is undertaken on a discretionary basis, and the Society is subject to Prudential Regulation Authority requirements for prudential management.

### **Created to serve a defined group and purpose**

35. MCCOs are usually formed by a defined group of people for a defined purpose. While MCCOs often start with a defined purpose including risk pooling among a particular group of individuals, businesses or municipalities, as they grow they often expand the purpose to address other purposes or groups of risks. This results in diversification and a greater ability to spread risk beyond a particular group of similar policyholders in a manner that can help minimize the impact of claims on the original group of members. Often, legal requirements oblige that they maintain a definition of membership and/or purpose in an ongoing fashion such that new members are also part of the defined group or purpose.

36. The defined group or core purpose of the MCCO may be the insurance function. Alternatively, in particular for cooperatives, the insurance function may be ancillary and the core purpose may be something else such as, the sales of agricultural products or charitable and religious purposes. The membership may have a common definition that is limited or broad and may be geographically close or dispersed.

37. Depending on the circumstances, the strictness of the definition of the group membership and purpose may be reflected as part of the regulatory or supervisory treatment or may influence how other aspects are considered. The definition may strengthen other aspects of mutuality or, in others, steps may be required to reinforce these aspects and ensure they are functional.

38. In the report "Evolving Microinsurance Business Models and their Regulatory Implications | Cross-country synthesis note 1"<sup>19</sup> of the A2ii, MCCOs are categorised in terms of microinsurance business models under "local self-help" characterised by the fact that "a group of persons (such as a mutual or another community-based organisation) pools its own risk." The report also states: "The biggest incentive for the self-help group to offer insurance to members is that members experience risks which they are unable to mitigate on their own, yet they do not have access to affordable formal insurance. The local self-help group model

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<sup>19</sup> Source: Access to Insurance Initiative, 2014. Evolving Microinsurance Business Models and their Regulatory Implications | Cross-country synthesis note 1, p.20; Available at: [https://a2ii.org/sites/default/files/reports/2014\\_08\\_08\\_a2ii\\_cross-country\\_synthesis\\_doc\\_1\\_final\\_clean\\_2.pdf](https://a2ii.org/sites/default/files/reports/2014_08_08_a2ii_cross-country_synthesis_doc_1_final_clean_2.pdf)

allows individual members to pool risk among members, thereby mitigating the financial impact of risks. In some instances an external party, such as an NGO or technical assistance provider may encourage the formation of groups and render some services to the groups.” If the latter is the case both the group and the supervisor should be aware of business continuity risks connected with the discontinuation of the technical assistance. Alternative solutions should then be sought or preferably be pre-arranged for that eventuality.

### **Not-for-profit**

39. MCCOs, by their nature, accrue surpluses (or perhaps deficits). These surpluses are maintained or distributed for the benefit of the members.<sup>20</sup> It is notable that this surplus accrual and maintenance can be for members collectively rather than individually and separately. Accrued surplus also has a characteristic of being maintained, at least to some extent, across generations of membership. In the long term, there may be some part of retained surplus that arose at a time when none of the current members held membership. The method of distribution of any surpluses may take place through benefit increases or premium reductions similar to participating products offered by shareholder firms but may also include investments in providing ancillary services or contributing to community projects oriented to improved well-being. Regardless of the method of distribution, issues of equity in the distribution may be critical and therefore supervisors could take a proactive approach in protecting the interests of policyholders in defining the use of accumulated surpluses.

## **2.2 Range of Organisational Forms**

### ***Range of organisational forms considered as MCCOs***

40. For the purposes of this paper, MCCOs include a very diverse range of types of organisation and may be described differently in different jurisdictions. MCCOs may include organisations and institutions that are:

- not registered under any specific law or regulation;
- recognised under a specific law even if not distinguished for insurance purposes;
- recognised under the insurance law itself.

41. Examples of such MCCOs include:

- Mutuels
- Mutual Benefit Organisations
- Cooperatives
- Friendly Societies
- Burial Societies / funeral assistance providers
- Fraternal Societies
- Community-based organisations
- Risk pooling organisations
- Self-insuring schemes.<sup>21</sup>

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<sup>20</sup> See also paragraph 108

<sup>21</sup> This paper addresses self-insurance schemes where those self-insurance schemes insure a group who also effectively sponsors or owns the scheme and that it operates on a not for profit basis.

42. Annexes 1 and 2 contain an overview of MCCOs and their purposes as defined in various jurisdictions. It is clear that MCCOs definitions vary from one jurisdiction to another. Some forms of MCCOs may not be covered under the regulations and exist informally. The coexistence of different forms could be attributed to the historical and socio economic background of the society. For example, in Japan cooperatives are eligible to do "Kyosai" (mutual aid) business and in the UK friendly societies emerged to cope with unpredictable catastrophic events or acute / terminal illness. Through state regulation, the latter societies were further involved in providing formal life insurance to their members. Burial Societies (in most of Africa) evolved from the need to fund funerals or hospitalisation costs. These societies had both social and economic functions within the community.

43. The discussions on legal definitions and forms of MCCOs could be concluded with the understanding that based on demonstrated needs, communities have chosen to organise themselves. These organised / semi organised groups have essentially worked for the benefits of members exclusively. With time, faith and trust earned from members has allowed these organisations to get attention from the government and attempts were made to regularise and acknowledge them as formal institutions. With such acknowledgements (through government regulations) - these organisations have shown significant growth which is discussed in section 2.4 and which highlights the role of enabling regulations to realise the potential of MCCOs in emerging markets.

### **2.3 Partnerships of MCCOs: Associations, Groups and Apex organisations**

44. MCCOs may choose to organise themselves in groups and in member-driven organisations like associations. This could create various advantages or disadvantages from a business or regulatory perspective.

#### **Associations**

45. MCCOs have larger potential to deliver inclusive insurance by collaborating and developing partnerships amongst each other. Such partnerships could be termed as associations of MCCOs that could exist at the national or regional level. A few examples of each classification are included in Annex 3 of this paper for the purpose of building an understanding on the need and importance of such bodies.

46. Such partnerships would enhance group solidarity, enable peer based learning, develop a code of conduct and engage in joint financial education activities. In addition, they represent their members towards the public and engage in a dialogue with the authorities, for example to lobby for tax benefits or to contribute to a National Financial Inclusion Strategy.

#### **Groups and Apex Organisations**

47. MCCOs are sometimes organised in group structures. At the top of the group there would be a parent company or apex organisation<sup>22</sup>. The parent company could for example be a cooperative of which the various MCCOs are a member. Their membership allows them to cooperate and benefit from joint arrangements. Participation by MCCOs in a group structure would enhance group solidarity, and provide the much needed scale to the effort of delivering insurance to the un- or underserved. The "parent" cooperative could for example also provide

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<sup>22</sup> See paragraph 49.

insurance technical expertise or actuarial services or make collective reinsurance arrangements.

48. As an example<sup>23</sup>, the Société de Groupe d'Assurance Mutuelle (SGAM)<sup>24</sup> was created by French Law with the Ordinance of 29 August 2001 based on the SGA (sociétés de groupe d'assurance), the existing model for public limited companies with the aim of enabling the partners of the group to manage important and sustainable financial solidarity links. The mutual group structure is open to all legal types of European insurance undertakings, (PLCs, P&C or health mutuals, cooperatives, pension providers or reinsurers) provided at least one of the organisations is headquartered in France and thus compliant with the insurance code<sup>25</sup>. The SGAM itself cannot sell insurance. Its purpose is to manage investments and to delineate the strategy of the group. It is the Affiliation Agreement (between the SGAM and its member companies) that describes the links, duties, commitments, cost sharing and all other forms of cooperation. This legal tool is considered by mutual insurers as a useful instrument to cooperate and/or consolidate without losing their mutual identity<sup>26</sup>.

49. Apex organisations are entities that are formed to provide services to groups of MCCOs or to facilitate groupings of such organisations, or both. They can be owned or operated by the group of organisations that they provide services to, or can be more independent in legal terms.<sup>27</sup>

50. For the supervisor the existence or possible use of these constructions can be relevant. If, for example, the organisational size of the mutual is too small to allow the hiring of specialists such as actuaries, this expertise can be sourced in from the parent company or an apex organisation. It will then be important to involve these entities in the supervisory reviews. In addition, supervisors could rely on the parent company / apex organisation for data collection or compliance with requirements (for example training of agents).

## **2.4 Size of the MCCO sector<sup>28</sup>**

51. Globally, the mutual insurance sector wrote a record level of business in 2014, with aggregate premiums of US\$ 1,286 billion, up 1.3% from the previous year (2013: US\$ 1,269 billion). The mutual sector posted its seventh consecutive year of positive premium growth in 2014 with year-on-year growth since 2007, demonstrating a flight to quality since the onset of the financial crisis. Annual growth of the mutual sector was greater than the global market average in five of the previous seven years. Since 2007, mutual insurers collectively registered a compound annual growth rate (CAGR) of just under 4% between 2007 and 2014, more than double the CAGR of the total market during the same period (+1.8%).

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<sup>23</sup> Source: ICMIF

<sup>24</sup> The SGAM is included in the Insurance Code (Code des assurances), articles L 322-1-2 and L 322 1-3 (Decree D 2002-943 of 26 June 2002 to transpose the Directive 98/78/CE of the European Parliament and the Council of October 27 1998 on the supplementary supervision of insurance undertakings in an insurance group).

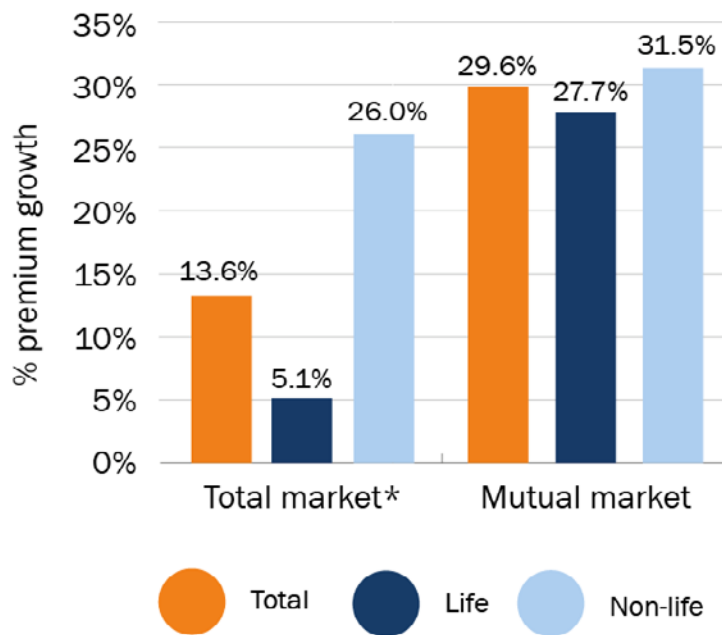
<sup>25</sup> Jointly administered by the social partners, i.e. employers' and employees' organisations.

<sup>26</sup> Examples of SGAMs existing in France are: Covéa (MAAF, GMF, MMA, 2003); SMABTP (SMABTP, SMAvie BTP, 2006); AG2R Prévoyance, La Mondiale (2007); Sferen (MACIF, MAIF, MATMUT, 2010); and MACSF (MACSF, le Sou Médical, 2009).

<sup>27</sup> See paragraph 3.38 and footnote 16 of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>28</sup> Source: 2016 ICMIF Mutual Market Share report (<https://www.icmif.org/news/mutual-and-cooperative-insurers-continue-expand-their-global-reach-latest-icmif-global-mutual>). ICMIF's definition of "mutual" includes organisations whose legal status may not be classified as such in their national law, but whose structure and values reflect the mutual/cooperative form, i.e. companies which are owned by, governed by and operated in the interests of their member policyholders. These include limited companies owned by people-based organisations, fraternal benefit societies (fraternals), friendly societies, Takaful providers, reciprocals, nonprofits, exchanges, discretionary mutuals, protection and indemnity (P&I) clubs, community organisations and foundations.

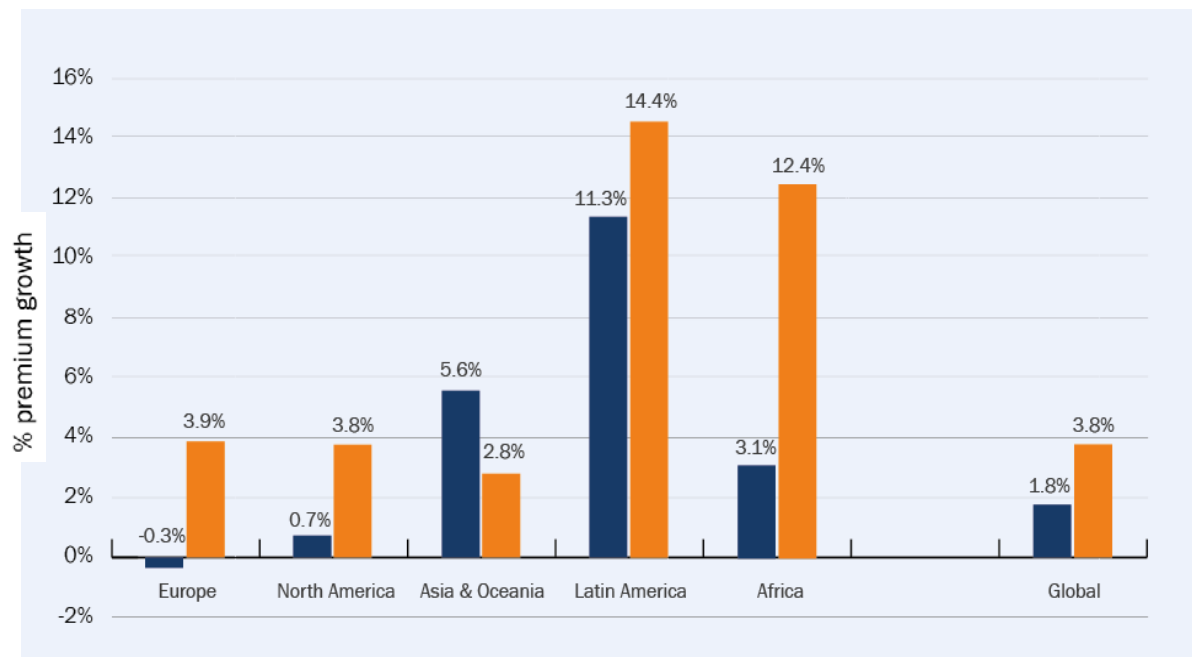
52. As a result of mutual insurers' outperformance of the total insurance market, the global market share of the mutual sector increased from 23.7% in 2007 to 27.0% in 2014 - a proportional increase of 14%.



\*Total market as per Swiss Re

Global premium growth 2007-2014

53. The above figure shows 2014 was the fifth consecutive year of premium expansion for the global insurance market, resulting in aggregate premium volumes that were 13.6% greater than pre-crisis (2007) levels. In comparison, the global mutual insurance sector reported a 29.6% increase in premium income during the same seven-year period.



\*Total market as per Swiss Re

Regional market and mutual compound annual growth rates (2007-2014)



54. Between 2007 and 2014, the CAGR of the mutual sector exceeded that of the rest of the insurance industry in four of the five global regions. The total market in Europe and North America saw little change in premium volumes between 2007 and 2014: a small contraction in the European market (-0.3%) and a negligible increase in the North American market (+0.7%). In contrast, the mutual insurance sector in Europe and North America increased by 3.9% and 3.8% respectively, thus outperforming the total market by more than three percentage points in both regions.

55. Mutual insurers in emerging markets recorded their strongest premium growth since 2007, with Latin American mutuals reporting the highest growth rates (CAGR of 14.4% compared to 11.3% for the total market). African mutuals grew at a CAGR of 12.4% between 2007 and 2014, almost 10 percentage points greater than regional average of 3.1%.

56. Asia and Oceania was the only region where average mutual growth since 2007 did not exceed that of the total market. Mutual insurers reported a CAGR of 2.8%, which was half of the CAGR for the total market (+5.6%).

	2014	2007
Europe	31.2%	23.3%
North America	35.5%	28.8%
Asia & Oceania	16.1%	19.5%
Latin America	12.1%	10.0%
Africa	2.1%	1.2%
Global	27.0%	23.7%

Mutual and cooperative market share: 2007 – 2014 comparison

57. Global: The global mutual market share of mutual insurers increased from 23.7% in 2007 to 27.0% in 2014 (a proportional growth of 14%). Regional breakdown: Latin America was the region with the fastest mutual premium growth over the seven year period 2007 to 2014, with a mutual market share of 12.1% in 2014 (2013: 10.0%). Despite much lower mutual insurance penetration in Africa compared to other regions, market share almost doubled from 1.2% in 2007 to 2.1% in 2014.<sup>29</sup>

Global rank*	Country	Mutual market share			% growth 2013-2014	% share of global market*	% share mutual market
		2014	2013	2012			
1	USA	37.1%	36.7%	34.6%	+1.1%	26.9%	36.9%
2	Japan	40.8%	43.1%	45.0%	-5.4%	9.5%	14.4%
3	UK	7.7%	7.6%	7.8%	+1.3%	7.4%	2.1%
4	China	0.3%	0.3%	0.3%	-15.7%	6.9%	0.1%
5	France	47.4%	46.5%	45.0%	+2.0%	6.6%	11.6%
6	Germany	44.4%	43.5%	43.2%	+1.9%	5.3%	8.8%
7	Italy	23.9%	23.4%	20.3%	+2.4%	4.1%	3.6%
8	Korea (Rep)	10.4%	10.2%	9.4%	+1.6%	3.4%	1.3%
9	Canada	19.1%	19.5%	19.3%	-1.6%	2.6%	1.9%
10	Netherlands	51.0%	49.3%	49.2%	+3.3%	2.0%	3.8%
	<b>Total</b>					<b>74.8%</b>	<b>84.5%</b>

Mutual market share in the top ten insurance markets <sup>30 31</sup>

<sup>29</sup> Global Mutual Market Share 2014 ICMIF, 2016. For further information: <http://www.icmif.org/global-mutual-market-share-2014> (accessed 16.09.16)

<sup>30</sup> Global Mutual Market Share 2014 ICMIF, 2016. For further information: <http://www.icmif.org/global-mutual-market-share-2014> (accessed 16.09.16)

<sup>31</sup> Global rank and % share of global market as per adjusted figures from Swiss Re World Insurance in 2014

### 3. The Application of the Insurance Core Principles to MCCOs

58. While descriptions and examples of how MCCOs operate and are supervised are provided from both developed and developing market perspectives, the primary focus of this paper is for insurance supervisors seeking to enhance financial inclusion in developing markets. This section intends to provide application guidance on the way the ICPs could be applied in a proportionate manner to MCCOs which should contribute to removing unnecessary barriers by disproportionate regulation and supervision. The guidance included herein does not apply to MCCOs in the role of intermediary unless the ICP in question has explicitly indicated that it does.<sup>32</sup> As described in Section 2 organisational forms and structures can vary, thus depending on the MCCO, supervisors should apply the ICPs at a legal entity and/or group-level, taking proportionality into account.<sup>33</sup>

#### 3.1 Proportionality in general

59. The ICPs provide a globally accepted framework for the supervision of the insurance sector. The ICP statements prescribe the essential elements that must be present in the supervisory regime in order to promote a financially sound insurance sector and to provide an adequate level of policyholder protection. Standards set out key high level requirements that are fundamental to the implementation of the ICP statement and should be met for a supervisory authority to demonstrate observance with the particular ICP.<sup>34</sup> The ICPs apply to insurance supervision in all jurisdictions regardless of the level of development or sophistication of the insurance markets and the type of insurance products or services being supervised.<sup>35</sup> Therefore, in principle the ICPs apply to the regulation and supervision of MCCOs.

60. This section of the paper provides considerations and guidance for implementation of various ICPs where the specific characteristics of the MCCO sector gives rise to a specific approach from a perspective of proportionality. The ICPs describe the proportionality principle by indicating that: “*supervisory measures should be appropriate to attain the supervisory objectives of a jurisdiction and should not go beyond what is necessary to achieve those objectives.*”<sup>36</sup> The terms “*nature, scale and complexity*” subsequently provide the perspectives for considering proportionality. The proportionality principle in the ICPs gives room to consider specific characteristics of the MCCO sector. However, it should be kept in mind that the considerations leading to a proportionate application of a Principle or Standard should give due consideration to the desired outcome of that Principle or Standard. Where specific application guidance is not provided in this section of this Application Paper, supervisors are still expected to consider the principle of proportionality for the application of the ICPs to the MCCO sector.

61. In respect of MCCOs, types of member ownership roles, democracy, solidarity, definition of common purpose, and profit / surplus retention, may give reason to tailor regulatory arrangements and supervisory obligations. Some of the business practices, processes and other characteristics in respect of MCCOs may call for specific treatment to achieve the desired outcome of a Principle or Standard.

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<sup>32</sup> Paragraph 9 of the Introduction to the ICPs

<sup>33</sup> Although ICP 23 may not be generally applicable to MCCOs, there is a view that the role of apex organisations can give rise to some group related issues and ICP 23 could be considered as part of the treatment of such arrangements.

<sup>34</sup> Paragraph 6 of the Introduction to the ICPs

<sup>35</sup> Paragraph 8 of the Introduction to the ICPs

<sup>36</sup> Paragraph 8 of the Introduction to the ICPs

62. At the same time, the effectiveness of the mutual processes can reduce as organisations grow in size or have more diverse membership. Many MCCOs go to considerable additional lengths to reinforce the effectiveness of mutual processes. However, once organisations become very large and diverse, it has to be recognised that it becomes increasingly difficult to find material differences from the way share companies are run despite efforts to maintain the mutual identity, and therefore those very large MCCOs should be subject to the same requirements as shareholder companies. This may particularly be the case when there is a significant number of policyholders who are not members or owners and therefore have little or no say in the governance of the MCCO. It is important for supervisors to understand the differences amongst MCCOs and that their supervisory approach reflects such differences so that the same supervisory outcomes are met.

## **3.2 Formalisation and Licensing**

### **Licensing**

63. Relevant Principles and Standards<sup>37</sup> - A legal entity engaging in insurance activities must be licensed before it can operate in a jurisdiction. The insurance legislation should contain, inter alia:

- a definition of regulated insurance activities subject to licensing;
- a prohibition of unauthorised insurance activities;
- a definition of permissible legal forms of domestic insurers; and
- an allocation of the responsibility for issuing licenses.

64. Scope of the Licensing Requirement – The nature of the insurance activities will in principle determine whether a license is needed. When a MCCO is carrying insurance risk it should in principle be considered an insurer and therefore subject to licensing. The MCCO acting as insurance intermediary should also be subject to a form of licensing.<sup>38</sup> It is to be expected that a legal entitlement by a customer to a (guaranteed) benefit based on an insurance agreement should be a qualifying element of an insurance policy, requiring protection by insurance regulation and by supervisory oversight. Therefore, arrangements under which a claim is discussed by the legal entity without any legal entitlement to compensation would not be considered an insurance contract although there is a membership relationship between MCCO and members.<sup>39</sup>

65. The ICP guidance indicates that some “*jurisdictions may decide to exclude some activities from the definition of insurance activities subject to licensing. Any such activities should be explicitly stated in the legislation. Jurisdictions may do this for various reasons, such as:*

- *the insured sums do not exceed certain amounts;*
- *losses are compensated by payments in kind;*
- *activities are pursued following the idea of solidarity between policyholders (eg small mutuals, cooperatives and other community-based organisations, especially in the case of microinsurance); or*
- *the entities’ activities are limited to a certain geographical area, limited to a certain number or class of policyholders and/or offer special types of cover such as products not offered by licensed domestic insurance legal entities.”*

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<sup>37</sup> ICP 4; Standard 4.1

<sup>38</sup> Standard 18.2

<sup>39</sup> See paragraph 34: the situation described under the second bullet would qualify as insurance.

The Guidance adds that “*given the principle that all entities engaged in insurance activities must be licensed, the exclusion of limited insurance activities from licensing requirements should give due regard to having appropriate alternative safeguards in place to protect policyholders.*”<sup>40</sup> This guidance should be interpreted restrictively and not be seen as an exemption in general for the licensing and supervision of MCCOs. If small MCCOs are excluded from insurance regulation and supervision – and hence considered informal - there should be effective alternative safeguards which may be found in proven, vested social structures and practices on which the MCCO is founded. Even if such alternative safeguards can be considered to be in place, there is merit in establishing and keeping an overview of the informal MCCOs activities and to encourage that these MCCOs choose the path of formalisation.

#### **Exemptions for mutuals; the case of France and Poland:**

In France, property and casualty and life mutuals regulated by the Insurance Code, and health and providence mutuals regulated by the Code de la Mutualité (Mutuality Code),<sup>41</sup> are authorised to conduct business for the same lines of business as stock insurers. Health and Providence mutuals of the Code de la Mutualité can only be authorised for a limited number of lines of business, which are related to the person (accident, sickness, unemployment...). These mutuals cannot operate in motor insurance, household insurance and others. (art.R.211-2 of code de la mutualité).

Mutuals under the ‘Code de l’Assurance’ (Insurance Code)<sup>42</sup> (art. L.322-26-3 and R.322-125) can be exempted from licensing, provided they are fully reinsured with a “union of mutuals”. By law, the sole activity of such union must consist in fully reinsuring the insurance operations of the mutuals that are member of the union. Exemption is thus based, not on the size of the mutual, but on whether or not the mutual is or not fully reinsured with such specific entity as a “union de mutuelles.” A similar exemption exists for mutuals under the Code de la Mutualité.<sup>43</sup> See also Art.7 of the Solvency 2 Directive applicable to non-life mutuals

In Poland a mutual undertaking with a small number of members and few or low number of insurance contracts or an inconsiderable territorial range of activity can be recognised by the supervision authority as a Small Mutual Insurance Undertaking (SMIU). SMIUs operate on simplified rules. There are some “simplified” regulations relating to SMIU’s capital requirements (eg low share capital and optional guarantee fund).

66. Permissible Legal forms – The insurance supervision legislation will need to include the legal forms admissible. This is normally done on the basis of a choice of the suitable legal form for covering insurance risk which, with respect to the MCCO sector, is often vested in corporate legislation. The insurance supervision legislation will normally designate one or more of the institutional forms mentioned in paragraph 41 such as mutual and friendly societies. However, the national (insurance or corporate) laws may have restrictions on the legal forms suitable to carry insurance risk even as a membership organisation. For example, in the Netherlands, cooperatives are not eligible to underwrite insurance. For that purpose, corporate legislation has designated the mutual society.

#### Legal forms: the case of Tunisia

There are two forms of regulated mutual entities in Tunisia:

<sup>40</sup> Guidance 4.1.1 and 4.1.2

<sup>41</sup> <http://codes.droit.org/cod/mutualite.pdf>

<sup>42</sup> <http://codes.droit.org/cod/assurances.pdf>

<sup>43</sup> See also Art. 7 of the Solvency 2 Directive applicable to non-life mutuals

- Mutual insurance companies (“sociétés d’assurance à forme mutuelle”) which operate similar to insurance (share) companies; and
- Mutual societies or associations (“associations ou sociétés mutualistes”) which are groups or associations that offer support to their members (and to their relatives) and cover of risks related to their lives (including health cover, retirement compensation, disability and death).

67. Licensing Modalities – When deciding on the appropriate way of licensing a jurisdiction should opt for a proportionate approach and may take into account the nature, scale and complexity of the insurance activities of MCCOs. For small MCCOs, jurisdictions may opt for a simplified administrative authorisation through a registration process for which basic documentation such as Articles of Association, by-laws, a list of names of directors, a simple balance sheet and Profit & Loss (P&L) account or opening balance sheet, and policy conditions are submitted. After registration, the supervisor may limit its activities to a light touch oversight based on basic financial returns. This modality of licensing may be arranged for MCCOs with limited activities in terms of the number of policyholders, premiums volume, type of insurance risk (for example limited to agricultural insurance) or geographical scope (or a combination of these factors). Limitations or special conditions may be set in respect of the activities of such smaller MCCOs to control prudential and conduct of business risks. These limitations and conditions may bring these risks to a level that would allow limited oversight instead of full supervision. For example, certain lines of business such as life insurance and/or liability insurance may be prohibited. Also, conditions may be used to arrange that the articles of association or by-laws enable the board to ask members for additional contributions or use members’ account for solvency purposes. These limitations and conditions may be imposed either by legislation or as conditions connected to a decree granting exemption from full licensing and supervision.

68. For bigger MCCOs that in terms of the size of the business and risk profile are comparable with commercial insurers, following the same licensing processes as required of such commercial insurers may be appropriate. For any modality of licensing, the legislation should clearly state the applicability, requirements and process for registration.<sup>44</sup>

#### **Type of license / registration and any exemptions from supervision**

Morocco: There is no license but charters of mutuals must be approved by joint order of the Minister of Economy and Finance and the Minister of Employment and Social Affairs.

South Africa: A friendly society registered with long-term policies with (i) the value of the policy benefits, other than an annuity, to be provided or (ii) the amount of the premium in return for which an annuity is to be provided, does not exceed R7,500 (approx. US\$ 500) per member is not required to be a registered insurer.

69. Licensing Authority – The licensing authority could be the supervisor for the commercial insurers. Sometimes, for MCCOs, a special government department or public authority other than the regular insurance supervisor is assigned with the registration of MCCOs. In some jurisdictions, registration may even be limited to incorporation and registration with the Chamber of Commerce. To ensure appropriate policyholder protection, it is important that when assigning the licensing and supervisory authority that due regard should be given to whether or not the authority has the proper capacity and expertise for oversight of an insurance entity, and an understanding of the dynamics of insurance markets. It should also be able to carry out all responsibilities regarding supervisory review and analysis (both on-site inspections and off-site monitoring) of the MCCO. It should have adequate powers for effective supervisory interventions when and where needed. If the supervisor for MCCOs is a

<sup>44</sup> Standard 4.1.3

separate authority from the supervisor for conventional insurers, proper information exchange and cooperation mechanisms are essential. These could be vested in legislation or arranged through a memorandum of understanding.

## Formalisation

70. The Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets states that *“given the overall objective that informal insurance is undesirable, the existence of an informal sector may need to be formalised to give effect to this objective”* and that *“everyone should be offered the opportunity to be part of the formal financial system.”*<sup>45</sup>

71. Providers of insurance services should be included under the supervisory regime rather than excluded. Efforts to reform the regime to include MCCOs within this regime are important so all policyholders should be accorded the benefits of prudential and conduct of business supervision.

72. Paragraph 2.2 onwards of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets provides application guidance on the process of formalising the informal sector and managing transitional arrangements. In this respect it is relevant to note that:

- Transitional arrangements may be necessary to allow informal insurance to migrate to a regulated environment. They may also be relevant when regulatory arrangements anticipate that insurers will form and build capacity over time, or when pilots are conducted;<sup>46</sup>
- When seeking to formalise an informal sector, a clear and transparent pathway should be provided. As a first step, all informal entities providing insurance services should, at least, be registered through a process that is clear and transparent (see Guidance 4.1.6) and meet minimum requirements;<sup>47</sup>
- Once registered, entities should operate a restricted business model reflecting the extent to which their business is lower risk, smaller, and less complex. Conditional licenses could be used (as envisaged under Standard 4.7);<sup>48</sup>
- Accepting (imposing) restricted business models with commensurate recognition of the impact on the nature, scale and complexity of the risk should be implemented to encourage the path to a more formal status;<sup>49</sup>
- Supervisors need to avoid approaches that are inconsistent and could lead to regulatory arbitrage. This challenge can arise with transitional arrangements, or specially tailored regulation. In such instances, attention is needed to ensure that perverse incentives are not created and differentiation is limited only by the nature scale and complexity of the risk.<sup>50</sup>

73. When a process of formalisation is started, the supervisor is often confronted with a significant segment of the market that is not yet registered and is therefore difficult to reach. This is especially pertinent in the MCCO sector which could consist of numerous small-size providers that are geographically spread and unaware of pending regulatory changes. Also, the financial and other conditions of individual informal insurance providers are likely to be unknown to the supervisor. This will create a challenge in understanding the impact of

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<sup>45</sup> Paragraph 2.22 resp. paragraph 2.5 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>46</sup> Paragraph 2.22 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>47</sup> Paragraph 2.23 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>48</sup> Paragraph 2.24 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>49</sup> Paragraph 2.25 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>50</sup> Paragraph 2.30 Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

imposing (new) regulations to this market segment and will have consequences in terms of supervisory capacity to manage transitional processes.

74. Therefore, when managing a process of formalisation, the supervisor could consider the following steps:

1. identification of the insurance providers involved;
2. understanding the financial, organisational and other conditions of the providers involved as a basis for the design of a proportionate regulatory regime and an appropriate transitional approach;
3. effective outreach and communication with the insurance providers involved.

75. Identification of informal MCCOs – Without knowledge of the identity of the insurance providers that will be regulated it is impossible to communicate directly with them to explain the required measures and to manage the formalisation process. The supervisor may need to be creative in establishing a list or (tentative) register of (potential) providers that need to be formalised and supervised in the future. As it might not be clear immediately whether an entity will be considered an insurer according to the insurance regulation the list may have a preliminary nature and used to ascertain at a later stage which entities are indeed to be considered an insurer.

76. Such a list or register could be established on the basis of data from:

- The Chamber of Commerce. If MCCOs are recognised as a legal entity, they are likely to be registered with the Chamber of Commerce as could be expected with cooperatives and mutuals;
- Other public records or records from public authorities like revenue and tax authorities;
- Membership registers from trade associations. This could be the insurance association or associations for cooperatives or mutuals;
- Other private sources such as client details of telephone or internet providers;
- Private research institutions specialised in searches for marketing and other purposes; and
- Tipping-off – information provided by customers for example provided on special information lines.

To get access to these sources, the supervisor may need to verify whether the provision of the data is legally permissible. If not, a special legal arrangement – possibly as part of the transition arrangements – could be considered. The collection by and transfer of information from these institutions may require payment of a fee or reimbursement of expenses. The supervisor will need to discuss the logistics with the institutions.

77. Understanding the financial, organisational and other conditions – Once the identity and contact details of the potential insurance providers have been established the supervisor may need to contact the individual entities. The supervisor would first of all need to explain the rationale for the initiative to contact the entity and also explain the basics of the (future) regulations. This would help to persuade the entities to cooperate in the transition process, more so as they might at that stage not be required to cooperate and provide information as long as their formal status as insurance provider has not been legally established. For that purpose it is advisable to obtain the cooperation of any trade association that can assist or mediate in establishing a good rapport with its members and possibly help in collecting the data required.

78. Once a contact has been established the supervisor can ask for information - such as the following that will allow them to understand the “business” of the entity:

- The characteristics of the products and services offered to the members and the operational and other processes used;
- The financial position of the entity including assets, liabilities and investment policy;
- The nature of the organisational set-up, governance and relationships with members.

The supervisor can also request the information from auditing and actuarial firms.

79. To collect this information the supervisor may want to ask for basic financial and other data such as an annual report, balance sheet, P&L account and auditors report. It could also send out a questionnaire with specific questions to either the entity or – if possible and available – the entity’s accountant or actuary. Another option is to complement the information by doing quick scans through on-site visits.

80. This information will serve multiple purposes which are interrelated. Firstly, insight knowledge based on this information will provide an impression as to how the (envisaged) regulation will impact the entity. It will, for example, provide an indication if and how many entities will be able to meet the future financial requirements. As new regulations might raise business expenses for the entities and challenge their sustainability, regulations may prompt a trend towards an exit from the market or concentration into bigger entities through mergers and portfolio transfers. If a supervisor has a proper understanding of these aspects it can (more optimally):

- Make arrangements so that the future regulations give due regard to these conditions which could mean setting the boundaries for tiered licensing and light-touch oversight;
- Consider transitional measures which could mean establishing grandfather clauses<sup>51</sup> in regulation or grace periods<sup>52</sup> for compliance to allow accommodation with the new requirements;
- Prepare the organisation and staff of the supervisor for the process of formalisation which could mean arranging specific training for staff and make arrangements to assist in expeditious licensing processes, merger of entities or winding-up of entities.

Any deliberation on such policies and measures should be based on the optimal protection of policyholders.

81. Effective outreach and communication – As already explained in the previous paragraphs, it is important to inform the (potential) insurance providers well in advance of the pending changes to the regulations. This would allow them to prepare for any changes and provide the supervisor with the information on the financial, organisational and other states of affairs to consider specific policies and measures. Although a good rapport is helpful for this purpose, the supervisor may encounter resistance and opposition from the entities. They may have fundamental objections to becoming regulated and supervised, in particular if it jeopardises their existence. Some may be unaware that they are actually offering services to their members that can be regarded as insurance; for example, if they do not use the conventional insurance terms (contract instead of policy or contribution instead of premium). It is important that the supervisor tries to convince the insurance providers to cooperate. Often trade associations can be helpful to achieve this.

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<sup>51</sup> A clause exempting certain existing insurance providers from certain legal requirements.

<sup>52</sup> A period granted to allow compliance with regulations



## **Growing an inclusive market and responding to informality: the case of the Philippines<sup>53</sup>**

In the Philippines, mutual benefit associations (MBAs) are recognised in the insurance law since 1974. Since 2006, a special regulatory dispensation created the Microinsurance MBAs, requiring a minimum of 5,000 members, reduced operations (only life), and a lower guarantee fund that can be built over time.

The 2010 microinsurance regulatory framework saw further measures to address informality in the microinsurance space. An important component has been interagency cooperation between the Insurance Commission, the Cooperative Development Authority and the Central Bank. Thus, where cooperatives are concerned, it was recognised that the authority with functional oversight over insurance provision, the Insurance Commission, needs to work together closely with the authority overseeing cooperatives from an institutional point of view.

The current regulatory framework allows MCCOs four options for formalisation:

1. by obtaining a group policy from a commercial or cooperative insurers;
  2. by becoming an agent for a commercial or cooperative insurers;
  3. by establishing a new Micro insurance - MBA or by joining an existing microinsurance-MBA; or
  4. by applying for a commercial or cooperative license, in which case a reduced capital adequacy ratio applies if at least 50% of the business is in microinsurance.
- The representatives of the Insurance Commission Philippines emphasised that the process in the Philippines has taken several years, and is still ongoing.

There are two cooperative insurers with a significant number of low-income clients and links to primary cooperatives. Also, the MI-MBAs have been a prominent driving force for microinsurance, showing commercial insurers the potential of microinsurance. In particular, CARD MBA, the first to be licensed in 2001, fulfilled an important role as a “franchise model” for nascent MI-MBAs. The technical assistance arm formed under its auspices, RIMANSI, continues to play a strong apex and backstopping role. Today, 21 microinsurance MBAs cater for approximately three million policyholders and their family members, holding more than 60% of the life market in terms of the number of microinsured. MI-MBAs saw 32% growth between 2012 and 2013.

Challenges remain including how to sustain the current high levels of growth, how to expand the role of MCCOs (which is currently confined to life business) into the non-life market with the remaining informality of cooperatives still running self-insurance schemes. The government started to reengage on the formalisation topic in 2015. Focusing on in-house insurance schemes of cooperatives.

## **Steps towards formalisation**

Jamaica: Since 1971, all insurance companies had to be registered. The FSC monitors the market and where it is found that an unregistered entity is operating in the market, the company is given the opportunity to register. If the entity refuses to register, the entity is referred to the Director of Public Prosecution since it is a criminal offence to operate

<sup>53</sup> 9th IAIS-A2ii Consultation Call on "Mutuals, Cooperatives and other Community Based Organisations (MCCOs) in inclusive insurance", 26 March 2015

insurance without registration. The Insurance Act and the attendant regulations are set out the registration requirements.

New Zealand: the Bank identified a number of insurers with significant shortcomings in some licensing requirements, such as inadequate capital, shortcomings in their fit-and-proper policies for directors and “relevant officers”, and inadequate governance. The Bank’s approach in regard to these insurers was to require evidence of a realistic plan to address shortcomings within specified timeframes, or to show how they would cease carrying on insurance business in New Zealand and exit the sector. Whilst the Bank was not able to enforce the Act’s powers on un-licensed insurers, the licensing requirements provided a threshold that crystallised the “continue or exit decision” by requiring insurers to get up to speed and comply, or to make the decision to exit.

### 3.3 Corporate Governance

82. Relevant Principles and Standards - Corporate governance refers to the set of relationships between an insurer's board, senior management, customers and other stakeholders; and a structure through which the objectives of the insurer are set, and the means of attaining those objectives and monitoring performance are determined. The supervisor requires insurers to establish and implement a corporate governance framework which provides for sound and prudent management and oversight of the insurer’s business as well as adequately recognising and protecting the interests of policyholders.<sup>54</sup> Accordingly, the corporate governance framework of an insurer:

- promotes the development, implementation and effective oversight of policies that clearly define and support the objectives of the insurer;
- defines the roles and responsibilities of persons accountable for the management and oversight of an insurer by clarifying who possesses legal duties and powers to act on behalf of the insurer and under which circumstances;
- sets requirements relating to how decisions and actions are taken including documentation of significant or material decisions, along with their rationale;
- provides for communicating, as appropriate, matters relating to the management, conduct and oversight of the insurer to stakeholders; and
- provides for corrective actions to be taken for non-compliance or weak oversight, controls or management.<sup>55</sup>

83. The subject of corporate governance is closely related to the issue of agency, which refers to the concerns of alignment of the interests of the managers of an organisation with those of the principals / owners of that organisation that result from a split between ownership and management. Governance of MCCOs is different from that of conventional insurers formed as share companies.<sup>56</sup> In MCCOs the insurer is collectively owned (and/or controlled) by policyholders, which affects the possible divergence of interests.

84. The approach to corporate governance requirements should take into account the nature of MCCOs including the democratic processes where these are robust. As a result, this particular aspect of insurance regulation can offer both opportunities and carefully consider a balance of obligations on MCCOs. As is envisaged in the ICPs, it may be useful to consider separately defined rules for corporate governance for MCCOs that are both facilitative of access and reflect the nature of the mutuality.

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<sup>54</sup> ICP 7

<sup>55</sup> Guidance 7.0.1

<sup>56</sup> Guidance 7.0.6

## Board and General Meeting of Members

85. The effective functioning of the board remains a key objective of supervisory oversight and should be subject to the same overall review by supervisors. The manner that supervisors and MCCOs achieve this objective may, however, take account of the structure of the MCCOs.

86. When reviewing the set-up and functioning of the governance framework of an MCCO the supervisor may give due regard to the following aspects:

- The corporate structure of the MCCO;
- The size of the organisation and effectiveness of democratic processes in the MCCO;
- Appointing powers;
- Attribution of decision-making;
- Control issues;
- Suitability issues.

87. The corporate structure – In accordance with the jurisdiction’s corporate law, the MCCO could have various structures that will affect the assignment of roles, responsibilities and accountabilities and therefore the effectiveness of the governance framework. As indicated above the policyholders are considered the owners of the MCCO. Generally, under corporate law they are often considered the members of the association (cooperatives, mutuals). They constitute the general meeting of members that is empowered to take the important decisions within the limits of the law and articles of associations or by-laws. The board has ultimate responsibility for setting and overseeing the implementation of the insurer’s business objectives and strategies for achieving those objectives, in line with the insurer’s long-term interests and viability<sup>57</sup>.

88. MCCOs could have a two-tier system in which next to the board a supervisory board is established.<sup>58</sup> The supervisory board will have no executive responsibilities but is assigned with the oversight of the MCCO. While the members of the board are (in principle) appointed by the members, this might not be the case for a supervisory board. A system of co-optation may be applied on the basis of which the supervisory board could appoint its own members. This could help to assure its independence from the board whose activities it is overseeing. The supervisory board will report to the general meeting.

89. Besides a board, the MCCO will have senior-management – sometimes called directors or administrators – who are responsible for the daily operations under the oversight and steering of the board.<sup>59</sup> For small MCCOs senior-management may consist of only one or two directors which may prompt the need for special internal control measures (see below).

90. As members of an MCCO may not all be able and willing to actively participate in the democratic processes, subject to legal provisions in corporate law, MCCOs may establish a council of members’ representatives (members’ council). The council members are elected by the policyholders / members. The council typically has some of the powers normally attributed to the general meeting. A members’ council could be an effective way to enhance the democratic functioning of an MCCO.

91. Size of the organisation and effectiveness of democratic processes – the democratic processes in an MCCO are likely to work well in smaller size organisations set up as an initiative of specific coherent groups, for example, farmers or fishermen. Their interest in the pooling of a specific risk closely related to their income and livelihood as well as the personal contacts between the people involved in the MCCO may provide an impetus for democratic

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<sup>57</sup> Standard 7.2

<sup>58</sup> Guidance 7.0.3

<sup>59</sup> Standard 7.10

involvement. As organisations grow and management responsibilities are assigned to professionals, these processes may become more challenged. Groups of members may not all share the same interests or have organised themselves as a group which affects the countervailing power vis-à-vis the board and senior management. Sometimes mutuals and cooperatives are governed in a way similar to share companies with the general meeting being more a formality. In those cases, a members' council may be a helpful way of improving the democratic nature of the MCCO. From a supervisory perspective the supervisor should be aware that democratic processes might not always be functioning adequately which might negatively affect the governance of the MCCO. Similarly, the supervisor should give adequate attention to the interest and position of any policyholders who are not a member of the MCCO and - as is the case with share companies – need adequate protection.

92. Appointing powers – The power to appoint the members of the board will in principle be assigned to the general meeting of members. When reviewing the governance framework of an MCCO, the supervisor should be aware that their jurisdiction's corporate law may allow for exceptions. Sometimes the by-laws may entitle non-members to appoint one or more members of the board. However, it would seem to be against the nature of mutuality if a majority of members of the board would be appointed by non-members. If this nevertheless occurs in practice, it may create a legal dispute between members and the MCCO as a legal entity.

93. On the subject of election of members of the board, consideration should be given to the background of the candidates. Traditionally, and very often for small size MCCOs the members will elect the board from among the members themselves. Another possibility is that members need to elect the board from a list of candidates put together by the board itself or by others. Sometimes this list is even binding and no other candidates will be allowed to enter the election process. The supervisor needs to be mindful that - in particular if the election process is not based on corporate law - this might create legal or other disputes that may negatively affect the governance of the MCCO, for example if legal injunctions paralyse the decision-making ability of the MCCO. The background of board members is also important from a perspective of suitability or fitness and propriety (see paragraph 99). If the by-laws of an MCCO allow the appointment of a non-member as board member this would create the possibility of enhancing specific expertise. Alternatively, the by-laws may have provisions on the board being allowed to hire and be advised by external experts.

94. Typically, the by-laws of an MCCO based on corporate law will contain a fixed term for appointment as member of a board. Additional provisions may exist on re-election. This may pose challenges as to the continuity of the business of the MCCO, in particular if members are assigned to specific areas of attention, for example financial markets, or are member of a committee, like an audit committee. Supervisors should be mindful of such continuity issues.

95. Attribution of decision-making – There may be differences between MCCOs in respect of the types of decisions that are within the purview of the general meeting of members on the one hand and of the board on the other hand. Typically, the general meeting will have the right to decide on a change to the by-laws, approval of the annual report and winding-up of the MCCO. It is important to acknowledge this because it determines who is entitled to take certain decisions for example, in emergency situations in which expeditious measures are needed such as a transfer of a portfolio or increase of the premium. If a supervisor needs to intervene the procedures involving the approval of members or the general meeting as such is something that needs to be considered.

#### **Corporate governance requirements**

France: Specific corporate rules for the mutuals of the Code de la Mutualité where, in particular, a) the General Meeting plays a major role, b) One of the effective managers is automatically the Chair of the board meeting.

Morocco: Mutuals are managed by a board whose members are elected by the General Meeting, which sets the strategic directions and takes important decisions according to the statutory provisions. The General Meeting is composed of members of the mutual or their delegates.

Poland: The management board of a domestic insurance undertaking, with the exclusion of mutual undertaking, shall consist of at least two members. Persons contributing to the share capital may be members of the mutual undertaking's management board or the mutual undertaking's supervisory board, to the extent specified in the articles of association.

United Kingdom: In the UK, in response to concerns about standards of corporate governance in some mutuals in the 1990s, the mutual insurance sector developed a self-regulated code of governance, UK Corporate Governance Code, Annotated for Mutual Insurers. The Code has now been in place for nine years, and each year members of the Association of Financial Mutuals undertake a detailed compliance exercise, the results of which are published by the trade body.

Finland: In Finland mutuals have supervisory boards as important bodies and instruments of owners steering of the company. Public limited companies don't usually have supervisory boards when there is a Board consisting of non-executive members. The owner-policyholders have a right to participate and vote in the general meeting, which appoints the members of the supervisory board. The aim is that the assembling of the supervisory board reflects the collective of owner-policyholder (geographically, customer segments etc.). The supervisory board appoints the Board. In addition, there are certain advisory boards, which are not legal bodies of the company but more like a channel of communication between company and its owner-policyholders.<sup>60</sup>

Sweden: There are different ways to ensure an adequate influence for members. The situation in every specific mutual has to be taken into account to ensure that members' influence is guaranteed. In a large mutual with several million members the members can elect delegates to represent them at the General Meeting and exercise the voting rights, and the right to speak and make proposals. The election can be either direct or indirect via organisations that represents the members, or a combination of these methods. The number of delegates that are elected directly or indirectly by representative organisations can vary between mutuals to reflect the composition of members in the specific mutual. The delegate must be a member (policyholder) in the mutual and cannot be a board member, or employed by the mutual. The delegates are elected for one year at a time.<sup>61</sup>

96. Control issues – Supervisory approval is required for proposals to acquire significant ownership or an interest in an insurer that results in that person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer.<sup>62</sup> Control is typically exercised through possession of shares and will relate to voting rights and in particular the right to appoint members to the board. Jurisdictional legislation will need to indicate when control is significant for which a threshold will be provided, for example 25% or higher of the number of shares or voting rights in the General Meeting. As in principle MCCOs do not have share capital nor do members individually have a dominating vote in the General Meeting the provisions on approval of qualified holdings are not likely to be relevant. However, exceptions may exist. For example in the Netherlands, some mutuals are allowed to have guarantee capital divided in shares comparable to those of share companies. Therefore, similar hybrid companies might exist depending on corporate law.

97. Although the supervisor may not be in a position to formally approve the acquisition of significant control in an MCCO, - and as part of that approval process check the suitability of

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<sup>60</sup> Source: ICMIF

<sup>61</sup> Source: ICMIF

<sup>62</sup> ICP 6

the prospective significant owners - the need remains to monitor the control aspects of the MCCO. As part of checks on suitability, significant owners may need to be able to supply additional capital to support the solvency of the insurer. Such a facility might very well be missing in an MCCO, which prompts the need for alternative financial support measures (see section 3.4 on Capital Requirements and Capital Resources).

**Requirements / practices in respect of legal or natural persons with a significant ownership / control in the insurer)**

Mexico: The mutual insurance companies cannot be controlled by foreign persons or foreign financial institutions.

Tunisia: For mutual societies: there are no such control requirements or practices for mutuals.

Turkey: Control requirements are in line with those of share companies. However, there is a special limit for each shareholder in the Cooperative Law. Each shareholder is to have at least one share (at a value of 100 Turkish Liras) and a shareholder could have a maximum of 5000 shares according to the Cooperative Law.

98. One issue relating to effective governance, and also related to changes of control, is the risk of control of a mutual entity being secured by an external party when the democratic processes are less strong. MCCO structures may be more vulnerable to such interventions as the cost of taking control can be lower than would be the case if a direct purchase of equity is required. This can provide an attractive target for asset stripping activities or other frauds. As a result, care is needed to ensure such actions can be subject to effective supervisory oversight and, if necessary, intervention.

99. Suitability issues - The supervisor requires board members, senior management, key persons in control functions and significant owners of an insurer to be and remain suitable to fulfil their respective roles.<sup>63</sup> For MCCOs the persons that are likely to be assessed, or to be subject to suitability testing, are the members of the board and senior management.<sup>64</sup> For MCCOs, the democratic principles imply the members of the board are selected, and representative of, the policyholder / member body. As a result, members of the board usually have a stronger link and obligation to policyholders and may be less subject to types of conflicts of interest between those of shareholders and policyholders. To this extent, such issues could be less of a supervisory concern provided the democratic process works effectively.

100. When a board is constituted largely of elected representatives there is a risk that the board does not encompass the same diversity of experience that a more 'selected' board may arrange. When the democratic process is a key support of governance, there may be a need to ensure the availability of appropriate expertise and diversity of commercial or insurance experience, otherwise the board may not be collectively suitable in terms of the competencies required. For example, a MCCO based on membership of a particular profession or industry may not automatically draw a board with experience in commercial and insurance related matters.

101. Surveys indicate many MCCOs are very conscious of this issue and they provide regular training for new directors on an ongoing basis, although it may not always be easy to access such training without significant effort. Some MCCOs also indicated their boards are only constituted by members elected and not by any members who also hold management responsibilities and as such are "wholly independent." In addition, there is access to the board to independent experts at the board's own initiative; the ability of individual directors to initiate investigations or to secure advice; or very robust processes whereby directors can obtain

<sup>63</sup> ICP 5

<sup>64</sup> See the previous paragraphs on significant owners / qualified controls

access to management to inquire and understand issues – all of which can enhance their oversight role and help the directors in carrying out the responsibilities expected of them. In some jurisdictions, MCCOs are obliged to, or will spontaneously adopt the practice of having some appointed independent directors who bring particular expertise to the board. In others, MCCOs may have access to technical service providers as a cost effective way to build and maintain expertise.

102. For supervisors it is important – while being mindful of the democratic principles applying to MCCOs – to recognise the knowledge and expertise required and available in a specific MCCO. When doing so, the risk profile of the specific MCCO needs to be considered. For example, if investments are limited to deposits with regulated banks than in-depth knowledge of financial markets may not be necessary. The same applies to actuarial expertise if the products are limited to household insurance. Those MCCOs specialised in a specific line of business - such as agricultural insurance, funeral insurance or health insurance - will benefit from having senior management with expert knowledge in that specific area. For example, an MCCO insuring livestock could appoint a director with experience as veterinarian. Alternative measures could be considered to enhance expertise for example by hiring experts. However, a certain minimum level of knowledge needs to be present at the level of senior management and the board.

103. Supervisors should be mindful that provisions in supervisory legislation concerning suitability requirements and prior approval by the supervisor of appointments of members to the board and senior management may be perceived to be conflicting with the democratic principles of electing board members. It will in particular become pertinent if a supervisor opposes an appointment or disqualifies an appointed board member or senior manager. MCCOs may see this as an infringement of their democratic rights. Supervisors need to be clear on the legal situation in their jurisdictions certainly in sensitive areas involving the privacy of individuals.

**Suitability of board members and key functions (fit and proper requirements and vetting practices)**

Morocco: There is no specific requirement in order to be a board member but the court may order the temporary or permanent incapacity to participate in the administration or management of a mutual in case of violation of the law.

Tunisia: For mutual societies, there are no specific rules for board members and key functions now, but according to the draft of the code of mutuals, board members and key functions will be regarded the same way as in insurance companies.

**Risk Management and Internal Controls**

104. The supervisor requires an insurer to have, as part of its overall corporate governance framework, effective systems of risk management and internal controls, including effective functions for risk management, compliance, actuarial matters and internal audit.<sup>65</sup> This is a subject requiring a proportionate approach with due regard to the nature, scale and complexity of the MCCO sector in combination with the desired outcome of the Principle or Standard at hand.

105. If the business of the MCCO is limited, for example, in terms of number of policies, nature of the product, size of assets and investments or number of staff then the design and set-up of the risk management system could be commensurate. Small organisations may not need internal control processes of a complicated nature involving multiple functionaries in the organisation. For example, where the office is run by one director and one administrative

<sup>65</sup> ICP 8

member of staff – the direct visual oversight by the director becomes an important control measure, though in such circumstances there is a need to ensure that the Board is capable of effective challenge.

106. The supervisor requires the insurer to have effective control functions with the necessary authority, independence, and resources.<sup>66</sup> The ICPs require the following control functions to be in place and operating effectively: risk management function, compliance function, actuarial function and internal audit function.<sup>67</sup> It might be a challenge for small MCCOs to assign these functions to (separate) individuals within its organisation. When considering whether an MCCO is complying with supervisory requirements in this respect it should be noted that the relevant Standards speak in terms of functions rather than persons. This means that MCCOs are expected to vest or accommodate the functionality rather than having a separate individual appointed as compliance office, risk manager, etc. This would leave some room for combining these functions. However, it would not be appropriate to combine in one person functions of an oversight nature with functions of an operational nature or administrative nature. Possibly alternatives could be found by hiring external experts such as actuaries or - if possible – arranging support at group or federation level. For that purpose an adequate service level agreement would be needed. In addition, if functions are outsourced, the Board and Senior Management should still maintain adequate control and oversight of these outsourced functions.

#### **Risk management and internal controls requirements**

Morocco: Internal controls are not mandatory but some rules exist. As far as risk management is concerned, the law requires separate management of each risk covered with distinct accounting and separate accounts. Concerning the actuarial function, actuarial studies are required when creating a mutual or when changing the amount of contributions (premiums) or benefits.

Tunisia: For mutual societies: according to the draft of the code of mutuals they will be regarded the same as other insurance companies. Mainly the requirements are to appoint an actuary, an external auditor and their responsibilities, as well as specifying the responsibility of the managing director and the board of directors.

Turkey: Same requirements, however their scale is taken into account during the on-site inspections like other share companies.

### **3.4 Capital Requirements and Capital Resources**

107. Relevant Principles and Standards - The supervisor establishes capital adequacy requirements for solvency purposes so that insurers can absorb significant unforeseen losses and for providing degrees of supervisory intervention.<sup>68</sup> More specifically the ICPs require the supervisor to:

- Establish regulatory capital requirements at a sufficient level so that, in adversity, an insurer's obligations to policyholders will continue to be met as they fall due and require that insurers maintain capital resources to meet the regulatory capital requirements;<sup>69</sup>

<sup>66</sup> Refers to properly authorised functions, whether in the form of a person, unit or department, serving a control or checks and balances function from a governance standpoint and which carry out specific activities including risk management, compliance, actuarial matters, and internal audit.

<sup>67</sup> Standards 8.4, 8.5, 8.6 and 8.7 respectively.

<sup>68</sup> ICP 17

<sup>69</sup> Standard 17.2



- Include solvency control levels in these capital requirements which trigger different degrees of intervention by the supervisor;<sup>70</sup>
- Define a Prescribed Capital Requirement (PCR) which is a solvency control level above which the supervisor does not intervene on capital adequacy grounds as well as Minimum Capital Requirement (MCR) which is a solvency control level at which, if breached, the supervisor would invoke its strongest actions and which is subject to a minimum bound below which no insurer is regarded to be viable to operate effectively;<sup>71</sup>
- Define the approach to determining the capital resources eligible to meet regulatory capital requirements and their value; consistent with a total balance sheet approach for solvency assessment and having regard to the quality and suitability of capital elements;<sup>72</sup>
- Establish criteria for assessing the quality and suitability of capital resources, having regard to their ability to absorb losses on both a going-concern and wind-up basis.<sup>73</sup>

108. MCCO-specific features - Capital requirements for a MCCO may require specific consideration. The financing of the business / activities by MCCOs is different from that of traditional share companies as is indicated in paragraph 8. Where in the case of an insurer as a share company the risk is transferred from insured to insurer; a MCCO is essentially a risk-sharing mechanism between members. The contributions by the members are used to cover the expenses such as claims made by members, the funding of provisions and the financing of various operating costs. If the financial results of the MCCO show a deficit the members may – in accordance with the provisions in the by-laws - be called to make supplementary payments (member call). Alternatively, the MCCO may decide to reduce the indemnification to meet the available budget. This latter practice should have an adequate legal basis, for example, vested in the by-laws or any other legal document with which the member has agreed. The extent to which an (additional) premium is charged, or a surplus is returned can be based on various factors for example, proportionate to the advance premium paid. The by-laws will typically determine the method to be applied.

109. Another possible feature of an MCCO is the paid-in subordinate member's account. Any surplus returned to the member may be added to an account held by the MCCO in the name of the member / policyholder. The funds in this account would not be available to the member until the winding-up of the MCCO or possibly at the end of his/her membership of the MCCO. This option would allow the MCCO to keep the funds in the entity and to draw upon it if needed for solvency or financing purposes in accordance with supervisory legislation, corporate law and/or the by-laws. On the other hand member's accounts may pose challenges to the MCCO and the supervisor in the case of a demutualisation (see hereafter) or transfer of portfolio if members question any use of the funds in these accounts.

110. Capital requirements for MCCOs - Within the framework of the ICPs mentioned above the supervisor should consider how to accommodate, if appropriate, these specific features of MCCOs in its design and application of capital requirements. The ICPs do allow for such variations; however, any variations to the regulatory capital requirement imposed by the supervisor are made within a transparent framework, are appropriate to the nature, scale and complexity according to the target criteria and are only expected to be required in limited circumstances<sup>74</sup>.

111. In the calculation of the required solvency, no specific requirements exclusively for MCCOs may be needed. However supervisors may choose to establish a tiered system of licensing and supervision for small size companies with lower threshold solvency requirements (PCR and MCR) or requirements based on a simplified method of calculation for

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<sup>70</sup> Standard 17.3

<sup>71</sup> Standard 17.4

<sup>72</sup> Standard 17.10

<sup>73</sup> Standard 17.11

<sup>74</sup> Standard 17.9

example, the size of the provisions, premium-income or incurred losses over past years. As a justification for such special treatment the fact that MCCOs use a system of collecting contributions as described above, can be taken into consideration in particular for small-size MCCOs in which solidarity is well vested.

112. This is also recognised in the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets where it states: *“When seeking to enhance access to inclusive insurance markets, the absolute minimum bound for the Minimum Capital Requirement (MCR) may be revised to a lower level reflecting a lower risk profile and more limited need for detailed governance and risk management. This allows a wider range of entities to participate in the provision of insurance services.”*<sup>75</sup> It is up to the supervisor introducing lower threshold solvency requirements to consider whether it wants to set a different MCR and PCR, or if both would be at the same level.

113. The lower levels of capital required as mentioned in the previous paragraph could be linked to the tiered system of licensing allowing for lighter-touch oversight of MCCOs with a lower risk profile as mentioned in paragraph 67. In this respect, it should be mentioned that certain small-size mutuals in the European Union are either exempt from the solvency framework, Solvency 2, or subject to a “Solvency 2 light” regime which can be regarded as a proportionate approach to solvency requirements.

#### **Required capital**

Australia: Some of the existing friendly societies have been granted relief from having to meet the minimum Aus. \$10 million capital requirements required of other life insurers.

China: In early 2015 CIRC issued a trial regulatory scheme for mutual insurance organizations. The scheme sets out certain requirements for applying for a mutual insurance company license, including requirements as to minimum start-up capital. Those requirements are CNY 100 million with a minimum of 500 members for General mutual insurance companies and CNY 10 million with a minimum of 100 members for Professional and Regional mutual insurance companies.

France: Solvency 2 floors do not apply to mutuals under the code de la mutualité that are entitled to ask members for additional contributions.

Mexico: The regulations do not establish solvency capital requirements for mutual insurance companies.

Uganda: Mutuals have the following capital Requirements = Assets of company + 15% \* (Assets – Liabilities).

Morocco: There are no capital requirements, but technical provisions are provided as well as allocation rules and investment surpluses. No mutual is exempted from its requirements.

Philippines: Required Capital for MBAs and Cooperatives are different and much less than regular insurance companies. MBAs: No required capitalisation but an initial guarantee fund of Php5 million (US\$ 108,000) deposited with the Insurance Commission (IC) is required. The IC may require this fund to be increased up to the capital investment of an existing domestic insurance company (Section 405 Insurance Code). For Cooperatives: capitalisation is 50% that of regular insurance companies. For Mutual Insurance companies: the same paid-up capital as regular insurance companies.

Tunisia: A-For mutual insurance companies: Different capital resources. The minimum capital for insurance companies is 3 million TND (about 1.5 million US\$) if licensed for a single branch and 10 million TND (about 5 million US\$) in the case of multi-branch licenses.

<sup>75</sup> Section 3.17 of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

For mutual insurance companies the minimum social fund is 1,5 million TND (about 750,000 US\$).

114. Capital Resources - In respect of capital resources, the supervisor as mentioned above needs to define the approach for determining the capital resources eligible to meet regulatory capital requirements and their value, consistent with a total balance sheet approach for solvency assessment and having regard to the quality and suitability of capital elements. In respect of MCCOs the Application paper on Regulation and Supervision supporting Inclusive Insurance Markets makes the general point that *“MCCOs may need to align their capital needs with available resources more carefully than entities that can raise capital more flexibly and this should be a matter of attention in their own risk and solvency assessment.”*<sup>76</sup>

115. The paper also mentions that given *“the nature of the MCCO structure, capital will also be an area where the requirements will need to be considered and possibly adapted if MCCOs are new to the market”* and that when establishing criteria for assessing the quality and suitability of capital resources *“any reliance on guarantees should be of a limited duration during a start-up period and be quickly replaced with retained surpluses. Some regulatory and supervisory systems also recognise guarantees from third parties; this has been the way many small mutual insurance entities started.”*<sup>77</sup>

116. Notwithstanding the previous paragraphs, it is important that MCCOs meet a risk based capital level to start and continue to operate. A simple risk based capital formula can be developed in most jurisdictions that is informative to the regulator and the insurer on the amount of capital needed. All MCCOs have to be above the risk based capital calculation. MCCOs usually would take smaller risks so the amount of capital will be lower.

117. In principle, an MCCO would not have issued shares that would constitute tier 1 capital. In respect of the quality and suitability of capital elements typical to the MCCO sector, it may however be appropriate to include contingent elements that are not considered as assets under the relevant accounting standards, where the likelihood of payment if needed is sufficiently high according to criteria specified by the supervisor. Such contingent capital may include, for example, members' calls by a mutual insurer and may be subject to prior approval by the supervisor.<sup>78</sup> The aforementioned Application Paper adds: *“Normally, regulatory or supervisory arrangements do not permit capital that can be raised through future calls on members as “callable but unpaid capital or reserve items” to be eligible to meet regulatory capital requirements. This may be permitted for MCCOs if, among other things it can be demonstrated that such calls had been met in practice and there is very strong solidarity amongst members.”*<sup>79</sup>

118. In addition, the supervisor may consider a similar treatment to the paid-in subordinate member's accounts, which has characteristics similar to subordinated loans. The latter are in some countries accepted as a suitable capital element provided the underlying conditions are approved by the supervisor.

119. The valuation of both the members' calls and members' accounts may need verification / certification by an independent auditor. Also, supervisory regulation may enable the supervisor to call in unpaid members' contribution and exercise the authority to a members' call in case of financial distress of the MCCO.

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<sup>76</sup> Paragraph 3.33 of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>77</sup> Paragraph 3.34 of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

<sup>78</sup> Guidance 17.10.11

<sup>79</sup> Paragraph 3.3.5 of the Application Paper on Regulation and Supervision supporting Inclusive Insurance Markets

## **Capital resources**

Belgium: Certain mutuals are entitled to ask members for additional contributions via a variable premium setting mechanism.

Chile: Legislation for mutuals and for insurance companies does not include specific regulation related to the type and size of resources that can be used to meet the capital requirements. However, limits that apply to investments that back up required capital and technical provisions are different for mutuals compared to insurance companies.

Philippines: MBAs and cooperatives may make capital calls from its members to increase capitalisation.

France: If the mutual is authorised by its by-laws to call for supplementary contribution from its members, such calls, upon supervisory approval, may be considered as capital resources. Besides, mutuals of the code de la mutualité can issue specific capital instruments, called “certificats mutualistes”. These ‘notes’ can be reimbursed only when the mutual is liquidated (if it ever is), and after all creditors have been fully refunded.

Poland: use of members calls – only if the articles of association of mutual undertaking specify the system of members’ payments to a mutual undertaking, annual surplus – the articles of association of a mutual insurance undertaking may provide for the repayment of share capital only out of annual surpluses.

Turkey: From the capital aspect, it is sufficient that they have enough capital amount according to the Cooperative Law.

Uruguay: In accordance with law 18407, cooperatives in general are allowed to count among their capital: subordinated shares, interest shares and other forms of capital (Articles 65, 65, 66, 67). Legislation for insurance cooperatives requires prior authorization from the overseeing regulatory body before issuing these instruments.

## **3.5 Portfolio-transfers, Mergers, Demutualisation and Winding-up**

120. Relevant Principles and Standards – The following requirements are relevant in the context of this section:

- The legislation defines a range of options for the exit of insurance legal entities from the market;<sup>80</sup>
- The transfer of all or a part of an insurer’s business is subject to approval by the supervisor, taking into account, amongst other things, the financial position of the transferee and the transferor. The supervisor satisfies itself that the interests of the policyholders of both the transferee and transferor will be protected;<sup>81</sup>
- A change of a mutual company to a share company, or vice versa, is subject to the supervisor’s approval. The supervisor satisfies itself with the new constitution or governing organisational document of the company before giving approval.<sup>82</sup>

### **Transfer of insurance commitments in respect of MCCOs**

121. A transfer of insurance commitments from an MCCO to another entity – either by individual transfer or portfolio transfer or merger – may involve more legal considerations than

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<sup>80</sup> ICP 12

<sup>81</sup> Standard 6:10

<sup>82</sup> Standard 6:9

in the case of such a transfer from a share company. This is caused by the fact that, depending on the legal system at hand in addition to the contractual relationship, the membership of the customer with the MCCO is relevant. The insurance contract between the policyholder and MCCO is governed by (insurance) contract law. This law and/or the insurance supervisory regulations are likely to determine the process and conditions under which an insurance contract can be transferred to another entity. The same would apply to the transfer of an entire portfolio of insurance contracts. In the case of a merger - in which a legal entity is legally integrated with an existing entity or together with another entity merges into a new entity originating from that merger - corporate law will usually also have relevant provisions that need to be complied with.

122. In the case of an MCCO the customer will also have a membership with the MCCO which will entitle him/her to democratic rights in the legal entity including involvement in key decisions in the general meeting such as transfers of portfolio, mergers and a (voluntary) winding-up. In addition, by virtue of the by-laws the customer may have financial entitlements to the assets of the MCCO including possibly his/her member account. All the legal aspects involved need to be considered and the supervisor needs to be knowledgeable of these in order to properly manage any process of transfer, merger or winding-up.

123. Therefore, the supervisor may need to consider the following questions in addition to the consideration from a prudential perspective<sup>83</sup> when dealing with a request for a transfer or merger:

- Which body within the MCCO is legally entitled to decide on the transfer or merger and which roles do the members have? What process was followed in practice?
- Which legal powers do members have to challenge any decision taken in this respect in particular: which legal means do members have to resist the transfer of their contracts individually or collectively (for example cancellation of the contract)? What are the consequences for individual policyholders of using any legal rights to resist a transfer (for example reimbursement of (part of the) premium)?
- What entitlements do the members have based on any regulation or by-laws in respect of any funds (including member's accounts), or assets of the MCCO, including remaining profits? Which entitlements will they get after the transfer or merger?
- Are members liable for any deficit or loss of the MCCO based on any regulation or by-laws? If so, what arrangements have been made by the MCCO in this respect at the occasion of the transfer or merger?
- How were the proposals for the transfer and their legal position communicated to the members / policyholders?

124. Other issues relating to transfer of portfolios would normally be identical or largely similar to those issues that arise with respect to the transfer of participating or non-participating policyholder portfolios between shareholder companies.

#### **Transfer of portfolio and merger**

Argentina: the Organic Law of Mutual Associations (Law No. 20.321) allows mergers without the mutual being dissolved. Article 30 states that "mutual associations may merge between themselves". The merger requires the approval of the General Assembly of Members and the supervisor. Also, Resolution 729/88 widens the possibility of "absorption," which is to say that a mutual may merge with another mutual creating a new mutual association that directly integrates both, or one mutual can be absorbed by another mutual.

Chile: Mutuels are not allowed to merge or to transfer their portfolio.

<sup>83</sup> In particular the review of the solvency position of the insurers involved in the transfer or merger

**Morocco:** Merging two or more mutuals is pronounced after concordant resolution of the general meeting of the mutual or mutuals which will disappear and the board of the acquiring mutual. It becomes definitive after being approved by joint order of the Minister of Economy and Finance and the Minister of Employment and Social Affairs. The absorbent mutual receives the asset, in the form in which it is, and must pay the liability.

## Demutualisation<sup>84</sup>

125. Demutualisation is the process by which a mutual or cooperative is converted into a share company. Demutualisation could be a formal legal process as such according to national legislation, or de-facto achieved through a merger or portfolio transfer (from mutual to share company). Demutualisation should be subject to the specific approval of the supervisor. In principle it is a particular type of transfer which should be treated as such. However, members in the mutual or cooperative are impacted in the sense that after the transfer they will no longer be a member with only the insurance contractual relationship remaining. As this could negatively affect members' interests the path to change of control through demutualisation should be carefully set out and communicated with the members in addition to their involvement in the required decision-making process/es. In such cases, especially as they may be rare, the supervisor may probably need to be able to request special expert reports regarding the treatment of member interests.

126. It is important that the contributions of former members are recognised; otherwise, an open demutualisation policy will promote the eventual demise of all MCCOs. All insurance co-operatives/mutuals build up capital over time, as they get older most of the capital comes from prior members who "left money on the table" for the good of the community. In a demutualisation the surplus from these prior clients could be transferred to a community fund and not the current policyholders. For example in a case of demutualisation in Canada all the surplus was divided to current members, when from an actuarial point of view 80% of the surplus was from members who were no longer with that insurer.

### Process of demutualisation

**Belize:** Court approval would have to be given for the demutualisation.

**Sri Lanka:** In terms of the Companies Act, a cooperative will have to seek registration as a share company and in the Articles state that the new company will take over the affairs of the cooperative.

**Tunisia:** A- for mutual insurance companies: There is no specific regulatory framework. The demutualisation of local mutual insurance companies that was achieved in April 2014 allowed for a process which includes financial and business analysis, information of members, call for general assembly, and calls for capital. B- for mutual societies: This process is forbidden according to the draft code of mutuals.

**France:** French legislation does not provide for 'demutualisation' as such. What exists however in practice and has the same or similar result, is the creation of a stock company by a mutual, which then transfers its insurance portfolio to the stock company.

**Mexico:** The regulation does not establish a demutualisation process. If a mutual company wants to become an insurance institution it must meet with the all authorisation requirements for a new institution.

<sup>84</sup> Although less frequent, also remutualisation can occur. An example is remutualisation of the Swedish Skandia Liv company (Study on the current situation and prospects of mutuals in Europe, European Commission, November 2012: [http://www.amice-eu.org/userfiles/file/EC%20Study%20prospects\\_mutuals\\_fin\\_en.pdf](http://www.amice-eu.org/userfiles/file/EC%20Study%20prospects_mutuals_fin_en.pdf)).

Chile: Mutuals in Chile are not allowed to take a process of demutualisation since they depend on the Army, Air Force, Navy and Police.

Germany: Also conceivable are restructurings - the mere consequence of which is a change of legal form of a legal entity that changes its legal form, but maintains its legal identity.

New Zealand: Demutualisation would be a strict legal process requiring the approval of affected members and the involvement of the High Court.

Trinidad and Tobago: A detailed plan for the conversion of a mutual company into a company with share capital should be submitted to the Central Bank of Trinidad and Tobago. The Central Bank would appoint experts such as an independent actuary to investigate the financial position of the mutual company and a Financial Valuation Expert. The actuary appointed shall upon completion of his investigation submit a report of their findings to the Central Bank including the allocation of shares to eligible policyholders, the price range that shares in the new company will be sold to the public, and the rights of policyholders. The Central Bank will also request any other information that is required such as, details of policyholder communication, particulars relating to the financial state of the company, any changes proposed to be made in the memorandum and articles of association and a statement of actual and/or contingent liabilities as determined by the company's actuary from the Board of Directors of the Company. Where the plan is approved by the Central Bank it shall be laid as a special resolution before the policyholders of the mutual company and the resolution would only be effective when a certain percentage of votes cast by the policyholders are in favour of the process. A prospectus detailing the offering would have to be approved by the Securities and Exchange Commission of Trinidad and Tobago and the new company would have to be registered under the Companies Act.

United States: As there have been more than 200 demutualisations in the life industry alone, and each one has been driven by factors unique to each company's situation, it is difficult to answer so general a question. Demutualisation is conducted pursuant to the state law of the insurer's domicile and is subject to the approval of that state's insurance commissioner; as part of that process the domiciliary state's commissioner will seek the opinion of, and cooperate with, the commissioners of the various states whose businesses or citizens may be affected.

## **Winding-up**

127. As the winding-up of an MCCO marks the end of both the insurance contract and membership relationship between member and MCCO, the supervisor is obliged to give due consideration to the application of all applicable laws and regulations as well as the by-laws. In addition, attention needs to be given to the liquidation of assets and entitlements to reserves, member's accounts, and other items that members have according to national legislation.

128. As part of the winding-up, the MCCO will likely appoint liquidators to settle contracts and liquidate the assets. Sometimes the board itself may be charged with this task. The liquidators will be accountable to the general meeting and report on its work. The supervisor should monitor this process and review the reports prepared by the board and/or liquidators.

### **Winding-up**

Chile: While there are some requirements in respect of a winding-up for insurance companies that is not the case for mutuals.

France: In the case of a (solvent) run-off, the excess of assets over liabilities cannot be distributed to Members. It can only be allocated to other mutuals, or to some specific non-

profit institutions (“associations reconnues d’utilité publique”) upon decision of the General Meeting.

Morocco: The winding-up of a mutual must be conducted under supervision of a representative of the Minister of Finance. The remaining assets shall be distributed by the General meeting among other mutuals, on the proposal of the Board and after approval of the ministry of employment and social affairs.

Poland: Requirements relating to winding-up are slightly modified in respect of mutual undertakings. According to article 200 of Polish Act on Insurance Activity, the provisions of Commercial Partnership and Companies Code apply accordingly to winding-up of mutual insurance undertakings with the exception of SMIU. Winding-up of SMIU proceeds in a manner specified in the resolution of the general meeting, but if the supervision authority ascertains that winding-up activities toward SMIU have not been taken or conducted, the provisions of Commercial Partnership and Companies Code apply accordingly to winding-up of SMIU.

### **3.6 Supervision and Supervisory Review**

#### **Supervision**

129. Relevant Principles and Standards - The following requirements are relevant in the context of this section:

- The authority (or authorities) responsible for insurance supervision, the objectives of insurance supervision, and the mandate and responsibilities of the supervisor are clearly defined in primary legislation;<sup>85</sup>
- Where, in the fulfilment of its objectives, the supervisor identifies conflicts between legislation and supervisory objectives, the supervisor initiates or proposes correction in legislation;<sup>86</sup>
- The supervisor needs to be operationally independent, accountable and transparent in the exercise of its functions and powers;<sup>87</sup>
- The supervisor exchanges information with other relevant supervisors and authorities subject to confidentiality, purpose and use requirements.<sup>88</sup>

130. The roles of policymaking, regulation and supervision of MCCOs are often shared between a range of government ministries and authorities. As MCCOs can be part of a range of social and economic policy areas including financial services, agriculture, social welfare, health and community relations, the likely range of interested authorities can be greater than would be the case with, for example, other forms of insurers. These other authorities may not all be as fully conversant with issues with respect to providing financial products and services, particularly insurance. It is also likely that arrangements for effective, complete, and coordinated oversight will be more challenging and will have to consider a wider range of potentially competing objectives that will require special attention. Therefore, such arrangements should be carefully examined to help ensure appropriate policyholder protection is maintained.

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<sup>85</sup> ICP 1 and Standards 1.1 and 1.2

<sup>86</sup> Standard 1.4

<sup>87</sup> ICP 2

<sup>88</sup> ICP 3



131. In such a situation, it is also possible that oversight of the supervisory elements included in the ICPs may be allocated to one or more authorities for MCCOs and to another for other insurers. Alternatively, the responsibility for most or all of the elements may rest with the one authority or be shared between authorities. As stated above, the clear and transparent allocation of responsibilities is needed. It is also important that, when shared, structures for each supervisory authority are in place to ensure the requirements mentioned above are supported in each authority where supervisory functions are carried out to the extent relevant to their allocated responsibility. The expectations for cooperation and information sharing will be critical. See also paragraph 69 of this paper.

**Designation of supervisory authority:**

Trinidad and Tobago: Friendly Societies and Co-operatives fall under the purview of the Ministry of Labour and Small Enterprise Development. The insurance industry including mutuals is regulated by the Central Bank of Trinidad and Tobago.

132. As the ICPs apply to MCCOs that are functioning as an insurer, the supervisor – regardless of whether they are the authority responsible for commercial share companies – needs to meet the relevant Principles and Standards mentioned at the beginning of this section. If that supervisor is part of a public organisation assigned with responsibilities of a different nature then care needs to be taken that its operational independence is safeguarded. This might not be the case if the supervisor is a government department that needs to consider other interests than strictly policyholder protection from a prudential or conduct of business perspective.

***Supervisory review***

133. The supervisor should take a risk-based approach to supervision that uses both off-site monitoring and on-site inspections to examine the business of each insurer, evaluate its condition, risk profile and conduct, the quality and effectiveness of its corporate governance and its compliance with relevant legislation and supervisory requirements. The supervisor obtains the necessary information to conduct effective supervision of insurers and evaluate the insurance market.<sup>89</sup> The supervisor should also have the expertise to distinguish between what is a genuine MCCO and what is one that is operating just under the name. In particular, in the case MCCOs are allowed to operate under a light-touch regime there may be a risk of regulatory arbitrage.

134. This is a general requirement that applies equally to MCCOs as to share companies. It may however pose challenges to a supervisor. First of all the supervisor needs to be mindful of the specific features of the MCCO businesses including the way it is financed. This may require specific knowledge of MCCO relevant legislation as well as its market segment.

135. Also, reporting requirements may differ between share companies and MCCOs. This is in particular pertinent for financial reporting based on the legal form of the insurer and vested in corporate or accounting law. Often MCCOs have their own financial reporting requirements and - depending on the size of the business – need to deposit or submit simplified financial statements or could even be completely exempt from financial reporting. The supervisor will typically require regulatory reporting by the supervised insurers for its off-site supervision. The regulatory reporting may consist of (elements of) the financial reporting based on corporate or accounting law. From a perspective of proportionality, the entire set of financial statements submitted to the supervisor for the purpose of regulatory reporting should be appropriate to achieve and not go beyond the objective of the reporting, which is to have a sufficient understanding of the financial condition of the insurer. Relevant factors such as the nature of

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<sup>89</sup> ICP 9

the insurer, size of the business, the markets in which it operates etc. should be considered for this.

136. Another challenge may be the number of MCCOs active in the insurance domain in particular if these are small-sized and show a wide regional distribution. The supervisor may not have the resources to carry out its supervisory activities with the same intensity as for the bigger insurers. In those cases, it is worth considering balancing the supervisor's resources by introducing separate categories of administrative authorisation for small size MCCOs as is described in paragraph 67 of this paper. The same is done in some jurisdictions for micro-insurance companies. This authorisation – possibly a simplified registration process – could be subject to conditions that set boundaries for the types of product lines and size of the business. Such a system could be complemented with provisions on whistleblowing for example by auditors or actuaries if they witness a breach of the conditions that are conditional for a lighter-touch oversight.

137. For MCCOs subject to a restricted licence (i.e. limitations on the type of insurance risks that they are allowed to write), it may not be necessary to conduct regular on-site inspections as part of the risk based supervisory review, given the lower prudential risk that these MCCOs pose. The supervisory review can instead encompass off-site reviews and on-site 'visits' to understand the past financial performance and future business plans of the MCCO. For that purpose, supervisors should have the option to consider relief from *regular* on-site inspections unless there are specific concerns which may require the supervisor to conduct regular inspections.

#### **Reporting to the supervisor**

Morocco: Mutuals must communicate each year: the financial statements, the moral and financial reports, the Minutes of the General Meeting, the report of the Control Committee, and the financial documents and statistics required by regulation and any other document requested by the supervisor.

## Annex 1: MCCOs as defined in various countries<sup>90</sup>

### European Mutuals

Country	Legal types	Lines of business the Legal type is allowed to operate in
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	Mutual insurers are allowed to be active in all insurance classes, both life and non-life.
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)	The activities of small mutual associations are restricted to the lines of business specified in positions 8 and 9 of Annex A of the Insurance Supervision Act except nuclear risks.
Belgium	Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society)	Life and non-life insurance
	Société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)	Non-life insurance: complementary health insurance
Bulgaria	взаимозастрахователна кооперация (mutual insurance cooperative)	Life insurance
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)	Life insurance
Denmark	Gensidige selskaber (Mutual companies)	Life and non-life insurance
Finland	Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies)	Life and non-life insurance
	Vakuutusyhdistys/försäkringsförening (insurance association)	Life and non-life insurance
	Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)	Statutory pensions
France	Société d'assurance mutuelle (mutual insurance companies)	Life and non-life insurance
	Mutuelles (mutuals)	Life and non-life insurance (complementary health insurance) They can also manage facilities dealing with health, culture and society. Some of them are also active in the compulsory statutory insurance domain.
Germany	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	Life and non-life insurance
	Kleine Versicherungsvereine (small insurance mutual)	Life and non-life insurance
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)	Non-life insurance
	Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)	Compulsory/duplicatory health care/insurance (not part of the social protection system as such)

<sup>90</sup> The list of laws and the descriptions in this annex 1 are subject to change.

Hungary	Biztosító egyesület (Mutual Insurance Association)	non-life and life insurance
	Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)	Services for members that supplement or replace social security services, as well as services that promote healthy lives.
Ireland	Friendly societies	Life insurance
Italy	Società di mutuo soccorso (benefit mutual societies)	The mutual aid societies (società di Mutuo Soccorso) operate in the areas of health, social, recreational and cultural activities
	Società di mutua assicurazione (mutual insurance companies)	Life and non-life insurance
Latvia	Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)	Life and non-life insurance
Luxembourg	Association d'assurances mutuelles (mutual insurance association)	Life and non-life insurance
	Société de secours mutuel (mutual aid society)	Mutual assistance in the social domain. The main benefit offered by these latter category of mutuals consists in the payment of funeral grants, which is why they are commonly defined as "funeral funds"
Malta	Mutual association	life and non-life insurance (non-directive insurers: annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million euro )
Netherlands	Onderlinge Verzekeringmaatschappijen/vereniging (insurance mutual)	Life and non-life insurance including compulsory health insurance
Norway	Gjensidige forsikringsselskaper (mutual insurance company)	life, non-life and re-insurance
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)	life, non-life and re-insurance
Portugal	Associações mutualistas (mutual associations)	Life and non-life Insurance. Mutual associations may undertake activities other than insurance – but always within the realm of welfare and health care provision.
	Mútua de seguros (Mutual Insurance company)	Mútua de seguros are allowed in life insurance, in non-life insurance and in reinsurance.
Romania	Societăți mutuale' (mutual companies)	life and non-life insurance
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners – CARP	Social services, no insurance
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)	non-life and life insurance (complementary health insurance)
Spain	Mutuas de seguros (mutual insurance company)	Life and non-life insurance
	Mutualidades de previsión social (mutual provident societies)	Life and non-life insurance
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)	life, non-life and re-insurance
	Försäkringsföreningar (insurance associations)	life, non-life and re-insurance

United Kingdom	In United Kingdom, mutual-type organisations are defined as broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual.	Life, non-life and re-insurance and other (noninsurance and non-financial) services.
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## Non-European Mutuals

Country / Source of law	Definition of Mutual	Form of mutuals	Definitions of different form of Mutuals
<p><b>South Africa</b> (The Long-term Insurance Act, no. 52 of 1998 • The Short-term Insurance Act, no. 53 of 1998 • The Friendly Societies Act, no 25 of 1956 • The Financial Advisory and Intermediary Services (FAIS) Act, no. 37 of 2002. • The Co-operatives Act, no. 14 of 2005)</p>	<p>South Africa does not have specific definition of mutual. It has various laws governing the insurance outreach to the poor. Both the long term and short term insurance acts have defined a number of classes of policies for which a company can register. Long term insurance includes benefits payable in the case of a life or disability event, whereas short-term insurance policy classes relevant to micro-insurance includes motor and property insurance or personal accident insurance. Effectively the result is a product category-based regulatory system where the nature of the risk event underlying the product determines the level of risk held by the insurer and therefore the appropriate regulation.</p>		<p><b>Friendly societies</b><sup>91</sup> are non-profit organisations or associations of persons established to provide relief or maintenance during minority, old age, widowhood or illness for members or persons related to members. Such relief could include payment of a sum of money on birth of a child or upon death, insurance of tools used in a trade, unemployment benefits, for education or training of members or their children, or such other business as may be proclaimed in the Government Gazette.</p> <p><b>Co-operatives</b> are autonomous associations of persons (a minimum of five) united voluntarily to meet their mutual economic, social and cultural needs through a jointly owned and controlled enterprise that is organised and operated on co-operative principles. Directors must not be of unsound mind, financially insolvent, or have been convicted of certain offences (theft, forgery, etc.) (s.33 Cooperatives Act).</p>
			<p><b>Burial societies</b><sup>92</sup> are generally formed by people who know each other, such as family or friends. An archetypal burial society is characterised by member governance, is not for profit, meets at least once every month and usually has, at the branch (primary</p>

<sup>91</sup> <https://www.fsb.co.za/Departments/retirementFund/friendlySocieties/Documents/FSAR2005.pdf>

<sup>92</sup> [http://cenfri.org/documents/microinsurance/2005/South%20Africa\\_Regulation%20of%20formal%20and%20informal%20insurance%20markets.pdf](http://cenfri.org/documents/microinsurance/2005/South%20Africa_Regulation%20of%20formal%20and%20informal%20insurance%20markets.pdf)

Country / Source of law	Definition of Mutual	Form of mutuals	Definitions of different form of Mutuals
			<p>society) level, no more than 300 to 500 members (and usually far fewer – the average membership ranging between 50 and 80).</p> <p><b>Funeral parlours</b> are primarily in the business of providing funeral services. However, in an attempt to secure a market for these services, many have added a number of financial services to their portfolio. These include insurance (legal and illegal), credit (mostly in rural areas) and savings (pre-paid funerals).</p>
<p>Philippines (Administrative code; Insurance Code chapter VII) Department of Finance Order 15-2012 of 1st June 2012</p>	<p>Any society or association, whether incorporated or not, formed or organised for the purpose of paying sick benefits to members, or of furnishing support to members while out of employment, or of furnishing professional assistance to members, or of paying to relatives of deceased members a fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues, assessments, or voluntary contributions, or of providing for any method of accident or life insurance among its members out of dues or assessments collected from the membership, and any society or association making either or any of such purposes incidental features of its organisation on the basis of fixed dues or assessments specifically provided for to meet such incidental features</p>		

Country / Source of law	Definition of Mutual	Form of mutuals	Definitions of different form of Mutuals
<p>India (Co-operative Societies Act, 1912 (2 of 1912; Indian insurance Act 1938; Micro insurance regulations 2005)</p> <p>Defined in Part 4 Sec 95<sup>93</sup> before recent amendment of 2015</p>	<p>"Mutual Insurance Company" means an insurer, being a company incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866) or under any Act, repealed thereby, which has no share capital and of which by its constitution only and all policy-holders are members.</p>	<ul style="list-style-type: none"> <li>▪ Non-Government Organisations</li> </ul>	<p>Means a non-profit organisation registered as a society under any law, which has been working at least for three years with marginalised communities, with proven track record, clearly stated aims and objectives, transparency and accountability as outlined in its memorandum, rules, byelaws and regulations, as the case may be and demonstrates involvement of committed people.</p>
		<ul style="list-style-type: none"> <li>▪ Self-Help Groups</li> </ul>	<p>Means any informal group consisting of ten to twenty persons which has been working for at least for three years with marginalised communities, with proven track record, clearly stated aims and objectives, transparency and accountability as outlined in its memorandum, rules, byelaws and regulations, as the case may be and demonstrates involvement of committed people.</p>
		<ul style="list-style-type: none"> <li>▪ Micro-Finance Institutions</li> </ul>	<p>Means any institution or entity or association registered under any law for the registration of societies or cooperative societies as the case may be, inter alia, for sanctioning loan / finance to its members</p>
		<ul style="list-style-type: none"> <li>▪ Cooperatives</li> </ul>	<p>Autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise</p>

<sup>93</sup> [https://www.irda.gov.in/ADMINCMS/cms/frmGeneral\\_Layout.aspx?page=PageNo107&flag=1&mid=Insurance%20Laws%20etc.%20%3E%3E%20Acts](https://www.irda.gov.in/ADMINCMS/cms/frmGeneral_Layout.aspx?page=PageNo107&flag=1&mid=Insurance%20Laws%20etc.%20%3E%3E%20Acts)



## Annex 2: Examples of the Role of MCCOs

Function	Country	Description
As carriers of insurance risk	West Africa	The UEMOA legislation, brought out <b>Economic Community of West African States (ECOWAS)</b> , establishes a multinational framework which allows mutual social health organisation to underwrite health insurance and simplified accounting requirements have been prescribed for such providers.
As distributors	India	The Microinsurance Agent Regulations (MAR) brought out by the Insurance Regulatory And Development Authority (India) have recognised self-help groups to tie-up with insurers not only for collection of proposal forms but also for collection and remittance of premium and policy administration service. Local handling of marketing and sales lowers transaction costs.
Supporting premium collection	Philippines India	Remittances of funds from Filipino workers overseas have been an important source of support to local families and the wider economy. Church groups providing support to communities of foreign workers have worked with insurers in the Philippines to collect premiums on insurance products during their regular community meetings and remitting them collectively to insurers, reducing cost and improving the efficiency of these contributions.
As part of the claims assessment process	India	The MAR brought out by the Insurance Regulatory And Development Authority (India) have allowed self-help groups to assist in the claims settlement process.
As the policyholder of a group insurance product	Sri Lanka Philippines Guinea	Savings and credit cooperatives (SACCOs) can offer group insurance coverage tailored to the needs of their members by negotiating premium rates. This fact is also an example of motivating collective risk reduction through individual action and has implications for influencing the quality and cost of services provided to low-income segments.
As part of the process of understanding customers	India Nepal South Africa	Mutual societies are active in information dissemination of formal social protection and poverty alleviation programs. They also ensure registration of all eligible citizens and monitoring by civil society.
As part of the process of educating customers	Ethiopia Zambia Brazil India	Community groups along with MFIs, perform needs analyses and awareness campaigns in a variety of ways, including focus group meetings, street plays, and inviting microinsurance claims recipients to tell others about the benefits of insurance. This enhances awareness of insurance and encourages collective action and risk reduction activities by all group members.
As providers of complimentary services	Brazil, India Philippines	Many credit cooperatives complement their financial services offering, namely savings and loans, by cross selling life and non-life insurance. Sometimes this may involve non –financial products too.

## **Annex 3: Examples of Associations of MCCOs**

### **1. Global**

The International Cooperative and Mutual Insurance Federation (ICMIF) is a long established (founded in 1922) and unique global organisation representing cooperative and mutual insurers from around the world. ICMIF holds eight years' worth of exclusive data about the mutual sector. With its global headquarters in the United Kingdom and regional offices in Washington DC, USA; Tokyo, Japan; and Brussels, Belgium; today ICMIF represents 230 values-based insurers in 70+ countries with over US\$ \$ 270 billion premium income. ICMIF delivers unique networking opportunities; market and member intelligence; and external relations services. It takes a strong lead in encouraging best practice amongst its member firms in key insurance issues, including: performance management, legal and governance, marketing, brand and reputation, reinsurance and social and environmental performance. ICMIF is also active in the fields of microinsurance and Takaful, with Takaful providing Shariah-compliant risk amelioration products to Islamic markets.

### **2. Regional**

The Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) Created in January 2008 through the merger of the two previously existing associations of mutual and cooperative insurers in Europe, AISAM and ACME, represents the interests of the sector with one united voice. It provides a platform for mutual and cooperative insurers of all sizes to combine resources and expertise, exchange experiences across national borders and discuss key issues and concerns relating to planned legislative and regulatory changes and developments. Significance of AMICE could easily be ascertained with its membership base of 110 direct members representing above 1000 insurers. AMICE promotes the mutual model through various initiatives and having strategic partnership with other key organisations. It works closely with members to advocate and bring relevant policies for growth of mutuals in European market. It enables to voice the concerns of small and medium enterprises engaged in mutual model.

The Confederation of Financial Institutions (CFI / West Africa is the grouping of six approved federations of mutual saving and credit: RCPB-(Burkina Faso) FECECAM (Benin) FUCEC (Togo) KAFO JIGINEW (Mali) NYÈSIGISO (Mali) and PAMECAS (Senegal). The head office of the Confederation is in Ouagadougou, Burkina Faso. It is a regional movement of financial unions under the law # 59/94/ADP on the regulation of Mutualist Institutions or Savings and Credit Unions of Burkina Faso since 2007. Its major focus is on representing the cooperative movement as a whole to the authorities, thereby negotiating agreements with the government. It has been continuously striving to improve the visibility of the CFI and its members in Africa and the world

### **3. National**

Mutualité Française (National Federation of French Mutual Benefit Societies- FNMF) - FNMF is the leading player in the area of complementary health insurance; covers 38 million people thereby 95% organisations, in France. Its activities fall within both national and local priorities for action. Its efforts are driven towards reducing health inequalities. It leverages through partnerships with other health and welfare professionals and is supported by a network of professionals coordinated at the national level.

The National Cooperative Union of India (NCUI) is the apex organisation representing the entire cooperative movement in the country. It was established in 1929 as All India Cooperative Institutes Association and was re-organised as Indian Cooperative Union through the merger of Indian Provincial Cooperative Banks' Association with All India Cooperative Institutes Association and later in 1961 as National Cooperative Union of India. At present, there are 207 institutions which are members of NCUI. NCUI works on multiple levels to foster the growth of cooperative in India. It provides networking and advocacy platform by organising

events, conferences and seminars etc. It enters into partnerships with other global forums in order to enhance peer to peer learning. NCUI has created awards and expresses opinions through periodical journals, seminar paper etc.

To summarise the above discussion, one can conclude that there are various roles played by the apex organisations and federations. Such close associations could result into the development of innovative products and practices beyond usual networking and advocacy.