



Input document

IAIS Stakeholder Teleconference on Resolution

To support the stakeholder teleconference, the IAIS Resolution Working Group (ReWG) developed this document, which follows the outline of the planned Application Paper on Resolution Powers and Planning. It includes brief descriptions of the planned topics to be covered as well as issues for discussion on which stakeholder inputs are particularly welcomed. The questions for discussion are developed to solicit views from a stakeholder perspective. During the teleconference, as appropriate, the IAIS ReWG will also share its initial views on these issues.

About the IAIS

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

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

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

Application Papers provide additional material related to one or more ICPs and/or ComFrame, 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.

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1 Introduction

1.1 Objectives and background

The planned Application Paper on Resolution Powers and Planning will aim to provide guidance on supervisory practises related to resolution, which is defined in the IAIS Glossary¹ as “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.” In particular, it will provide guidance for the application of ICP 12 (Exit from the Market and Resolution), including the ComFrame standards and guidance, and is also relevant to ICP 25 (Supervisory Cooperation and Coordination), including the ComFrame standards and guidance (related to crisis management planning).² These materials were adopted by the IAIS Annual General Meeting in November 2019.

Application Papers do not set new standards or expectations. This Paper will be aimed at:

- Providing guidance to supervisors and/or resolution authorities on the practical application of resolution powers, as well as on cooperation and coordination between authorities when planning for, and exercising, such powers;
- Providing guidance with regard to resolution planning, which may be beneficial to supervisors, resolution authorities and/or insurers, depending on the circumstances within a jurisdiction; and
- Providing examples and case studies to illustrate the application of standards and guidance relevant to resolution.

The planned Paper also aims to address issues that were identified during the development of supervisory material in ICP 12 and ComFrame, including feedback received from IAIS Members and stakeholders. Issues that were identified, include:

- Further guidance and clarifications around expectations for resolution planning;
- Explanations and examples of the application of resolution powers;
- The practical application of proportionality in the case of resolution; and
- The role of policyholder protection schemes (PPS) in resolution. This Paper discusses the role that a PPS, if established within a jurisdiction, may have in relation to certain resolution powers as well as in relation to the resolution authority. It does not, however, aim to provide a comprehensive overview or complete guidance on the role of PPS in resolution.

1.2 Scope of application

The Paper and most of its concepts are relevant to all insurers (ie, insurance legal entities and insurance groups, including insurance-led financial conglomerates) and its recommendations are applicable across supervisory approaches among jurisdictions. Also, generally, the concepts described in the Paper are equally applicable to the business of insurers and reinsurers.

The planned Paper also provides guidance to certain specific requirements that are set out in ComFrame only, which focuses on IAIGs only, in particular the requirements related to resolution planning, resolvability assessments and crisis management groups (CMGs). These

¹ <https://www.iaisweb.org/page/supervisory-material/glossary>

² <https://www.iaisweb.org/page/supervisory-material/insurance-core-principles-and-comframe>

sections are thus intended to be particularly useful for supervisors and/or resolution authorities of IAIGs where prior planning for resolution and cross-jurisdictional coordination may be beneficial.

The exact scope of application of the relevant supervisory material that is discussed in the Paper, is depicted in the table below.

Table 1 Scope of Application: resolution-related supervisory material

| Thematic area | High-level description | Location | Scope of application | |
|---------------------------------------|--|-----------------------|----------------------|------|
| | | | Legal entity / Group | IAIG |
| Resolution framework | Resolution framework | ICP 12 | ● | ● |
| Resolution planning | Preparing for resolution | ICP 12.3 | ○ | ○ |
| | Resolution plan and resolvability assessment | CF 12.3.a & CF 12.3.b | | ○ |
| | Management information system | CF 12.3.c | | ● |
| Resolution powers | General powers for resolution of insurers | ICP 12.7 | ● | ● |
| | Specific powers for IAIGs | CF 12.7.a | | ● |
| Crisis management and planning | Coordination of crisis management preparations | ICP 25.7 | ● | ● |
| | Establishment of crisis management groups | CF 25.7.a & CF 25.7.b | | ● |

Legend: [] Not required; [○] Required as necessary; [●] Required

1.3 Proportionality

The planned Application Paper should be read in the context of the proportionality principle, as described in the Introduction to ICPs, which provides supervisors and/or resolution authorities “the flexibility to tailor their implementation of supervisory requirements and their application of insurance supervision to achieve the outcomes stipulated in the Principle Statements and Standards”. In particular, proportionality allows ICP 12 to be translated into a jurisdiction’s resolution framework in a manner appropriate “to its legal structure, market conditions and consumers; and allows the supervisor and/or resolution authority to increase or decrease the intensity of supervision according to the risks inherent to insurers, and the risks posed by insurers to policyholders, the insurance sector or the financial system as a whole.”

Where appropriate, the Paper will provide practical examples of the application of the proportionality principle, notably as regards resolution planning.

1.4 Terminology

In the Paper, terms have the same meaning as set out in the IAIS Glossary. To facilitate the understanding of the Paper, definitions of terms that are used frequently are shown in the table below.

Table 2 List of resolution-related terms

| Term | Definition and/or additional guidance |
|---|--|
| 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 liquidation claims hierarchy. Branches can also be put into liquidation, separately from the insurance legal entity they belong to. |
| Portfolio transfer | Transfer of one or more policies together with, when relevant, the assets backing those liabilities. |
| 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 authority | A person that is authorised by law to exercise resolution powers over insurers. This term is used when it involves resolution powers and/or processes after resolution has been instituted: this includes supervisors acting under their resolution powers |
| Resolution plan | A plan that identifies in advance options for resolving all or part(s) of an insurer to maximise the likelihood of an orderly resolution, the development of which is led by the supervisor and/or resolution authority in consultation with the insurer in advance of any circumstances warranting resolution. |
| 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. |
| Supervisor | This term is used when it involves responsibilities and/or roles of the day-to-day supervisor of an insurer. |
| Supervisor and/or resolution authority | This term is used when it involves responsibilities for planning and/or initiation of resolution and encompasses supervisors acting in their pre-resolution roles (eg before a supervisor or resolution authority institutes resolution and/or obtains any necessary administrative and/or judicial approvals to do so). |

1.5 Inputs

The planned Application Paper relies on public documentation on resolution for insurers, including material from the FSB, IAIS and IAIS Members. It also benefits from the inputs from

22 IAIS Members, who participated in a Member Survey during Q4 2019 related to resolution frameworks, resolution planning, resolution powers and PPSs.³

The FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (“Key Attributes” or KAs) set out the core elements that the FSB considers necessary for an effective resolution regime. The ICPs and ComFrame material, as well as this Paper, have been informed by the FSB Key Attributes to the extent appropriate. It should be noted however that the scope of application of the FSB Key Attributes differs from the scope of the ICPs and ComFrame. The Key Attributes are designed for financial institutions including insurers that could be systemically significant or critical if they fail, and certain specific Key Attributes are required only for global systemically important financial institutions. The ICPs and ComFrame, instead, are targeted at the insurance sector as a whole, and IAIGs only, respectively.

1.6 Structure

The Paper is planned to be structured as follows. Section 2 sets the scene by discussing the objectives and concepts of resolution. Section 3 discusses concepts around point of non-viability and entry into resolution. Sections 4, 5 and 6 provide further guidance and practical examples around, respectively, resolution powers, resolution planning and resolvability assessments. Finally, section 7 deals with coordination and cooperation amongst involved authorities.

Question for Discussion

- **Are there any other issues that warrant discussion in the Application Paper that are not listed above?**

2 Objectives and concepts of resolution of insurers

2.1 Concepts

As explained in the introductory guidance of ICP 12, exit from the market refers to the cessation of an insurer’s business, either in part or in whole. Insurers may be required by the supervisor and/or resolution authority to exit from the market, and that insurer be “resolved”. Such a situation generally occurs to a troubled insurer that is no longer viable, or is likely to be no longer viable, and has no reasonable prospect of returning to viability in its current form. As such, resolution can be seen as a final step taken by the supervisor and/or resolution authority, after all other preventive or corrective measures have proven to be insufficient to preserve or restore an insurer’s viability (see ICP 10 Preventive Measures, Corrective Measures and Sanctions).

2.2 Objectives of a resolution framework

As also explained in the introductory guidance of ICP 12, an orderly process for an insurer’s withdrawal from the market helps to protect policyholders and contributes to the stability of the

³ Inputs were received from IAIS Members from the following jurisdictions: Australia, Bermuda, Brazil, British Virgin Islands, Chile, France, Germany, India, Ireland, Italy, Japan, Malaysia, The Netherlands, Norway, New Zealand, Portugal, Russia, Saudi Arabia, Singapore, South Africa, Turkey, United Kingdom, United States of America.

insurance market and the financial system. ICP 12 therefore requires jurisdictions to have a framework in place for the resolution of insurers.

This subsection will provide insights into common objectives of resolution frameworks, based on the outcomes of the Member survey.

3 Triggers – Entry to resolution

ICP 12 requires legislation to provide criteria for determining the circumstances in which the supervisor and/or resolution authority initiates resolution of an insurer (“entry into resolution”). Entry into resolution should be initiated when an insurer is no longer viable, or is likely to be no longer viable (“failing or likely to fail”) and has no reasonable prospect of recovering to viability within a reasonable timeframe. The resolution regime should have a forward-looking trigger that would provide for timely and early entry into resolution. This section will provide guidance and illustrative examples to this effect.

Questions for Discussion

- **What indicators should be used by the resolution authority to assess if the conditions for resolution have been met?**
- **What information provided by the insurer would be beneficial in assisting the resolution authority in its decision making for resolution condition assessments?**
- **What should be considered a reasonable timeframe for recovery?**

4 Resolution powers

This section is aimed at providing guidance and examples of good practice related to all the resolution powers listed in ICP 12 and ComFrame integrated therein. For each of the powers, it provides a description of its intended benefits and use and considerations in its application. As appropriate, it also discusses any specific considerations related to the resolution of insurance group and/or to safeguards.

For the purpose of the planned Application Paper, the powers listed in ICP 12 will be grouped based on common characteristics. While this grouping may not be perfect, and some resolution powers might be allocated to more than one group, this grouping is purely aimed at facilitating the reading by avoiding possible duplications in describing the powers and their benefits and uses. As indicated in ICP 12, the complete list of resolution powers is not exhaustive and the resolution authority should have discretion to apply other available powers. Finally, the order of presentation of the powers is not an indication of the sequence in which these powers could be exercised or their priority. With these disclaimers in mind, the powers are proposed to be grouped as follows:

1. Prohibition of certain payments and transfers:

These powers share common goals and mechanisms of application aimed at preservation of assets; these actions are directed at the insurer

- Prohibition of the payment of dividends to shareholders
- Prohibition of the payment of variable remuneration
- Prohibition of transfer of assets.

2. Taking control:

- Retain, remove, or replace Board members, Senior Management, Key Persons
- Take control and manage the insurer, or appoint an administrator or manager to do so
- Override rights of shareholders of the insurer

3. Withdrawal of licence to write new business and run-off

4. Restructuring mechanisms

- 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 (“bail-in”)
- Terminate, continue or transfer contracts, including insurance contracts.
- Transfer or sell the whole or part of the 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

5. Suspension of Rights:

These actions are directed at external stakeholders (eg policyholders and other creditors)

- Temporarily restrict or suspend the policyholders’ rights of withdrawing their insurance contracts.
- Stay rights of the reinsurers of the ceding insurer 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.

6. Initiate Liquidation.

Questions for Discussion

- **Does the categorisation for the purpose of this Application Paper seem appropriate?**
- **What are key factors when choosing between resolution powers?**
- **Under what circumstances would restructuring mechanisms be an appropriate power in insurer resolution?**
- **How could restructuring mechanisms be operationalised in non-life versus life business?**

4.1 Resolution powers in ComFrame

Dealing with the resolution of an IAIG presents unique challenges, particularly in the case of a complex group with highly interconnected legal entities. The insurance legal entities in the group may be regulated by different supervisors, and some legal entities may not be regulated by any financial authority.

The additional powers that are required to be available to the resolution authority for resolving an IAIG, are discussed in this subsection (see CF 12.7.a). These powers may also be useful for the resolution of insurers or insurance groups that are not IAIGs.

4.2 Safeguards

As stated in ICP 12.10, the exercise of resolution powers must comply with the NCWOL principle. This subsection discusses relevant considerations.

4.3 PPS

This section discusses the role of a PPS, if present within a jurisdiction, in resolution and in relationship to resolution powers available.

Questions for Discussion

- **What should be the role of a PPS in resolution?**
- **For instance, should the role of a PPS be limited to pay-out after liquidation, or should it also facilitate the execution of other resolution powers such as restructuring mechanism? If so, how and under what conditions?**

5 Resolution plans

A resolution plan identifies in advance options for resolving all or part(s) of an insurer with the ultimate aim to be better prepared for resolution. Therefore, a resolution plan serves as a guide to authorities for achieving an orderly resolution in situations where recovery measures are no longer feasible or have been unsuccessful. The purpose of a resolution plan is to identify risks, endogenous and exogenous, that may threaten the viability of an insurer. A resolution plan should also establish a range of measures that can be taken to minimise the impact of an actual or prospective failure without exposing taxpayers to loss. Furthermore, the plan should identify the insurer's critical functions and put in place measures, including the necessary steps and time to implement such measures, to ensure continuation of these functions in resolution or set appropriate measures for winding down of these functions in an orderly manner.

Section 5 will discuss the objective and key elements of a resolution plan, as well as the scope of application and the principle of proportionality. Broadly, the key elements of resolution plan include:

- An executive summary of the most important elements of the resolution plan, including the resolvability assessment;
- A description of the insurer that outlines the insurer's legal structure, its main activities and key financial and operational characteristics;
- A trigger framework for entry into resolution;
- An analysis of the impact of the failure of the insurer or the group on other parts of the financial sector, including the identification of any critical functions;
- A description of the preferred resolution strategy, which includes a mapping and description of the resolution powers available and considerations of appropriateness dependent on relevant factors;
- An operational plan for the implementation of the resolution strategy, taking into account the potential impediments to effective resolution and the actions to mitigate them;

- A description of the governance for resolution planning and resolution process;
- A communication strategy to help manage expectations, and/or retain (or restore) the confidence of market participants and policyholders; and
- An analysis of the impact on the PPS (if applicable).

Questions for Discussion

- **What do you expect the role of the insurer is in developing the resolution plan?**
- **What are key considerations in operationalising a resolution plan and resolution strategy?**

6 Resolvability Assessments

A resolvability assessment allows authorities to evaluate the feasibility and credibility of available resolution strategies. Thus, authorities should regularly undertake resolvability assessments including when there are material changes to the insurer's business or structure, or any other change that could have a material impact on the resolvability assessment. This section describes key considerations related to developing resolvability assessments.

Question for Discussion

- **What issues would be beneficial to be addressed in this section?**

7 Cooperation and Coordination

Cooperation and coordination between supervisors is essential for effective crisis management. Indeed, a lack of cooperation and coordination, where all involved parties seek their own interest without considering the efficiency and effectiveness of the overall resolution process, typically leads to a suboptimal resolution outcome, particularly in cross-border cases. ICP 12.0.12 states: "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."

Cooperation and coordination are necessary both for enhancing preparedness for crises and for facilitating the management of a resolution. This corresponds to two different stages of a crisis management flow: ie the preparation phase in a "business-as-usual" environment and the actual management of the crisis in the resolution phase.

Questions for Discussion

- **What kind of resolution planning information should authorities exchange within the CMG in normal times?**
- **What kind of information is relevant to have at hand in crisis times?**
- **What are key success factors for the functioning of a CMG?**