IAIS「破綻処理権限・計画に関する適用文書」への生命保険協会意見

対象箇所	意見(和文)	意見(英文)
General	• 倒産処理法制は各国の経済社会の根幹をなす	• The Life Insurance Association of Japan (hereafter the
Comments	重要な基本法制であるため、法的安定性や予	"LIAJ") appreciates the opportunity to submit public
	見可能性の観点からも、各国で異なる法制度	comments to the International Association of Insurance
	や商慣行等に十分な配慮が必要である。また、	Supervisors (or the "IAIS") regarding the Application
	各国当局は各国の実情に応じた監督実務を積	Paper on the Resolution Powers and Planning.
	み重ねてきているのであるから、その裁量は	Bankruptcy and insolvency acts/laws are an important
	最大限尊重されるべきである。	fundamental part of the legal system forming the basis of
		the economy and society of each country.
		• From the legal stability and predictability perspectives,
		there is a need to thoroughly consider the legal systems
		and business practices that differ from country to country.
		In addition, as each national authority has dealt with
		supervisory practices in its own way according to national
		needs and conditions, its discretion should be respected to
		the fullest extent.
Paragraph 8	• ICP introduction に記載されたプロポーショ	The LIAJ appreciates the references to the proportionality
	ナリティ原則への言及を評価する。	principle stated in the ICP Introduction.
	• 日本においては、保険業法に基づく行政手続	• There are two major types of resolutions in Japan; the
	と、更生特例法に基づく会社更生手続の大き	administrative process based on the Insurance Business
	く 2 種類の破綻処理類型が存在しており、本	Act, and the corporate reorganization process based on the
	AP が規定する Resolution Plan の内容と異な	Corporate Reorganization Act. This means the actual
	る実務が確立されている。	practices established in Japan differ from the Resolution

	• IAIS におかれては、このような各国の保険会	Plan stated in the Application Paper.
	社破綻処理実務の差異を十分考慮した上で本	The LIAJ would like to respectfully request the IAIS to
	AP を適用されたい。	carefully consider these differences in resolution practices
		of insurance companies in each country when applying the
		Application Paper.
Paragraph	• Entry into Resolution (パラ 25~) の中で、	• In Entry into Resolution (Paragraph 25), it states the
25-28 and	保険会社が最早存続不可能 (no longer viable)	resolution process should be initiated when an insurer is
Box 1: Illustrative	あるいは回復可能性が見込めない(likely to	no longer viable or is likely to be no longer viable.
	be no longer viable)場合に破綻処理プロセス	• In addition, Paragraph 27 states jurisdictions should
examples of resolution	が開始されるとしている。そして、パラグラフ	articulate clear standards or suitable indicators of non-
conditions (P.14)	27 において、各法域は、関連当局により開発	viability in the assessment frameworks developed by the
	されたアセスメント・フレームワークの中で、	relevant authorities, and have forward-looking triggers
	回復不可能性 (non-viability) に関する明確な	that would provide for the entry into resolution.
	基準または適切な指標を明定すべきであると	• For example regarding the trigger, according to the
	して、破綻処理プロセスが発動される際の	Member Survey (Box 1), where a quantitative threshold is
	forward-looking trigger を定めるべきと規定	set under the current system, it ranges between 70% and
	している。	150% of the Prescribed Capital Requirement (or "PCR"),
	基準(トリガー)について、例えば、各国事例	and when the insurer is in breach of the Minimum Capital
	に関するメンバーサーベイ (Box1) によると、	Requirement (or "MCR") with no reasonable possibility of
	現行制度のもとで定量基準が定められている	restoring compliance with MCR. In addition, Paragraphs
	場合、「規制資本要件(PCR)の例えば 150%	60, 65, and 75 state the PCR could be the quantitative
	~70%」や「最低資本要件(MCR)に抵触し	trigger for initiating resolution. Do these PCR/MCR refer
	回復する合理的な見込がない場合」と示され	to the ICS, or do they refer to the solvency margin ratio
	ている。また、その他にもパラグラフ 60・65・	based on the current system in each country?

	 75 において PCR を破綻処理プロセス開始の 定量基準(トリガー)とする記載が見られる が、これらの PCR/MCR は、ICS のことを指 すか。それとも各国の現行制度に基づくソル ベンシーマージン比率のことを指すのか。 仮に ICS のことを指している場合、パラグラフ4において「(ICS バージョン 2.0 のモニタリング期間中に)今後複数年をかけて改定が予定されており、当ペーパーの中で詳細なガイダンスを定めることは適切ではない」としていることと矛盾している。 If these PCR/MCR refer to the ICS, they are inconsisted with the statement in Paragraph 4 that states "Since IC (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in the coming year (during the monitoring period of the Insurance Capital Standard Version 2.0).
Paragraph 140	 5.4.7 の破綻処理計画ガバナンスの項目において、パラグラフ 140 の中で、"In some jurisdictions (中略) the insurer is required to develop and maintain the resolution plan" と書かれている他、同パラグラフ内で、"the insurer should be required to have a robust governance process (中略) this should be integrated into the insurer's overall Corporate Governance and Enterprise Risk Management."と書かれている。 当該記載は、あくまで一部の法域における実務慣行について記載した例示的なガイダンスであって、日本を含む全法域に対して規範的 In Section 5.4.7 (Resolution Planning Governance Paragraph 140 states "In some jurisdictions the insurer should be required to develop and maintain the resolution pla and "the insurer should be required to have a robust governance process this should be integrated into the insurer's overall Corporate Governance and Enterprise Risk Management". It is our understanding that these statements are only illustrative guidance describing the actual practices some jurisdictions, and not to be the prescriptive rules all jurisdictions including Japan.

	なルールを規定するものではないとの理解で	
	良いか。	
Paragraph	• 保険契約者保護機構 (PPS) への影響について	• Regarding the impact on the Policyholder Protection
156	は「 $5.4.9$ Impact on the PPS」で、	Scheme (or "PPS"), Section 5.4.9 (Impact on the PPS)
	"considerations should be made for the	states "considerations should be made for the potential
	potential scope and magnitude of impact	scope and magnitude of impact that the resolution plan
	that the resolution plan may have on the	may have on the PPS". It is our understanding that this
	PPS"との記載がある。当該記載は、resolution	statement suggests the resolution plan could not override
	plan が法的根拠なくして PPS の法的権限を	the legal authority of the PPS without any legal basis. If
	override できることを示唆するものではない	this is not the case, it is inappropriate to consistently give
	との理解で良いか。仮にそのような趣旨であ	superiority to the resolution plan over the PPS since the
	る場合、PPS は各国によってその設立経緯、	establishment process, basis, functions, and authority of
	根拠、機能、権限等が異なるため、一律に	the PPS differ from country to country.
	resolution plan を PPS に優越させることは	
	妥当ではない。	