



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

**INSURANCE CORE PRINCIPLES,
STANDARDS, GUIDANCE AND
ASSESSMENT METHODOLOGY**

**REVISED ICP 12
AND
COMFRAME MATERIAL INTEGRATED INTO ICP 12**

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ICP 12 Exit from the Market and Resolution

Legislation provides requirements for:

- **the voluntary exit of insurers from the market;**
- **the resolution of insurers that are no longer viable or are likely to be no longer viable, and have no reasonable prospect of returning to viability.**

Introductory Guidance

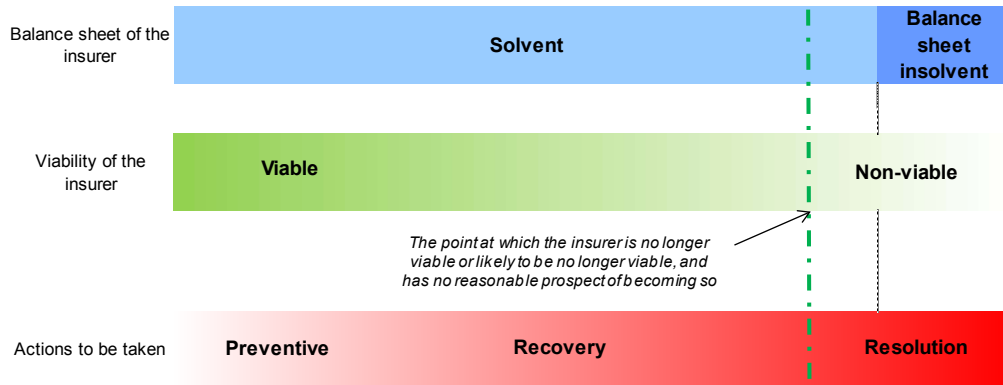
- 12.0.1 An orderly process for an insurer's withdrawal from the business of insurance helps to protect policyholders, and contributes to the stability of the insurance market and the financial system. Jurisdictions should have transparent and effective regimes for an insurer's exit from the market and the resolution of an insurer.
- 12.0.2 In this ICP "resolution" refers to an action taken by a resolution authority towards an insurer that is no longer viable, or is likely to be no longer viable, and has no reasonable prospect of returning to viability. Resolution actions include portfolio transfer, run-off, restructuring, and liquidation.
- 12.0.3 In this ICP, the term "resolution authority" refers to authorities that are responsible for exercising resolution powers over insurers. Depending on the jurisdiction, this term may include supervisors, other governmental entities or private persons (including administrators, receivers, trustees, conservators, liquidators, or other officers), or courts authorised by law to exercise resolution powers. Thus in this ICP:
- "supervisor" is used when the standard and/or guidance involves responsibilities and/or roles of the day-to-day supervisor of the insurer;
 - "resolution authority" is used when the standard and / or guidance involves resolution powers and/or processes after resolution has been instituted: this includes supervisors acting under their resolution powers; and
 - "supervisor and/or resolution authority" is used when the standard and/or guidance involves responsibilities for planning and/or initiation of resolution and encompasses supervisors acting in their pre-resolution roles (e.g. before a supervisor or resolution authority institutes resolution and/or obtains any necessary administrative and/or judicial approvals to do so).
- 12.0.4 The structure and roles of resolution authorities vary across jurisdictions. In some jurisdictions, the resolution authority and the supervisor may be one single authority; in other jurisdictions, resolution of insurers may be the responsibility of one or more separate authorities. In some jurisdictions certain resolution powers may be exercised or overseen by the court. Whatever the allocation of responsibilities, a transparent and effective resolution

regime should clearly delineate the responsibilities and powers of each authority involved in the resolution of insurers. Where there are multiple authorities responsible for the resolution of insurers, the resolution regime should empower the relevant authorities to cooperate and coordinate with each other.

- 12.0.5 Exit from the market refers to cessation of the insurer's business, in part or in whole. Insurers that meet regulatory requirements may decide to exit from the market on a voluntary basis for business and/or strategic reasons. This is often referred to as 'voluntary exit from the market'. Insurers may also be required by the supervisor to exit from the market.
- 12.0.6 Jurisdictions may need to have mechanisms in place to determine whether the continuity of insurance cover is necessary when insurers exit from the market. Any such continuity should preferably be on the same contract terms, but when necessary, on amended terms. Such mechanisms need to be proportionate to the unique nature and structure of the insurance market in each jurisdiction. Continuity of insurance cover may be facilitated by transferring insurance portfolios to a succeeding insurer, including a bridge institution. Continuity of some insurance contracts, particularly for some non-life products, may be necessary for only a short period (for example 30 or 60 days) so that the policyholder has sufficient time to find another insurer. Facilitating continuity of insurance cover might not be necessary for certain types of insurance products, such as those that are offered by many insurers in a market and which are highly substitutable.
- 12.0.7 Where an insurer exits from the market and there is no succeeding insurer or no similar insurance products available in the market, mechanisms that facilitate the availability of alternate cover may need to be explored by the supervisor, such as when the exiting insurer delivers insurance contracts that cover risks that may be important to a particular jurisdiction's economy and/or are compulsory insurance in legislation.
- 12.0.8 Supervisory measures and/or sanctions may result in an insurer exiting from the market (i.e. involuntary exit from the market) (see ICP 10 Preventive and Corrective Measures and Sanctions).

12.0.9 Insurers that are no longer viable or likely to be no longer viable and have no reasonable prospect of becoming so through their recovery action or supervisory measures, should be resolved. Figure 1 illustrates the relationship between solvency, viability and the nature of actions to be taken.

Figure 1. Stylised relationship among solvency, viability, and actions to be taken



12.0.10 A resolution regime should make it possible for any losses to be absorbed by: i) shareholders; ii) general creditors; and iii) policyholders, in a manner that respects the jurisdiction's hierarchy of claims in liquidation. Policyholders should absorb losses only after all lower ranking creditors have fully absorbed losses. Mechanisms, such as policyholder protection schemes (PPSs), may mitigate the need for the absorption of losses by policyholders.

12.0.11 Depending on the circumstances, resolution measures may be applied to one or more separate entities in an insurance group, such as: i) the head of the insurance group; ii) an intermediate holding company below the head of the insurance group; iii) an insurance legal entity within the group; iv) a branch of an insurance legal entity within the group; or v) other regulated (e.g. banks) or non-regulated entities within the group. For other regulated entities within the group (e.g. banks), a resolution regime relevant to their sector may apply.

12.0.12 Some insurers operate on a cross-border basis through subsidiaries or branches in another jurisdiction, or through providing insurance services on a cross-border basis without setting up a physical presence outside their home jurisdiction. Also, where an insurance legal entity is a member of a group, there could be intra-group transactions and guarantees among insurance legal entities and/or other group entities in different jurisdictions. Cross-border coordination and cooperation, including exchange of information, is necessary for the orderly and effective resolution of insurers that operate on a cross-border basis.

Voluntary exit from the market

12.1 Legislation provides a framework for voluntary exit from the market that protects the interests of policyholders.

- 12.1.1 Voluntary exit from the market is initiated by the insurer or by its owners, such as shareholders (or policyholders in the case of mutuals).
- 12.1.2 The supervisor should require the insurer which voluntarily exits from the market to make appropriate arrangements for the voluntary exit (e.g., run-off or portfolio transfer), including having adequate human and financial resources to fulfil all its insurance obligations.
- 12.1.3 The supervisor should require the insurer which voluntarily exits from the market through run-off to submit a run-off programme to the supervisor. The programme should include at least the following information:
- expected timeframe;
 - projected financial statements;
 - human and material resources that will be available;
 - governance and risk management of the process;
 - communication with policyholders about the insurer's exit from the market; and
 - communication to the public.
- 12.1.4 Insurers that exit from the market on a voluntary basis should continue to be subject to supervision until all insurance obligations are either discharged or transferred to succeeding insurers. Legislation should provide for appropriate requirements for these exiting insurers.

Objectives of the resolution of insurers

12.2 Legislation provides a framework for resolving insurers which:

- **protects policyholders; and**
 - **provides for the absorption of losses in a manner that respects the hierarchy of claims that would exist if the insurer was in liquidation.**
- 12.2.1 The legislation should support the objective of protecting policyholders. This however does not mean that policyholders will be fully protected under all circumstances and does not exclude the possibility that losses be absorbed by policyholders, to the extent they are not covered by PPSs or other mechanisms. A jurisdiction may have additional resolution objectives in the legislation, such as maintaining financial stability.

- 12.2.2 Resolution should seek to minimise reliance on public funding. In principle, any public funding used for the resolution of the insurer should be recouped from the insurance sector.

CF12.2a.1 In addition to the objectives in 12.2, the resolution objectives in respect of IAIGs should also include maintenance of financial stability, where applicable. A jurisdiction may, at its discretion, choose to rank these resolution objectives with respect to an IAIG.

CF12.2b The resolution of an IAIG does not rely on public ownership or bail-out by use of public funds.

CF12.2b.1 Bail-out by use of public funds does not include use of funds from policyholder protection schemes or resolution funds to support the implementation of resolution actions. However, funds, in principle, should be ultimately recovered from the insurance sector.

Planning

12.3 The supervisor requires insurers to plan for contingencies based on their specific risk in a gone-concern situation.

12.3.1 The supervisor may identify risks, specific to an insurer's circumstances, that would arise in resolution and which may impact the supervisor achieving the resolution objectives of the jurisdiction. For example, such risks may relate to the insurer's provision of relevant information to the supervisor or resolution authority, the continuity of certain business operations, and/or the orderly implementation of a jurisdiction's PPS.

12.3.2 The supervisor should require the insurer to consider such risks and where appropriate, prepare contingency plans to mitigate the risk.

12.3.3 The supervisor should require that the insurer have a plan and procedures in place to provide necessary information (e.g. policyholders' names, types of their contracts, and the value of each contract) to a relevant organisation (such as a PPS) in a timely manner when the insurer enters into resolution.

CF12.3a Resolution plans are in place for IAIGs in cases where the group-wide supervisor and/or resolution authority in consultation with the crisis management group of the IAIG (IAIG CMG), deems necessary.

CF12.3a.1 The group-wide supervisor and/or resolution authority should decide whether resolution plans are needed for an IAIG in consultation with members of the IAIG CMG, taking at least the following issues into consideration:

	<ul style="list-style-type: none"> • number of jurisdictions where the IAIG operates; complexity of the IAIG's group structure; and • possible impact on the financial system and the macro economy in the jurisdictions within which the IAIG operates.
CF12.3a.2	<p>The group-wide supervisor and/or resolution authority leads the development of group resolution plans in coordination with members of the IAIG CMG. Resolution plans should include a substantive resolution strategy and operational plan for its implementation and identify in particular:</p> <ul style="list-style-type: none"> • financial and economic functions that need to be continued to achieve the resolution objectives for the IAIG; • suitable resolution options to preserve such functions or wind them down in an orderly manner; • data requirements on the IAIG's business operations, structures, and those functions; • potential barriers to effective resolution and actions to mitigate those barriers; • actions to protect policyholders; and • clear options or principles for the conclusion of the resolution process.
CF12.3a.3	<p>Host supervisors and/or resolution authorities may have their own resolution plans for the IAIG's insurance legal entity in their jurisdictions, cooperating with the group-wide supervisor and/or resolution authority to ensure that the plan is as consistent as possible with the resolution plan for the IAIG.</p>
CF12.3a.4	<p>Resolution plans (where required) are reviewed at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the IAIG CMG.</p>
CF12.3b	<p>Where a resolution plan is required, resolvability assessments are regularly undertaken by relevant resolution authorities and/or the IAIG CMG to evaluate the feasibility of resolution strategies and their credibility in light of a possible impact of the IAIG's failure on policyholders and creditors, on the financial system and on the macro-economy in the jurisdictions within which the IAIG operate.</p>
CF12.3b.1	<p>Resolvability assessments should be conducted at the level of the respective entity where it is expected that resolution actions are taken in accordance with the resolution strategies for the IAIG as set out in the resolution plan for the IAIG. The group-wide supervisor and/or resolution authority is responsible for resolvability assessments conducted at the group level in coordination with other IAIG CMG member jurisdictions.</p>
CF12.3b.2	<p>The resolvability assessment should consider if it is feasible and credible for the resolution authority to resolve the IAIG in a way that</p>

	protects policyholders and maintains financial stability without use of public funds.
CF12.3b.3	Resolvability assessments should be conducted at least on the Head of the IAIG by the group-wide supervisor and/or resolution authority. Where the resolution strategy envisages that the IAIG would be resolved at lower levels, such as an intermediate holding company level or insurance legal entity level, resolvability assessments should also be conducted at such lower levels.
CF12.3c	The resolution authority requires the IAIG to develop and maintain management information systems (MIS) that are able to produce information on a timely basis to supervisor and/or resolution authorities for purposes of resolution planning and resolution actions.
CF12.3c.1	Information should be available at the group and the legal entity level.
CF12.3c.2	The IAIG's MIS should: <ul style="list-style-type: none"> • maintain a detailed inventory, including a description and location of the key MIS used in material legal entities of the IAIG, mapped to core services and critical functions; • identify and address legal constraints on the exchange of management information among material entities of the IAIG (for example, as regards the information flow from individual entities of the group to the head); • demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement plans within an appropriate period of time; and • maintain specific information at a legal entity level, including, for example, information on intra-group guarantees booked on a back-to-back basis.

Cooperation and coordination

12.4 The roles and responsibilities of relevant authorities within a jurisdiction that are involved in exit of insurers from the market or their resolution are clearly defined.

- 12.4.1 The jurisdiction should have a designated authority or authorities empowered to exercise powers for the resolution of an insurer. Where there are multiple authorities within a jurisdiction, their respective mandates, roles and responsibilities are clearly defined and coordinated.

12.4.2 Where different authorities within a single jurisdiction are in charge of the resolution of an insurer, a lead authority that coordinates the resolution of the insurer should be identified.

12.4.3 Examples where a lead resolution authority should be identified should include, but should not be limited to, the following:

- there are multiple authorities who supervise the insurer or some of its legal entities (e.g. prudential supervisor and conduct supervisor), or
- the insurer has insurance and other financial operations (such as banking), and the other financial operations are supervised by an authority other than the insurance supervisor in the jurisdiction.

12.5 The supervisor and/or resolution authority shares information, cooperates and coordinates with other relevant authorities for the exit of insurers from the market or their resolution.

12.5.1 Relevant authorities in this context may include the group-wide supervisor and/or resolution authority, host supervisors and/or resolution authorities and others that may need to be involved in the resolution of insurers, such as PPS and supervisors in other financial sectors.

12.5.2 When an insurer voluntarily exits from the market, the supervisor should cooperate and coordinate with other relevant supervisors as necessary.

12.5.3 Cooperation and coordination should include matters, among others, such as consulting with or informing other relevant authorities of e.g. the anticipated exercise of resolution powers that the resolution authority considers necessary before taking resolution actions, where this is practicable.

12.5.4 When consulting, authorities should seek to determine if coordinated action on the resolution of an insurance group is necessary to avoid or minimise adverse impact on other group entities.

12.5.5 The supervisor and/or resolution authority should seek to achieve a cooperative solution with authorities in other jurisdictions who are concerned with the resolution of the insurance group.

12.5.6 Cooperation and coordination would be crucial when considering resolution action such as ordering the insurer to cease business (for example, when the insurer has overseas branches), freezing the insurer's assets, and/or removing management of overseas branches, subsidiaries, or holding companies.

12.5.7 Information sharing, cooperation and coordination should be undertaken in a manner that do not compromise the prospect of successful exit or resolution.

Triggers

12.6 Legislation provides criteria for determining the circumstances in which the supervisor and/or resolution authority initiates resolution of an insurer.

12.6.1 Resolution should be initiated where an insurer is no longer viable, or is likely to be no longer viable and has no reasonable prospect of becoming so, even if the entity is solvent in light of financial reporting standards. Criteria that determine or help determine when the supervisor and/or resolution authority initiates resolution should be considered in light of the insurer and the circumstances of its resolution. Criteria for determining whether resolution processes should be initiated may include, but are not limited to, any of the following:

- the insurance legal entity is in breach of the minimum capital requirement (MCR) and there is no reasonable prospect of restoring compliance with MCR;
- the consolidated own funds of the insurance group are lower than the sum of the proportional shares of the MCRs, or minimum capital requirements of the regulated legal entities belonging to the insurance group (e.g. due to double-gearing);
- the insurer is in breach of other prudential requirements (such as a requirement on assets backing technical provisions) and there is no reasonable prospect of compliance being restored;
- there is a strong likelihood that policyholders or creditors will not receive payments as they fall due;
- intra-group transactions impede or are likely to impede the ability of the insurer to meet policyholder and/or creditor obligations as they fall due; or
- measures attempting the recovery of the insurer have failed, or there is a strong likelihood that such proposed measures will: i) not be sufficient to return the insurer to viability; or ii) cannot be implemented in a timely manner.

Powers

12.7 Legislation provides an appropriate range of powers to resolve insurers effectively. These powers are exercised proportionately and with appropriate flexibility.

12.7.1 Powers described below should be exercised in a proportionate manner that resolves the insurer most effectively in light of the circumstances and objectives of resolution. Some powers may not be needed for all insurers but only for insurers that are, for

example, of systemic importance in the jurisdiction. Some powers may only affect the insurer, while others may impact contractual rights of third parties (such as a suspension of policyholders' rights or restructuring of policies). When exercising resolution powers that allocate losses, the resolution authority should attempt to ensure that no creditor receives less (after compensation, where necessary) than they would have received if the insurer had been liquidated (the "no creditor worse off than in liquidation" —NCWOL— principle) (the term 'creditor' includes policyholders).

12.7.2 Some resolution powers are exercised in an aim to stabilise or restructure an insurer and avoid liquidation. Liquidation can be used in conjunction with other resolution actions, and is often the last resort option if these actions are not available or do not succeed. Liquidation may be incompatible with some resolution powers (e.g. stay early termination rights associated with derivatives and securities financing transactions). Conversely, in some circumstances, certain powers may only be compatible with a liquidation of one or more insurance legal entities, for instance when transferring part of the assets and liabilities of the insurer to a third party and placing the remaining business in a run-off or liquidation.

12.7.3 If a court order is required for the resolution authority to exercise resolution powers, the time required for court proceedings should be taken into consideration for the effective implementation of resolution actions.

12.7.4 Powers that may be exercised, subject to adequate safeguards, should include, but are not limited to, the following. This list is not exhaustive and the resolution authority should have discretion to apply other available powers. The order of presentation of the powers is not an indication of the sequence in which these powers could be exercised.

- prohibit the insurer from paying dividends to shareholders;
- prohibit the insurer from paying variable remuneration to Senior Management;
- recover monies from the Board, Senior Management, Key Persons in Control Functions and major risk taking staff', including claw-back of variable remuneration;
- prohibit the insurer from transferring its assets without supervisory approval;
- retain, remove or replace the Senior Management and / or Board Members;
- take control of and manage the insurer, or appoint an administrator to do so;
- withdraw license to write new business and put all or part of the insurance business contracts into run-off;

- initiate the liquidation of the whole or part of the insurer;
- sell or transfer the shares of the insurer to a third party;
- restructure, limit or write down liabilities (including insurance liabilities), and allocate losses to creditors and policyholders, where applicable and in a manner consistent with the statutory creditor hierarchy and jurisdiction's legal framework;
- override rights of shareholders of the insurer in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the insurer's business or its liabilities and assets;
- terminate, continue or transfer certain types of contracts, including insurance contracts; transfer or sell the whole or part of assets and liabilities of the insurer to a solvent insurer or third party;
- transfer any reinsurance associated with transferred insurance policies without the consent of the reinsurer;
- temporarily restrict or suspend the policyholders' rights of withdrawing their insurance contracts;
- stay rights of the reinsurers of the cedent in resolution to terminate or not reinstate coverage relating to periods after the commencement of resolution; and
- impose a temporary suspension of payments to unsecured creditors and a stay on creditor actions to attach assets or otherwise collect money or property from the insurer

12.7.5 The choice and application of the powers set out above should take into account whether an insurer's disorderly failure would potentially cause significant disruption to the financial system and economic activity, the types of business the insurer engage in, and the nature of its assets and liabilities.

12.7.6 Where the resolution authority takes action which leads to another person taking control of an insurer with a view to restoring, restructuring or running off the business, the resolution authority should continue to exercise functions which ensure that the objectives of resolution are met, notwithstanding any additional responsibilities which the person appointed may have to the insurer or to the courts.

12.7.7 Resolution powers should be exercised in a manner that does not discriminate between creditors on the basis of their nationality, the location of their claim, or the jurisdiction where it is payable.

12.7.8 Mechanisms should be in place to (i) enable continuity of cover for policyholders where this is needed and (ii) ensure timely payment of claims to policyholders of the insurer in resolution, with the aim to minimise disruption to the timely provision of benefits

to policyholders. A PPS can be one of the mechanisms that can help ensure timely payments to policyholders and minimise disruption.

- 12.7.9 When requiring contracts to be transferred to another insurer, the resolution authority should satisfy itself that the interests of the policyholders of the transferor and of the transferee are safeguarded. In some cases this may be achieved through varying, reducing or restructuring the transferred liabilities.
- 12.7.10 Portfolio transfers and transfers of other types of contracts of the insurer in resolution should not require the consent of each policyholder or party to the contract.
- 12.7.11 Consistent with the creditor hierarchy principle, insurance liabilities should be written down only after equity and all liabilities that rank lower than insurance liabilities have absorbed losses, and only if the resolution authority is satisfied that policyholders are no worse off than in liquidation (after compensation, where necessary). The NCWOL principle should also apply to any creditors and shareholders who are bailed in (e.g. through debt restructuring).
- 12.7.12 Information on the period during which policyholders are prohibited from withdrawing from their insurance contracts should be available to policyholders in a transparent manner for the purposes of policyholder protection.
- 12.7.13 The exercise of stay powers, their scope of application and the duration of the stays should be designed to address the specific situation of the insurer in resolution. For example, the duration of the stay could depend on the type of the insurance contract.

Group and Branch Perspectives

- 12.7.14 There may be circumstances where resolution powers will need to be exercised at the level of the head of the insurance group and/or non-regulated entities. Resolution authorities should have the capacity to exercise resolution powers directly on such entities within their jurisdiction to the extent necessary and appropriate. Where resolution powers need to be exercised on entities outside of their jurisdiction or legal authority, the resolution authority should have the capacity to cooperate with relevant supervisors and resolution authorities in the relevant jurisdictions.
- 12.7.15 Unless otherwise specified by the resolution authority, resolution powers exercised on an insurance legal entity (for instance to cease writing business) should also apply to the legal entity's branches. However, the resolution authority responsible for a branch can also exercise powers toward the branch. In either case, the resolution authorities responsible for the branch and the insurance legal entity should consult and cooperate with one another.
- 12.7.16 The resolution authority may choose which power, or which combination of powers, is applied to which entity within the group.

Different types of powers may be applied to different parts of the entity's business.

CF12.7a	<p>The powers that supervisors and / or resolution authorities may exercise, subject to adequate safeguards, for the resolution of an IAIG include, but are not limited to, the following:</p> <ul style="list-style-type: none">• prohibit the insurer from paying dividends to shareholders;• prohibit the insurer from paying variable remuneration to Senior Management;• recover monies from the Board, Senior Management, Key Persons in Control Functions and major risk taking staff⁹, including claw-back of variable remuneration;• prohibit the insurer from transferring its assets without supervisory approval;• retain, remove or replace the Senior Management and / or Board Members;• take control of and manage the insurer, or appoint an administrator to do so;• withdraw license to write new business and put all or part of the insurance business contracts into run-off;• initiate the liquidation of the whole or part of the insurer;• sell or transfer the shares of the insurer to a third party;• restructure, limit or write down liabilities (including insurance liabilities), and allocate losses to creditors and policyholders, where applicable and in a manner consistent with the statutory creditor hierarchy and jurisdiction's legal framework;• override rights of shareholders of the insurer in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the insurer's business or its liabilities and assets;• terminate, continue or transfer certain types of contracts, including insurance contracts; transfer or sell the whole or part of assets and liabilities of the insurer to a solvent insurer or third party;• transfer any reinsurance associated with transferred insurance policies without the consent of the reinsurer;• temporarily restrict or suspend the policyholders' rights of withdrawing their insurance contracts;
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- stay rights of the reinsurers of the cedent in resolution to terminate or not reinstate coverage relating to periods after the commencement of resolution;
- impose a temporary suspension of payments to unsecured creditors and a stay on creditor actions to attach assets or otherwise collect money or property from the insurer;
- require relevant entities within the group to submit necessary information for the resolution authority to be able to develop resolution plans;
- require the IAIG to take actions to improve its resolvability;
- establish a bridge institution;
- take steps to provide continuity of essential services and functions by requiring other companies in the same group (including non-regulated entities) to continue to provide these essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties; and
- temporarily stay early termination rights associated with derivatives and securities financing transactions.

CF12.7a.1	In some jurisdictions, PPSs can be utilised as a bridge institution to which insurance contracts of the IAIG are transferred.
CF12.7a.2	The power to require the IAIG to take actions to improve its resolvability should be exercised in a proportionate manner and the IAIG should, where reasonable, first be given the opportunity to make its own proposal to remove any identified impediments.
CF12.7a.3	The resolution authority should exercise resolution powers with the necessary speed and flexibility. Such powers should be used only if suitable and necessary to meet the resolution objectives.
CF12.7a.4	Essential services mentioned under the 21 st bullet point would include, in particular, IT.

Liquidation

12.8 Legislation provides that the supervisor is involved in the initiation of the liquidation of an insurance legal entity (or a branch of a foreign insurer in its jurisdiction).

- 12.8.1 Legislation should define the involvement of the supervisor in a liquidation, which promotes the protection of policyholders. The supervisor should be authorised to initiate the liquidation of an insurance legal entity, or a branch of a foreign insurer in its

jurisdiction. In some jurisdictions, the supervisor has sole authority to initiate such liquidation. If legislation permits another person (such as a creditor of the insurance legal entity, the insurance legal entity itself, or the court) to initiate liquidation, it should: i) require prior approval of the supervisor, or ii) at a minimum, require prior coordination with the supervisor. If legislation permits another person to initiate liquidation without such prior approval or coordination, it should provide that the supervisor may challenge the person's action.

12.9 Legislation provides a high legal priority to policyholders' claims within the hierarchy of claims in liquidation.

12.9.1 Policyholders should receive high legal priority in the liquidation of an insurance legal entity (or branch) so that policyholders rank above ordinary unsecured creditors. However, it is common in many jurisdictions that a higher priority is given to a limited number of other categories of claims. These may include claims:

- by liquidators, such as claims corresponding to expenses arising from the liquidation procedure;
- by employees;
- by tax or fiscal authorities;
- by social security systems; and
- claims on assets subject to rights in rem (e.g. through collateral, lien, mortgage).

12.9.2 In some jurisdictions, policyholders receive higher priority but only on a determined part of the insurance legal entity's assets (e.g. the assets covering technical provisions). In such jurisdictions, with respect to this portion of the insurer's assets, policyholders' claims are generally subordinate only to liquidation expenses.

12.9.3 In some jurisdictions, a PPS or other protection mechanisms can contribute to a resolution and ensure timely payment of claims to policyholders. Where a bridge institution is available, this can ensure continuity of insurance products in cases where no insurer present in the market takes over the insurance portfolio of the insurance legal entity that would otherwise be liquidated. A PPS or other protection mechanisms could also ensure compliance with NCWOL principle by providing compensation to policyholders so that none are worse off than in liquidation. Mechanisms achieving these objectives (i.e. ensuring timely payment and, when needed, continuity of contracts) should be in place. In some jurisdictions, a PPS can only pay claims after liquidation has been initiated.

Safeguards

12.10 The resolution authority exercises resolution powers in a way that respects the hierarchy of creditors' claims in liquidation and adheres to the NCWOL principle. If the resolution authority departs from the general principle of equal treatment of creditors of the same class (*pari passu*), the resolution authority explains the reasons for such departure to all affected parties.

12.10.1 While respecting the hierarchy of claims, the resolution authority could treat certain types of creditors differently from others in the same class of creditors' hierarchy. In such cases, the reasons for such a treatment need to be clearly explained. Concerned creditors should be protected by the NCWOL principle and where they do not receive at a minimum what they would have received in a liquidation of the entity they should have a right to compensation.

12.10.2 For instance, different types of creditors could be:

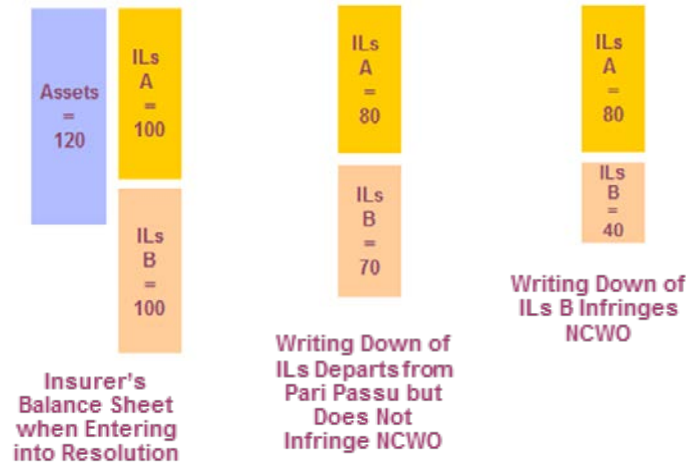
- two categories of creditors ranking *pari passu* where one is covered by a PPS while the other is not; or
- two categories of creditors ranking *pari passu* but the creditors are different in nature (e.g. direct policyholders versus cedents).

12.10.3 For instance, different treatment of a creditor could be:

- settling contracts ranking *pari passu* at a different pace; or
- reducing (writing down) contracts ranking *pari passu* at a different rate.

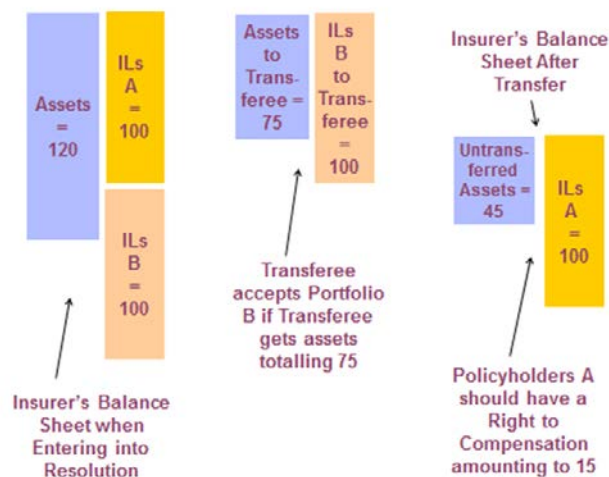
12.10.4 These options could be used provided this does not infringe the NCWOL principle. For instance, Figure 2 illustrates the insurance liabilities (ILs) of an insurance legal entity consisting of two portfolios (A and B), with the ILs of each portfolio amounting to 100 and assets amounting to 120. Assuming that each policyholder would thus receive 60% of their credit in liquidation, the resolution authority could reduce the ILs of A to 80 and the ILs of B to 70 (for instance, in the event where a sound insurer or sound insurers accepted to fund part of but not the whole shortfall). If the resolution authority reduces the ILs of B to 40, the resolution authority will need to provide compensation to policyholders of portfolio B (in the amount of 20) in order to meet the NCWOL principle. This simplified example does not take account of potential PPSs which could pay some claims.

Figure 2



12.10.5 The resolution authority could take actions which could worsen the position of some creditors provided that said creditors receive compensation sufficient to meet the NCWOL. Figure 3 illustrates this approach – it would be beneficial to policyholders in portfolio B to have their policies transferred, but the portfolio transfer worsens the position of policyholders in portfolio A, who therefore should receive appropriate compensation. This example does not take account of potential PPSs which could pay some claims.

Figure 3



12.11 Legislation provides whether insurance liabilities may be restructured and whether policyholders may absorb losses.

12.11.1 In some jurisdictions, insurance liabilities may be restructured. Restructuring, limiting or writing down insurance liabilities may include:

- suspending or postponing payments to policyholders;
- amending terms of insurance contracts;
- terminating or restructuring options provided to policyholders;
- reducing the value of current and future benefits;
- early settling of contracts by payment of a proportion of the insurance liabilities to provide a more rapid and cost-effective resolution. This can apply to future determined benefits but also, and in particular in the case of inward (accepted) reinsurance, to future contingent claims; or
- reducing the value of, or restructuring reinsurance contracts issued by the insurer, to allow losses to be imposed on cedents as appropriate and having regard to the NCWOL principle.

In most cases, approval from the court is required for the restructuring, while in some jurisdictions the resolution authority is empowered to restructure all or part of insurance liabilities without court approval. Restructuring should only occur if it adheres to the NCWOL principle.

- 12.11.2 Where insurance liabilities may be subject to restructuring in resolution, the resolution authority should clearly communicate information (for example, the processes through which such restructuring is undertaken and the extent that policyholders may be forced to absorb losses) to interested stakeholders.

Issues specific to groups and branches

12.12 Where the insurance legal entity belongs to a group and the head of the insurance group is located in the same jurisdiction as the legal entity, mechanisms are in place through which the head of the insurance group is able to be resolved.

CF12.12a.1	<p>The scope of ICP 12 and CF 12 is not limited to insurance legal entities within the group but, where appropriate, is also extended to:</p> <ul style="list-style-type: none"> • the head of the IAIG, and any intermediate holding company within the IAIG; • non-regulated operational entities within the IAIG that are significant to the business of the group; • financial institutions other than insurers within the IAIG; and • branches of insurers within the IAIG.
CF12.12a.2	<p>Resolution actions are taken for entities within the group that fall within the scope stipulated above as necessary and appropriate.</p>

CF12.12a.3	CF 12.12a.1 is not intended to override any existing sectorial requirement (e.g. for banks).
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12.13 The resolution authority has the authority to resolve a branch of a foreign insurer located in its jurisdiction.

- 12.13.1 The resolution authority responsible for a branch should have the ability to support a resolution carried out by the resolution authority of the insurance legal entity which owns the branch or by the resolution authority responsible for the resolution of the insurance group to which the branch belongs.
- 12.13.2 The resolution process may differ in the jurisdiction of the branch and in that of the insurance legal entity, due, among other things, to different insolvency laws and creditor hierarchies.
- 12.13.3 Where the resolution authority of the insurance legal entity which owns the branch or the resolution authority responsible for the resolution of the insurance group to which the branch belongs are not taking action, or are acting in a manner that does not take sufficient account of the objectives of resolution in the branch jurisdiction, the resolution authority responsible for the branch may take actions of its own initiative.
- 12.13.4 Where the resolution authority for a branch takes resolution action of its own initiative, it should give prior notification and consult the supervisor or resolution authority of the insurance legal entity which owns the branch and/or the supervisor or resolution authority of the insurance group to which the branch belongs.

Proposed definitions of key terms

(If approved, these definitions will be added to the Glossary.)

Resolution

Actions taken by a resolution authority towards an insurer that is no longer viable, or is likely to be no longer viable, and has no reasonable prospect of returning to viability. Resolution includes portfolio transfer, run-off, restructuring, and liquidation.

Resolution authority

An authority that is responsible for exercising the resolution powers over insurers. Resolution authority, depending on the jurisdiction, may include supervisors, other governmental entities or private persons (including administrators, receivers, trustees, conservators, liquidators, or other officers), or courts authorised by law to exercise resolution powers.

Recovery

Actions taken by an insurer that is still viable in order for it to return its financial position to the level at which the insurer meets regulatory requirements and/or to regain soundness of its operation.

Run-off

A process under which an insurer ceases to write new business and administers existing contractual obligations. A 'solvent run-off' is the process initiated for an insurer who is still able to pay debts to its creditors when the debts fall due. An 'insolvent run-off' is the process initiated for an insurer who is no longer able to pay debts to its creditors when the debts fall due.

Liquidation

A process to terminate operations and corporate existence of the entity through which the remaining assets of the insurer will be distributed to its creditors and shareholders according to the hierarchy of creditors. Branches can also be put into liquidation, separately from the insurance legal entity they belong to.

Restructuring of insurance liabilities

Reducing the amount of insurance benefits to be paid, changing the timing and/or ways of payments of those benefits, and/or altering the terms of contracts of existing insurance contracts.

Writing down of insurance liabilities

One of the ways to restructure insurance liabilities, by which the amount of insurance benefits to be paid to policyholders is reduced.

Portfolio transfer

Transfer of a book of business containing multiple single insurance policies (i.e. insurance liabilities together with the assets backing those liabilities) to another (succeeding) insurer.

Recovery plans

Plans developed and maintained by the insurer that identify options to restore financial strength and viability when the insurer comes under severe stress.