INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

Application Paper on Resolution Powers and Planning

23 June 2021

About the IAIS

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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.

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This document was prepared by the Resolution Working Group in consultation with IAIS Members.
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Acronyms

CMG	Crisis Management Group
ComFrame	Common Framework for the Supervision of Internationally Active Insurance Groups
FMI	Financial Market Infrastructure
FSB	Financial Stability Board
IAIS	International Association of Insurance Supervisors
IAIG	Internationally Active Insurance Group
ICP	Insurance Core Principle
KAs	Key Attributes of Effective Resolution Regimes for Financial Institutions
KAAM	Key Attributes Assessment Methodology
MCR	Minimum Capital Requirement
MIS	Management Information System
(M)MoU	(Multilateral) Memorandum of Understanding
NCWOL	No Creditor Worse Off than in Liquidation
PCR	Prescribed Capital Requirement
PPS	Policyholder Protection Scheme

1 Introduction

1.1 Objectives and background

1. This Application Paper on Resolution Powers and Planning aims to provide supporting material on supervisory practices related to resolution, which is defined in the IAIS Glossary[1] 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 provides background 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 at the IAIS Annual General Meeting in November 2019.

2. Application Papers do not set new standards or expectations. This Paper aims to:

- Provide support 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;
- Provide support with regard to resolution planning, which may be beneficial to supervisors, resolution authorities and/or insurers, depending on the circumstances within a jurisdiction; and
- Provide examples to illustrate the application of standards and guidance relevant to resolution.

3. The 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 on the role of PPSs in resolution. The IAIS plans to start the development of an Issues Paper on this topic in the second half of 2021.

4. While certainly important for resolution, issues around valuation and funding in resolution are not discussed in detail in this Paper. These issues are also closely linked to ICPs 14 (Valuation) and 17 (Capital Adequacy). Since ICPs 14 and 17 are scheduled to be revised in the coming years (during the monitoring period of the Insurance Capital Standard Version 2.0), developing detailed guidance in this Paper at this time would not be appropriate.

[1] https://www.iaisweb.org/page/supervisory-material/glossary
[2] https://www.iaisweb.org/page/supervisory-material/insurance-core-principles-and-comframe

1.2 Scope of application

5. This Paper and most of its concepts are relevant to the business of primary insurers and reinsurers,[3] as well as to both insurance legal entities and insurance groups. Its recommendations are applicable across supervisory approaches among jurisdictions. It complements the Application Paper on Recovery Planning approved by the IAIS in 2019.[4]

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

7. The application of the relevant supervisory material is depicted in table 1:

Table 1: Scope of Application: resolution-related supervisory material

Thematic area	***High-level description***	***Location***	***Scope of application***	
			All insurers	***IAIGs***
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	Resolution powers	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 & CF25.7.b		●

[ ] Not applicable;
[○] Applicable / required as necessary only (for instance based on the nature, scale and complexity of the (activities of) the insurer); and
[●] Required (these represent minimum requirements as provided in the IAIS supervisory material. Jurisdictions can go beyond these minimum requirements and for instance extend the scope of certain requirements as appropriate).

1.3 Proportionality

8. This Application Paper should be read in the context of the proportionality principle, as described in the Introduction to the 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

[3] See Box 1 in section 2 for a short description of considerations on the resolution of reinsurers.
[4] https://www.iaisweb.org/page/supervisory-material/application-papers/file/87519/application-paper-on-recovery-planning

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."

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

1.4 Terminology

10. In this 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 in the Paper are shown in the table below.

11. When this Paper refers to an "insurer", in line with the Introduction to the ICPs, this means insurance legal entities and insurance groups, including insurance-led financial conglomerates, and refers to the business of both primary insurers and reinsurers.

Table 2: List of resolution-related terms (in IAIS Glossary and ICP Guidance material)

Term	Definition and/or additional guidance
Essential services and functions	Services and/or functions that are significant for the continuation of (all or parts of) the insurer (for example, shared services, such as information technology services and outsourced functions).[5]
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 in some jurisdictions, separately from the insurance legal entity they belong to.
No creditor worse off than in liquidation (NCWOL)	Principle that requires that, in a resolution action other than a liquidation, creditors should be entitled to compensation if they receive less than they would have received if the insurer was liquidated.
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.

[5] This term should not be confused with those financial and economic functions of an insurer that need to be continued to achieve the resolution objectives (notably: policyholder protection and financial stability), which are discussed in section 5.

	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. 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.
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 that 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 that 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

12. This Application Paper relies on public documentation on resolution for insurers, including material from the Financial Stability Board (FSB), IAIS and IAIS Members. It also benefits from the inputs from 22 IAIS Members, who participated in a Member Survey in Q4 2019 related to resolution frameworks, resolution planning, resolution powers and PPSs.[6] Since the supervisory material in ICP 12 and ComFrame was adopted during that same period, the implementation of resolution frameworks is still evolving.

13. The Paper also benefited from the feedback received during a stakeholder teleconference that was held on 21 April 2020 and from feedback received during the public consultation from 9 November 2020 until 5 February 2021.

14. 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.[7] The ICPs and ComFrame material, as well as this Paper, have

[6] 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.

[7] See https://www.fsb.org/wp-content/uploads/r_141015.pdf. In August 2020, the FSB published the Key Attributes Assessment Methodology (KAAM) for the Insurance Sector; a methodology for

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

15. The remainder of the Paper is 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. Section 7 deals with coordination and cooperation amongst involved authorities.

2 Objectives and concepts of resolution of insurers

2.1 Concepts

16. 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 may be "resolved". Such a situation occurs when a troubled insurer 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, where all other preventive or corrective measures are inadequate to preserve or restore an insurer's viability (see ICP 10 (Preventive Measures, Corrective Measures and Sanctions)).

17. Resolution powers may be used in combination; for example, where parts of the insurer are put in run-off, parts are liquidated, and/or parts are transferred to another insurer. Both during and after resolution, the insurer continues to be subject to applicable laws and regulations. This is particularly the case for a solvent run-off, until all insurance obligations are either discharged or transferred to a succeeding insurer, or when a restructured entity is fully restored and re-enters active market participation.

18. An insurer may also decide to exit from the market on a voluntary basis for business and/or strategic reasons, even when that insurer is still viable and meets regulatory requirements. This may include an insurance group's decision to liquidate one or more insurance legal entities. Such a situation is often referred to as "voluntary exit from the market". Although such a situation is not the focus of this Paper, insurers, supervisors and resolution authorities may find certain elements of the Paper helpful.

2.2 Objectives of a resolution framework

19. As indicated 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

assessing the implementation of the KAs in the Insurance Sector, see https://www.fsb.org/wp-content/uploads/P250820-1.pdf.

insurance market and the financial system". ICP 12 therefore requires jurisdictions to have a framework in place for the resolution of insurers which is provided for by legislation ("resolution framework"). A resolution framework may serve at least the following objectives: policyholder protection, contributing to financial stability and minimising the reliance on public funding. A jurisdiction may, at its discretion, choose to rank these resolution objectives.

20. The protection of policyholders is crucial, and legislation should support the objective of protecting policyholders. However, this does not mean that policyholders will be fully protected under all circumstances and does not exclude the possibility that some losses could be absorbed by policyholders, to the extent they are not covered by PPSs or other mechanisms. The legislation should provide a scheme for prioritising the payment of claims of policyholders and other creditors in liquidation (liquidation claims hierarchy). Resolution powers should be exercised in a way that respects the hierarchy of creditors' claims in liquidation. In a resolution action other than a liquidation, creditors should be entitled to compensation if they receive less than they would have received if the insurer was liquidated (ie the "no creditor worse off than in liquidation" (NCWOL) principle). The NCWOL principle may require funding to provide compensation to creditors so that they receive at least as much as they would have received in a liquidation.

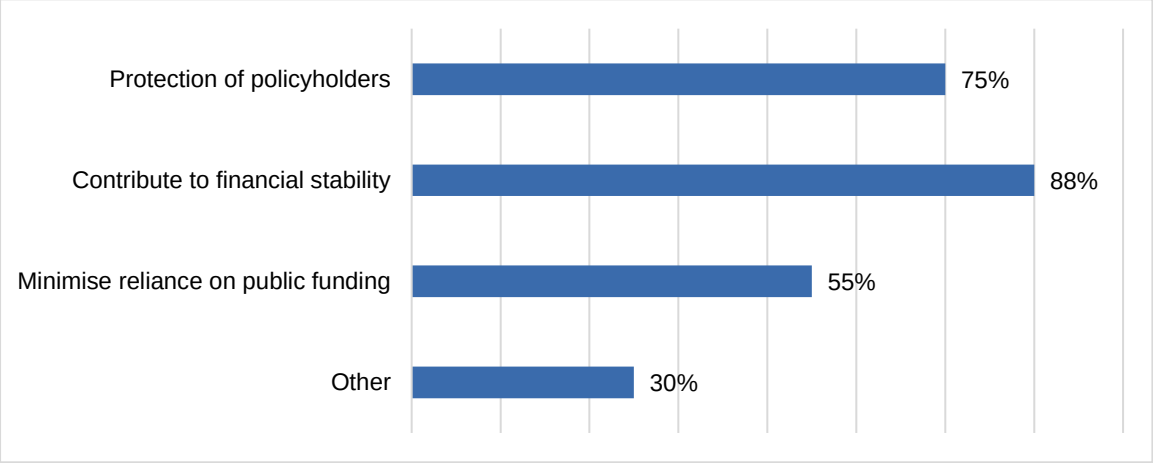
21. From a financial stability perspective, a disorderly failure of an insurer that is systemically important may cause significant disruption to the financial system and the real economy. Systemic importance is not synonymous with size. For instance, a disorderly failure of a niche insurer that performs a specialised function to a segment of the economy may cause a sudden and significant withdrawal of insurance coverage that, at a minimum, would lead to increasing costs for those policyholders relying on these key services for their day-to-day business. Likewise, a disorderly simultaneous failure of various insurers that perform similar activities or have common exposures could, collectively, pose a risk to financial stability.[8] Having a resolution framework in place, and engaging in resolution planning for such insurers, should limit the risk of a disorderly failure and thus contribute to financial stability.

22. Finally, resolution should seek to minimise any reliance on public funding. An expectation that public funding will be available to remedy an insolvency may create a "moral hazard" and provide an incentive for an insurer to engage in risky behaviour. Furthermore, as provided in ICP 12, in principle, any public funding used for the resolution of the insurer should be recouped from the insurance sector in a transparent manner; such recouping strengthens market discipline and encourages players to act responsibly.

23. Based on the outcomes of the Member Survey, in most jurisdictions that have implemented a resolution framework, these serve a combination of objectives. Consistent with ICP 12, the protection of policyholders, contribution to financial stability and minimising reliance on public funding, are most commonly cited (see Figure 1). Other cited objectives of resolution frameworks include: to ensure the continuity of critical operations; to reinforce market discipline; or to prevent large negative effects for society.

[8] See section 1 of the IAIS Holistic Framework for the assessment and mitigation of systemic risk in the insurance sector for a detailed description of possible sources of systemic risk.

Figure 1: Common objectives of a resolution framework



Source: IAIS Member Survey, 16 jurisdictions

24. As noted in paragraph 5, the Paper and most of its concepts are relevant to both primary insurers and reinsurers. Nevertheless, some specific features of the business of reinsurance may need to be considered (see box 1).

Box 1: Considerations related to reinsurers

Specific features of the business of reinsurance that may need to be considered when exercising resolution powers and when planning for resolution,[9] include for instance:

- In the exercise of the resolution powers (section 4), the nature of the business and of the liabilities needs to be taken into account, particularly with respect to the power to restructure, write down or limit (re)insurance liabilities;
- In the resolution planning for reinsurers (section 5), more focus should be given to the potential impact of failures on other insurers and financial stability as a whole. To define the scope of resolution planning for reinsurers, supervisors and/or resolution authorities should evaluate the impact of the resolution actions on cedents, third parties and financial stability in general. For instance, it should be assessed whether identified resolution strategies would result in indirect losses for policyholders, contagion effect to other insurers, or a material adverse impact on economic activity. The latter could be caused by a disruption to the continuity of reinsurance cover and payments, a forced sale of distressed assets and/or by a lack of cedents' confidence; and
- In the resolvability assessment (section 6), supervisors and/or resolution authorities should also assess the concentration risk and to what extent the diversification in reinsurance is affected. The findings of the assessment should be taken into account when designing the resolution strategy.

[9] The considerations listed are largely based on the EIOPA Opinion on the Review of Solvency II, "Background Analysis", Chapter 12, pages 635-637.

3 Entry into resolution

25. 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 ("failing") or is likely to be no longer viable ("likely to fail") and has no reasonable prospect of recovering to viability. The resolution regime should have a forward-looking trigger that would provide for entry into resolution before an insurer is balance sheet insolvent (that is, the value of the assets of the insurer is less than the value of its liabilities) or is unable to pay its obligations as they come due.

26. An approach that looks to whether the insurer can run-off, or continue to run-off, could be more appropriate for the long-term nature of some insurance liabilities, as opposed to an approach that considers viability on a shorter timeframe. This would allow jurisdictions to enter a failing insurer into resolution before the insurer becomes balance-sheet insolvent.

27. There should be resolution conditions that need to be satisfied in order to justify initiating resolution. At a minimum, this should include the determination that the insurer is failing, or is likely to fail, and has no reasonable prospect of recovering to viability. For example, this includes situations where recovery is unlikely to be achievable within a reasonable timeframe. Jurisdictions should articulate clear standards or suitable indicators of non-viability in the assessment frameworks developed by their relevant authorities to guide decisions on whether an insurer meets the conditions for entry into resolution. Relevant authorities should assess such standards or indicators in the context of the actual circumstances pertaining to the specific situation being considered. To facilitate the resolution of IAIGs, it is recommended for involved supervisors to share information on, and where possible, coordinate, the applicable triggers for entry into resolution in their respective jurisdictions (see section 7).

28. Box 2 provides illustrative examples of possible resolution conditions in place in various jurisdictions, based on the Member Survey. Various approaches can be identified:

- The use of one, or more conditions: Most jurisdictions use a set of conditions, whereby in some jurisdictions resolution can only be initiated if all conditions are met, whereas other jurisdictions may have a more flexible approach; and
- The use of qualitative guidelines, the assessment of which entails a certain degree of judgement, or quantitative (financial) thresholds.

Box 2: Illustrative examples of resolution conditions

Conditions and considerations for determining whether an insurer is failing, or likely to fail, include the following:

- The relation between available capital resources against the required regulatory capital:
    - Where a quantitative threshold is set, the exact level of this threshold ranges significantly between jurisdictions, with examples ranging between 70% and 150% of the prescribed capital requirement (PCR); or when the insurer is in breach of the minimum capital requirement (MCR) and there is no reasonable prospect of restoring compliance with MCR; or

    - There could be two thresholds: a higher threshold which authorises the supervisor and/or resolution authority to take action and a lower threshold where action is required;

- If the insurer has exhausted all management actions, or remaining management actions are considered to be insufficient to provide a reasonable prospect of restoring the capital position and return to viability;
- If possible recovery measures have been exhausted – either tried and failed or ruled out as implausible to return the undertaking to viability – or cannot be implemented in a timely manner;
- If the value of the assets of the insurer is less than the value of its liabilities ("balance-sheet insolvent"), or there are objective indications that this will be the case in the foreseeable future;
- If the insurer is, or is likely to be, unable to meet its debt obligations, or other liabilities as they fall due ("cash-flow insolvent");
- If the significant owner of the insurer is in financial difficulty and the insurer's financial condition is being significantly impacted with possible insolvency as a result;
- If the insurer does not operate in a manner that is consistent with regulatory requirements, for instance there are serious governance issues (including criminal activity or fraud), or risk management and control deficiencies that may significantly impact the financial position of the insurer;
- Continued deterioration in the insurer's financial condition. Erosion of available capital resources may be indicated, for instance, by an inability to comply with an order to increase capital, or by signs of increasing financial distress such as the need to trigger sales of illiquid assets; and
- Loss or likely loss of confidence in the insurer by the public, financial markets, policyholders, investors or creditors. This may be characterised by unusually high insurance policy surrenders, increased difficulty in obtaining or rolling over short-term funding, a rapid rise in the market spread of its Credit Default Swaps, a material downgrade in its credit rating, or rapid and sustained decline in its share price or market activity.

Source: IAIS Member Survey

29. Jurisdictions should consider internal governance arrangements for the decision-making processes for determining whether any of the resolution conditions are met. The resolution authority should consider the appropriate level of seniority required for the decision taker, whether it should be a single individual or a committee decision, the amount of supporting evidence provided, and timeframes between the decisions taken for each resolution condition.

30. Considerations should also be made to whether other relevant stakeholders should be consulted or informed for the resolution condition assessments, and whether a joint-institutional decision could be required for specific conditions under all or some circumstances. At the same time, consideration should be made to the risk that any undue interference, delay or disclosure of information, could compromise the swift execution of resolution measures. Other relevant stakeholders could include the government's treasury function, the prudential and/or conduct supervisor (as appropriate and depending on the structure of regulatory and supervisory authorities in the jurisdiction), the PPS (if there is one) and the courts.

4 Resolution powers

31. ICP 12.7 and CF 12.7.a require "legislation to provide an appropriate range of powers to resolve insurers effectively, and for these powers to be exercised proportionately and with appropriate flexibility". This section provides guidance for using these resolution powers. Each of the resolution powers listed in ICP and ComFrame provide 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 an insurance group. The Annex provides examples of how resolution powers have been enacted in some jurisdictions.

32. As indicated in section 2.1, there are similarities between preventive and corrective measures (ICP 10) aimed "to prevent an insurer from being no longer viable, or likely to become no longer viable", and resolution powers, which are used only after an insurer has already passed the point of non-viability. Some of the resolution powers build on these preventive and corrective measures. The table below provides a list of powers in ICP 10 and ICP 12 that are similar or even identical. Those powers that are not listed in the table below are unique for resolution purposes.

Table 3: Overview of similar powers discussed in ICP 10 and 12

Powers in ICP 10	Powers in ICP 12 and ComFrame
• Prohibiting the insurer from issuing new policies or new types of product • Withholding approval for new business activities or acquisitions • Suspending the licence of an insurer	• Withdraw licence to write new business
• Restricting the transfer of assets • Restricting purchase of an insurer's own shares	• Prohibit transfer of assets
• Restricting or suspending dividend or other payments to shareholders	• Prohibit the payment of dividends to shareholders
• Facilitating the transfer of obligations under the policies from a failing insurer to another insurer that accepts this transfer • Prohibiting the insurer from continuing a business relationship with an intermediary or other outsourced provider, or requiring the terms of such a relationship to be varied	• Terminate, continue, or transfer contracts
• Replacing or restricting the power and role of Board Members, Senior Management, Key Persons in Control Functions if the supervisor has material concerns with management or governance	• Retain, remove, or replace Board members, senior management, key persons
• Temporarily delaying or suspending, in whole or in part, the payments of the	• Impose moratoria on policyholder surrender rights, temporarily restricting

redemption values on insurance liabilities or payments of advances on contracts	or suspending policyholders' rights to withdraw their insurance contracts

33. For the purpose of this Application Paper, the powers listed in ICP 12 and ComFrame have been grouped based on common characteristics to facilitate describing the powers and their benefits and uses. To avoid repetition, each power is listed only once, but many powers could fit within more than one category. As indicated in ICP 12, the list of resolution powers is not exhaustive and the resolution authority should have discretion to apply other available powers when developing and implementing its resolution strategy. Also, the powers in ICP 12.7.4 have the status of guidance (ie a recommendation), whereas the powers in CF 12.7.a have the status of a standard (ie a requirement). Therefore, for jurisdictions that have one or more IAIGs, all powers listed under CF 12.7.a are required to be available for IAIGs. For other jurisdictions (or for insurers that are not IAIGs), ICP 12.7 requires an appropriate range of powers, and ICP 12.7.4 recommends powers that should be available to the resolution authority. Finally, the order of presentation of the powers is not an indication of the sequence in which these powers could be exercised, or of their priority. With these disclaimers in mind, the powers have been grouped as follows:

1. Taking control
    - Take control and manage the insurer, or appoint an administrator or manager to do so;
    - Override rights of shareholders of the insurer; and
    - Retain, remove, or replace Board members, Senior Management, Key Persons
2. Prohibition of certain payments and transfers
    - Prohibit the payment of dividends to shareholders;
    - Prohibit the payment of variable remuneration; and
    - Prohibit the transfer of assets
3. Withdrawal of licence to write new business and placement into 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;
    - 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; and
    - Transfer any reinsurance associated with transferred insurance policies without the consent of the reinsurer
5. Suspension of Rights
    - 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; 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

6. Liquidation

7. Powers required in ComFrame

- Establish a bridge institution;
- Take steps to provide continuity of essential services and functions; and
- Impose a temporary stay on early termination rights in financial contracts (including derivatives and securities financing transactions).

4.1 Taking control

34. Taking control of the insurer is a critical step in the resolution process, as it is a prerequisite for exercising many of the other resolution powers. The resolution authority's powers should not require, or be contingent on, the cooperation of the insurer or its shareholders.

Take control and manage the insurer, or appoint an administrator or manager to do so

35. With this power, the resolution authority takes control of the insurer in resolution in place of the insurers' Board and shareholders, to direct its activities so the insurer can continue to operate. This includes the management and disposal of the insurers' assets and liabilities. The resolution authority should have all of the powers of the insurer's Board and Senior Management, whose authority is suspended except as permitted by the resolution authority. The resolution authority should also have the power to manage or discharge employees.

36. The resolution authority can exercise its control of the insurer in resolution directly or through the appointment of one of more persons, including an administrator or manager. The role of such appointment is to facilitate and implement necessary measures to achieve the resolution objectives, at the direction of the resolution authority. The resolution authority, its administrator or manager, should have authority to obtain any other professional services. The compensation of an administrator, manager or others providing services would normally be paid by the insurer unless otherwise specified in the particular jurisdiction.

37. Finally, the resolution authority should be able to take control of all of the insurer's property and authorised to deal with its property.

Override rights of shareholders of the insurer

38. This power is necessary to implement other resolution powers. Whilst the insurer is in resolution, the voting rights attached to shares of the insurer are suspended. The resolution authority should be able to act in accordance with its resolution objectives without the need to obtain shareholder approval, so that the actions conducted by the resolution authority can be implemented in a timely manner, consistent with the parameters provided to it under that jurisdiction's resolution regime.

Retain, remove, or replace Board members, Senior Management, Key Persons

39. The aim of replacing key decision makers is to ensure effective management of the insurer during and post resolution.

40. The supervisor should require Board Members, Senior Management and Key Persons in Control Functions of an insurer to be and remain suitable to fulfil their respective roles (see ICP 5 (Suitability of Persons)). This is also true in resolution. The resolution authority may consider senior key decision makers within the insurer to be unsuitable, and consequently may need to remove or replace them. The fact that an insurer enters a resolution phase may itself be an indication that some or all Board Members, Senior Management and/or Key Persons do not meet suitability requirements.

4.2 Prohibition of certain payments and transfers

41. The resolution authority should have the ability to prohibit dividends to shareholders, prohibit or claw-back the payment of variable remuneration to the insurer's management, and prohibit the transfer of certain assets without supervisory approval. These actions can help to prevent a withdrawal of assets that could hamper or undermine the effectiveness of the resolution action. A supervisor may also apply these powers prior to resolution (ie in recovery phase) to preserve, or improve the financial condition of the insurer.

42. These measures can limit or recoup payments from an insurer that could be used to absorb losses in resolution. Thus, in a resolution scenario, these powers generally aim to protect policyholders and other creditors as asset withdrawals could further worsen the financial position of the insurer. Powers to prevent the outflow of assets can help achieve the resolution objectives by preserving value in the insurer.

Prohibit the payment of dividends to shareholders

43. The prohibition of dividend payments prevents cash outflow, which would lead to a further deterioration of the solvency position.

Group perspectives

44. If only a part of an insurance group is failing, imposing restrictions on the whole group in group resolution would retain the liquidity which could be used for the resolution of the failing part.

45. According to the Member Survey, in some jurisdictions it may be legally difficult to prohibit dividend payments by the parent company if the parent company is not a regulated legal entity. This makes it essential to have the power to prohibit dividend payments by regulated legal entities into the head of the insurance group, and where appropriate and feasible, to negotiate legally binding commitments by the head of the insurance group.[10] In cases of significant amounts of intra-group transactions it can give rise to increased risks at both insurance legal entity level and group level. The impact of all such risks should be taken into account in the overall assessment by the resolution authority.

Prohibit the payment of variable remuneration

46. This power enables the resolution authority to prohibit the payment of variable remuneration to, and allow the recovery of monies from, Members of the Board, Senior Management, Key Persons in Control Functions and major risk-taking staff, including claw-back of variable remuneration. In some jurisdictions, recovering monies from these persons may require a court order.

[10] One such example can be found in the United Kingdom (see Annex).

47. Legislation can specify the circumstances in which the resolution authority may prohibit or claw-back variable remuneration. Ideally, the resolution authority should have the discretion to decide when and how to exercise this right, as this flexibility will promote the objective of implementing resolution powers proportionately. The following examples illustrate some of the potential factors that the resolution authority could consider when deciding whether to prohibit or claw-back variable remuneration:

- The conduct or performance of the persons to whom payments are due, or were made;
- The amount of the payment relative to the person's salary or other compensation; and
- The impact of the aggregate payments on the financial condition of the insurer.

48. Codifying this power may be beneficial even in situations where an insurer is not yet in resolution. If an insurer experiences financial distress, the insurer's key decision makers are on notice that certain payments may be subject to claw-back if the insurer enters into resolution. Finally, the very presence of this power in legislation may encourage the insurer's key decision makers to avoid taking unacceptable risk, and hence may work as a preventive tool as well.

49. There may be limitations on the resolution authority's power to prohibit or claw-back payments. According to the Member Survey, in some jurisdictions labour legislation restricts the application of this power.

Prohibit transfer of assets

50. This power is used to ensure the preservation of the insurer's assets to retain value in the insurer and can support orderly resolution powers (if these are eventually needed), by ensuring that management does not make undesirable or inconsistent transfers.

51. The prohibition of asset transfers should be applied selectively, as forbidding some transfers may be detrimental to policyholders. For example, if there are reinsurance agreements, a cessation of all payments to reinsurers could cause reinsurers not to pay claims to the ceding insurer, which could negatively impact the primary policyholders. Or, if payments are due within an insurance group, suspending these payments could unduly impact some policyholders. In such cases the resolution authority may restrict specific deals or types of transactions.

52. Depending on the resolution powers available and authorities involved, exercising this power may be complex. According to the Member Survey, in some jurisdictions the resolution powers are divided, with no single authority responsible for all resolution powers or all phases of resolution. In particular, resolution powers other than liquidation may be conducted by the resolution authority, while liquidation may be conducted by an insolvency administrator or liquidator in the same manner as non-insurance insolvencies. This can limit the resolution authority's ability to exercise its resolution powers. In some jurisdictions there may be no readily available powers for the supervisor acting as resolution authority to prohibit the insolvency administrator or liquidator from lawfully transferring assets pursuant to the domestic bankruptcy law if the licence of an insurer was withdrawn and it is no longer a supervised entity. According to ICP 12.8.2, in such cases legislation should either "require prior approval of the supervisor" or at least "require prior coordination with the supervisor". If these two requirements are not met, legislation "should provide that the supervisor may challenge the person's action". This situation illustrates the advantages of a comprehensive legislation governing insurance resolution, which can be tailored to comport with ICP 12.

Group perspectives

53. In the context of insurance groups, it may be useful to impose restrictions on asset transfers at the beginning of the resolution process as it may be difficult to reverse transfers retrospectively to recover assets once the legal entity in resolution has already transferred assets to another entity or group holding company. There may be further complexities to the reversal of a transfer if the original transfer was to a non-regulated entity or an entity that resides in another jurisdiction.

4.3 Withdrawal of licence to write new business and run-off

54. The withdrawal of the licence to write new business,[11] including an immediate freeze on the power of intermediaries to bind coverage, is a general (supervisory) power, which can be applied in a wide variety of circumstances, including in resolution. Without a licence to write new business, but with continuing obligations to the existing policyholders (and normally subject to on-going supervision by the relevant authority or authorities), the insurer would effectively be in run-off.

55. One of the purposes of this measure will be to prevent new policyholders from being exposed to certain risks associated with a failing insurer. It is also important for existing policyholders and other creditors to prevent the insurer from taking on additional risk (ie new policyholder liabilities) when it is under financial distress and is likely to fail.

56. This measure can also help to reduce operational costs, as that insurer would no longer require certain functions within its business. Costs can be reduced by reducing the headcount of staff or by cancelling or modifying outsourcing arrangements with third parties, especially in respect to product development, sales, advertising and related distribution. However, a withdrawal of the insurer's licence to write new business may have unintended consequences, which should be adequately considered prior to a decision to withdraw. For example, the withdrawal of the insurer's licence to write new business could have an adverse impact on the insurer's cashflow, which could cause subsequent liquidity issues. Additionally, regulatory intervention may adversely affect policyholders' perception of the robustness of the insurer, and, particularly for insurers with long-term products, this may incentivise some policyholders to surrender their policies or lapse on premium payments, which could lead to liquidity issues or the forced sale of assets below market price to meet those claims.

57. Both the intended and unintended consequences of withdrawing the licence to write new business should be evaluated appropriately given the relevant facts at the time.

58. Additionally, the withdrawal of the licence will, in many cases, be accompanied by additional measures, including restructuring mechanisms or a full or partial portfolio transfer. Additional measures intended to be implemented by the resolution authority should also be considered in its evaluation of whether to withdraw the insurer's license.

59. The withdrawal of the licence would enable a resolution exit strategy that contemplates the insurer's run-off. A run-off would provide continuity of cover to policyholders. Depending on the type of business, and on its solvency position, an insurer that is no longer licensed to write new business might remain permitted or obligated to continue renewing its in-force policies.

[11] This may also be achieved through the supervisory power to suspend the licence, or restriction on writing new policies (see table 3).

60. It is possible for an insurer to fail to meet its regulatory capital requirements, but still be sufficiently solvent to meet all its liabilities to the maturity of all policies of the portfolio in full. It would be prudent for the resolution authority to require the insurer to produce a solvent run-off plan and conduct actuarial and sensitivity analysis to that plan to receive sufficient assurance that the insurer can reasonably run-off its business to maturity. As the portfolio runs off over time the profitability of the insurer would decrease, but fixed costs (eg administration costs) would not decrease proportionately, and this could cause potential liquidity or solvency issues as the portfolio matures. As the run-off tails-off, there may be benefit in the transfer of the small, remaining portfolio to a private sector purchaser, or even to liquidating the insurer.

61. However, the withdrawal of the licence may not need to be permanent, and could just be temporary. For example, if the resolution strategy was to re-capitalise the insurer so that it meets its PCR, then there could be a reasonable rationale to justify reinstating the insurer's licence as part of the exit strategy for resolution. There would need to be consideration for policyholder protection and fair treatment of policyholder groups (ie policyholders at the point of resolution and future policyholders post-resolution), particularly if policyholder liabilities were written-down as part of a restructuring. This, of course, will depend heavily on the resolution strategy and relevant facts at the time.

4.4 Restructuring mechanisms

62. In some situations an insurer can be restructured, which can permit aspects of the business to be saved. Some measures can impact the rights of third parties. These actions, which are subject to the safeguards discussed in section 4.8, can include the following:

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 liquidation claims hierarchy and jurisdiction's legal framework)

63. The FSB Key Attributes provide a list of resolution powers that fit well under restructuring mechanisms, and which the resolution authority should have at its disposal to absorb losses and achieve the resolution objectives:[12]

- Write down equity and cancel shares or other instruments of ownership of the insurer;
- Write down unsecured creditor claims;
- Exchange all or parts of unsecured creditor claims, or convert them into equity or other instruments of ownership of the insurer, any successor in resolution (such as a bridge institution to which part or all of the business of the failed insurer is transferred) or the parent company within that jurisdiction;
- Override pre-emption rights of existing shareholders of the insurer;
- Issue new equity or other instruments of ownership;
- Issue warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in[13] (to enable adjustment of the distribution of shares based on a further valuation at a later stage); and

[12] See paragraph EC 3.11 and EC 3.13 of the FSB KAAM for the Insurance Sector.

[13] Bail-in, as defined by the FSB, are restructuring mechanisms that enable loss absorption and the recapitalisation of an insurer in resolution or the effective capitalisation of a bridge institution through the cancellation, write-down or termination of equity, debt instruments and other senior or subordinated unsecured liabilities of the insurer in resolution, and the conversion or exchange of all or part of such instruments or liabilities (or claims on the insurer) into or for equity in or other ownership instruments issued by that insurer, a successor (including a bridge institution) or a parent company of that insurer.

- Restructure insurance liabilities (whether currently due and payable or contingent).

64. The primary objective of using a write-down tool is to absorb losses by reducing the value of a failing insurer's liabilities. When possible, this may enable the insurer to restore its viability such that it can continue to operate following the write-down. Also, it may be used to enable other resolution actions which would not have been feasible without a write-down, including run-off or portfolio transfer. For example, a restructuring of insurance liabilities may be needed in order for the portfolio to be transferred to a private sector purchaser. That may be in the interest of the policyholders as the policies are continued, even though the insurer does not continue to exist.

65. In using the write-down tool, the resolution authority should remain mindful of the NCWOL principle. The higher a claim stands in the liquidation claims hierarchy, the more likely it will be that the NCWOL principle will constrain the options for writing down that claim. Given the high priority of policyholder claims relative to other creditors, this is of particular relevance for policyholder liabilities, whereby a write-down would be limited to scenarios where the affected policyholders do not receive less than they would have in liquidation (see ICP 12.9). If a PPS is available to pay claims in a liquidation, the NCWOL analysis should consider the protection provided by the PPS to policyholders, as well as the impact of the write down on any policyholders whose claims are not covered by the PPS in whole or in part.

66. The resolution authority will need to assess the level of solvency required to gain sufficient comfort of the insurer's financial position post-write-down. This could be determined ex-ante (for example, the insurer could be required to meet a predetermined percentage of its PCR) or determined on a case-by-case basis (for example, taking into consideration the insurer's size, business model, nature of policyholder liabilities or the resolution strategy: eg, do the authorities intend to allow the insurer to continue to sell new business or put the insurer into run-off?).

67. The resolution authority may want to consider whether policyholder premiums should be adjusted post-write-down to reflect the write-down of their liabilities.. The resolution authority would need to be mindful of the NCWOL principle when making this consideration.

68. Jurisdictions that have a PPS may want to consider providing a legal right to the PPS to be subrogated to (the claims of insured policyholders in the liquidation of the insurer (ie, have the same right that the policyholder would have had to make a claim), up to the total amount the PPS made in payments to protected policyholders.

69. A write down will necessarily be based on the projected performance of the insurer's business over the course of the run-off. If the performance exceeds these assumptions, there may be more funds available than anticipated. If this occurs, the resolution authority may consider a mechanism to distribute any surplus funds by a "write-up" that reduces the severity of the write-down. This could be implemented by a distribution of the surplus in accordance with the liquidation claims hierarchy. The resolution authority could make a series of periodic distributions that are recalibrated over the run-off, as experience replaces assumptions. The pro rata payments would compensate policyholders (and potentially other creditors) for the amounts they were owed that were written-down. This could be applied retrospectively (ie on claims that were previously written-down) and prospectively, consistent with the jurisdiction's legal framework. If policyholders receive the full amount of their claim, any remaining surplus would be distributed to other creditors in accordance with the liquidation claims hierarchy.

Terminate, continue or transfer contracts, including insurance contracts

70. This power facilitates and supplements internal restructuring by enabling the resolution authority to move ownership of contracts to third parties or across legal entities within the same group. This could include intra-group services contracts, intra-group financial contracts and policyholder liabilities. The restructuring of policyholder liabilities via intra-group transfers could be beneficial, for example, to restructure the insurance legal entity in resolution so that it is more attractive to a private sector purchaser.

Sell or transfer the shares of the insurer to a third party and transfer or sell the whole or part of the assets and liabilities of the insurer to a solvent insurer or third party

71. In some circumstances, an insurer might not be viable on its own, but could still be a profitable component of a larger enterprise with the necessary expertise or complementary business units. Even if its profitability is uncertain, a buyer with enough loss-absorbing capacity might assess that the potential rewards outweigh potential risks. In such a situation, viability can be restored by selling the insurer to a third party that is willing to recapitalise it adequately.

72. However, there may be challenges in finding a willing buyer of shares in a failed insurer (ie an acquirer of the entire business, including the totality of its liabilities). Instead of selling or transferring the shares of the failed insurer, a transfer to a private sector purchaser may be more easily achieved by transfer of some of its assets and liabilities.

73. Some of the factors that will affect the feasibility of finding a prospective purchaser for all or portions of the insurer include:

- The size of the failing insurer compared to the overall market;
- The product types the insurer underwrites and the size of the relative product type books;
- Whether there are any issues with the treatment of policyholders that may complicate a transfer (for example, if policies had specific clauses, such as guarantees backed by the insurer's holding company on default of the insurer which would fall away once the transfer completes);
- The financial position of the failing insurer at the point the assessment is made (for example, if there were sufficient assets to at least meet the Current Estimate of Liabilities,[14] then it would be easier to find a prospective purchaser);
- Market capacity/appetite to take on a (large) book(s) of business (this would depend on market conditions and the financial position of competitors at the point of the assessment);
- The timeframe that the resolution authority assesses a property transfer would need to be completed by; and
- The impact on diversification at the level of the third party.

74. A transfer could be made more viable if the insurer's larger books of business were split into multiple tranches, with different tranches potentially relating to different products or risk profiles. The resolution authority could breakdown the portfolio so that individual books of business were of a quantum that could be taken on by another insurer. How the liabilities could be split up would be situation and fact dependent, although resolution planning would provide

[14] See ICP 14.7.4

the means to identify potential ways the failing insurer's liabilities could be split so that they could be transferred.

Transfer any reinsurance associated with transferred insurance policies without the consent of the reinsurer

75. This power may be required in circumstances where the resolution authority intends to transfer, in whole or in part, assets and liabilities of the insurer to a solvent insurer or third party, where insurance policies are, prior to the transfer, covered, in whole or in part, by reinsurance. This power provides the resolution authority with the ability to transfer insurance policies without changing the portfolio's risk profile and associated capital requirements by retaining the economic benefit provided by the reinsurance.

76. The reinsurance associated with the transferred insurance policies will have a direct impact on the portfolio's exposure to the total value of potential claims and therefore will also have a direct impact on the amount of capital required to back those policies for the acquiring insurer to meet its PCR post-transfer. In absence of the pre-existing reinsurance there may be insufficient assets to back the insurance policies, or the portfolio may become less commercially attractive, which would likely create difficulties in finding a willing third party to purchase the insurance contracts as part of a transfer.

4.5 Suspension of rights

Temporarily restrict or suspend the policyholders' rights of withdrawing from their insurance contracts

77. A moratorium on policyholder surrender rights, for a defined, limited period of time, would provide that any notice given by a policyholder to withdraw funds or to surrender their policy is either of no effect or deferred. It could thereby provide financial stability to the insurer, for example, preventing the risk of mass lapse for the duration of the moratorium. In certain circumstances, it would also provide stability and time to better allow for valuation (for example, to prepare for a portfolio transfer) and implementation of restructuring or a write-down tool. Such a moratorium also ensures even treatment of policyholders, avoiding a "race to surrender", which could have an adverse financial impact on the remaining policyholders.

78. The legislation should provide for the scope of the moratorium to be as broad as necessary, so that all policyholders (whether protected or unprotected by a PPS) could be in scope when appropriate. When exercising the power, the resolution authority should then have the flexibility to determine which policyholders would fall into scope of the moratorium on a case-by-case basis. For example, there may be a rationale to exclude annuitants from a moratorium.

79. The population of policyholders to which the moratorium might apply in a specific resolution may be driven by policy type and whether they are being transferred (in addition to the general purpose of the moratorium).

80. Insurance policy lapses or the exercise of surrender rights differs from the withdrawal of sight deposits in the banking context. Depositors have an immediate right to withdraw from a bank. For a policyholder to exercise surrender rights, a surrender request must be submitted and there is generally a contractual window of time for the insurer to actually effectuate the payment.

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

81. Actions by unsecured creditors to attach or sequester the insurer's assets can result in uneven treatment of creditors, and hinder efforts to resolve an insurer. If an action to seize assets is successful, it can result in a full payment of a creditor's claim that would result in reduced payments to other claims —including policyholder claims. A statutory or judicial stay on creditor actions can thus prevent a "race to payment", and preserve assets so that all creditors, depending on their ranking, are evenly treated.

82. Although not explicitly listed as a power in ICP 12, in the case of a write-down tool, a moratorium on payments to policyholders would provide breathing room to temporarily pause payments of claims to apply the write-down of the policy value, and then make payments at the reduced rate. This temporarily avoids paying policyholders who are due to be written-down, but without giving cause of action for any consequential losses arising from delayed payments that have fallen due. In the case where the moratorium would suspend payments to policyholders, there would need to be an explicit power accompanied by provision that the insurer would not be in breach of its contractual obligations for the duration of the moratorium.

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

83. The purpose of placing a stay on the termination rights of reinsurance contacts is to prevent reinsurance counterparties from terminating their contracts on the sole ground of the insurer's entry into resolution. Operation of the stay may depend on whether the insurer is still performing its substantive obligations towards the reinsurer. If the substantive obligations are still being performed, there should be no loss in respect to damages that the counterparty could claim. If the insurer in resolution defaults in performance of any of its substantive obligations under the reinsurance contract following the expiry of the stay, any applicable early termination rights will be exercisable.

84. This power should not be construed as constituting forced continuation of reinsurance beyond the stipulations of the reinsurance contract. For example, it is not envisaged for resolution authorities to compel reinsurers to keep a reinsurance contract in force beyond the original duration or date of maturity or to require reinsurers to continue renewable contracts where the reinsurer has the right not to renew the contract at the end of the term of the current insured period.

4.6 Liquidation

85. Unlike other resolution powers, which may aim to stabilise or restructure an insurer, in a liquidation, the insurer's policies are often rapidly cancelled or transferred, its assets are sold and converted to cash, its funds are distributed, and its corporate existence is terminated. Liquidation is typically sought only after other efforts to rehabilitate an insurer are not successful, or when it appears that alternatives would be futile. Liquidation can be used in conjunction with other resolution powers.

86. Most or all jurisdictions have a process for liquidating an insurer. Some jurisdictions have specialised liquidation schemes for insurers (or for financial institutions), while others may use the liquidation process available for general corporations. ICP 12 provides standards and guidance that specifically apply to liquidation of insurers:

- ICP 12.8 states that the supervisor is involved in the initiation of the liquidation. If another person is allowed to initiate liquidation, the supervisor should have the rights described in ICP 12.8.2. Under ICP 12.7.4, the resolution authority (which may be different from the supervisor) should be authorised to initiate liquidation of an insurer.
- ICP 12.9 requires liquidation laws to provide a high priority to policyholders' claims within the liquidation claims hierarchy.

87. Liquidation is generally viewed as the remedy of last resort, as it results in the termination of the insurer, its business and its policies. Liquidation also destroys the value of the insurer's in-force business and its value as a going concern, including intangible assets. Further, it may affect other insurers by undermining public confidence in insurance. Where available, resolution actions other than liquidation might help to preserve value, as well as achieving "public interest" resolution objectives, such as policyholder protection, preservation of financial stability and maintaining economically important functions. However, any other resolution action is subject to the NCWOL principle, which provides that creditors should be entitled to compensation if they receive less than they would have received if the insurer was liquidated. This ensures that the outcome for creditors is at least equivalent to the outcome that would have occurred in liquidation.

88. There may be cases where liquidation is the most appropriate alternative. The decision on when and how liquidation should be sought can involve a number of factors, as well as competing considerations:

- If liquidation is initiated abruptly, it can create a hardship on policyholders, especially if the liquidation laws mandate the immediate termination of policies. If possible, policyholders should have sufficient notice to obtain replacement coverage, assuming that it is available;
- The existence of a PPS may affect timing of liquidation. For example, if there is no PPS, it may be necessary to take immediate action to liquidate an insurer in order to preserve assets and avoid preferential payments. In contrast, if a PPS is available to continue the payment of claims, the resolution authority may need to coordinate with the PPS before initiating liquidation;
- In a group context, some insurance legal entities may be liquidated and others may be resolved in another manner. For example, some insurance legal entities might remain viable, others might need to be resolved using other powers than liquidation, and others might have no other option than liquidation; and
- Other resolution actions may not be an option in all cases. If there is a public interest threshold for the use of certain resolution tools, then a failing insurer that does not satisfy such a public interest test may have to be liquidated in regular insolvency procedure (eg this may be the case for smaller insurers in some jurisdictions, such as the Netherlands (see Annex)).

4.7 Resolution powers in ComFrame

89. Dealing with the resolution of an IAIG presents unique challenges, particularly in the case of a group with highly interconnected legal entities. Insurance legal entities in the group may be regulated by different supervisors, and some other entities may not be regulated by any financial authority. Non-financial legal entities could include both holding-company parents of financial institutions and unrelated nonfinancial businesses within a conglomerate ownership structure.

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

Establish a bridge institution

91. A bridge institution is a temporary institution aimed at receiving a transfer of assets and insurance liabilities from an insurer in resolution, with the intention to transfer the received assets and liabilities to a private sector purchaser at a later stage. The bridge institution is temporary in nature to facilitate a transfer that does not attract purchasers at the specific timing of resolution (for example, a market-wide stress or macro-economic conditions make finding a prospective purchaser challenging), whilst continuing to operate certain essential services and functions and viable operations of a failed insurer. A bridge institution should not intentionally be used as a run-off vehicle where assets and liabilities are held to maturity or completion.

92. A bridge institution should be controlled by the resolution authority. Such control could result from, inter alia, a majority ownership by the resolution authority, control voting rights in shares issued by the bridge institution, a Board majority, etc. Legislation should establish provisions, and the resolution authority take steps and arrangements, for appropriate management of the bridge institution.

93. A bridge institution may require authorisations (for example, permissions to carry insurance contracts / to make payments to policyholders) prior to receiving a transfer of insurance contracts. Authorisation requirements are likely to be jurisdiction specific.

94. To achieve the desired outcomes, the provisions for a bridge institution will likely include:

- The power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern;
- The power to reverse asset and liability transfers, or forward those transfers to a third party; and
- The power to arrange the sale of the insurance portfolio of the bridge institution to a private sector purchaser so as best to achieve the objectives of the resolution authority.

Take steps to provide continuity of essential services and functions

95. Legislation can require that the resolution authority approve contracts between an insurer in resolution and other legal entities within the group (including non-regulated entities) to ensure that there are no impediments to continuing essential services to the insurer in resolution or any successor or acquiring entity. As a general matter, legislation can also specify mandatory terms in an insurer's contract with any party providing services to prohibit the party from unilaterally cancelling the contract if the insurer is placed in resolution. The party providing services should be permitted to charge a reasonable amount for services, but not necessarily to require the payment of charges incurred before resolution as a condition of providing services.

96. If an insurer's policies are transferred to a successor or an acquiring entity, it may be necessary to ensure that the residual entity, or the third parties providing services to the latter, can temporarily provide services to the successor or acquiring entity.

Impose a temporary stay on early termination rights in financial contracts (including derivatives and securities financing transactions)

97. The purpose of placing a stay on the termination rights in financial contracts is to prevent financial counterparties from terminating their contracts on the sole ground of the insurer's entry into resolution, preventing, in particular, the close-out of financial contracts in significant volumes. This allows for derivatives contracts to continue to offset financial risks through the resolution process (provided that the insurer in resolution, or any successor to which the contracts have been transferred, continues to perform its obligations under those contracts).The termination of large volumes of financial contracts upon entry into resolution could result in a disorderly rush for the exits, creating further market instability and frustrating the proper implementation of resolution powers.

98. Financial contracts are defined by jurisdictional law,[15] but typically consist of derivatives and other financial contracts, such as repo or reverse repo, securities lending and other similar transactions subject to contractual set-off and netting arrangements. Insurance contracts do not fall into this category. The scope of the temporary stay on early termination (close out) and netting should be as broad as possible so that all financial contracts with such early termination rights could be in scope. The stay may be automatic, or on a case-by-case basis. A discretionary stay power would provide the resolution authority with the flexibility to decide on a case by case basis which contracts should be subjected to the stay. An automatic stay would apply for the period specified by statute on the entry of an insurer into resolution (or the occurrence of any other event defined as triggering the stay), without any discretion on the part of the resolution authority.

99. The temporary stay would need to apply for a clearly limited period of time, sufficient to provide "breathing space" so that other resolution powers can be implemented (for example, the restructuring of liabilities, the transfer of assets and liabilities, etc.).

100. To be effective and consistent with the objectives of resolution, temporary stays are frequently subject to the following conditions:[16]

- The stay should apply to early termination rights that are triggered by the entry into resolution, by the reasons for entry into resolution, or by the use of resolution powers;
- The stay is strictly limited in time;
- The resolution authority would only be permitted to transfer all of the eligible contracts with a particular counterparty to a new entity and would not be permitted to select for transfer any individual contracts with the same counterparty and subject to the same netting agreement (ie the "no cherry-picking" rule);
- The early termination rights of the counterparty are preserved against the insurer in resolution in the case of any default occurring before, during or after the period of the stay that is not remedied by the resolution authority on entry of the insurer into resolution or which is not related to entry into resolution or the exercise of a resolution power (for example, a failure to make a payment or the failure to deliver or return collateral on a due date);

[15] "Financial contracts" may be defined for the purposes of specific treatment under insolvency law, for example, to exclude them from any moratorium on the exercise of contractual rights to close-out netting in insolvency.
[16] See also paragraph 2.1 of I-Annex 5 of the FSB Key Attributes.

- Following a transfer of financial contracts the early termination rights of the counterparty are preserved against the acquiring entity in the case of any subsequent independent default by the acquiring entity; and
- After the period of the stay, early termination rights could be exercised for those financial contracts that are not transferred to a sound insurer, bridge institution or other public entity.

101. The failure by the insurer to meet a substantive obligation against any counterparties can trigger the termination of the financial contract to exercise any acceleration or early termination rights that arise as a result of that failure. For example, this may include the situation where the insurer is unable to post required collateral or to meet settlement obligations against a Financial Market Infrastructure (FMI).

4.8 Safeguards

102. As stated in ICP 12.10, the resolution authority is required to exercise resolution powers in a way that respects the liquidation claims hierarchy and adheres to the NCWOL principle. Guidance of ICP 12 provides some elementary examples of how the NCWOL principle can be implemented, but legislation to implement resolution powers can provide more detailed procedures to effectuate the NCWOL principle. These may include the following:

- Clear standards for compliance with the NCWOL principle;
- Use of independent experts to review a resolution proposal, including a valuation of claims in insolvency and review the NCWOL outcomes;
- The development of counterfactual scenarios showing how policyholders and other creditors would fare if the insurer were liquidated (including considering whether a PPS would be available in liquidation);
- A transparent explanation of how the proposed resolution complies with the NCWOL principle, and notice to policyholders and other creditors;
- Procedures for addressing comments or objections by interested parties, where applicable; and/or
- Approval by any relevant authority or body (eg court), when provided by legislation.

103. The NCWOL principle states that creditors are entitled to compensation if they are worse off in resolution than they would be if the insurer is liquidated; in other words, such creditors should achieve an outcome at least equivalent to the outcome they would achieve if the insurer were to be liquidated. For example, if the resolution authority orders speedy payments to be made to policyholders, and later on unexpected liabilities appear, this could leave future policyholder claimants with a pro-rata lower than they would have received in liquidation. In scenarios of this type, legislation should provide a remedy to compensate such creditors if resolution fails to achieve compliance with the NCWOL principle. This could be done, for instance, through the operation of a resolution fund.

5 Resolution plans

5.1 Objective

104. 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. 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 the risk to public funds. Furthermore, the plan should identify the insurer's financial and economic functions that need to be continued to achieve the resolution objectives 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 running off these functions in an orderly manner if that would best serve the interests of policyholders and reduce any negative impact on financial stability and the economy.

5.2 Scope of application and proportionality

105. In most jurisdictions, the development of a resolution plan is only required for a subset of insurers, in line with ICP 12.3 and ComFrame integrated therein. Similarly to recovery planning,[17] the requirements for preparing for resolution involve a proportionate approach, with requirements that become more stringent depending on the size and complexity of an insurer, amongst other considerations. This subsection is intended to provide guidance to assist supervisors and/or resolution authorities in their determination whether a resolution plan is necessary, as well as how planning for and managing a resolution can still be facilitated when such a plan is not deemed necessary.

106. ICP 12.3 provides that "the supervisor and/or resolution authority requires, as necessary, insurers to evaluate prospectively their specific operations and risks in possible resolution scenarios and to put in place procedures for use during a resolution." In cases where a resolution plan as such is not required, this standard may be implemented by engaging in simplified resolution planning, for instance as part of the normal crisis management and business continuity procedures. This may be done by developing a common plan or process for resolving certain type of insurers that have common characteristics, or by developing simplified planning for resolution strategies for an individual insurer, focusing only on some key elements listed in subsection 5.4 (such as, the strategic and legal analysis of the insurer, the communication plan, the description of the resolution strategy and/or the conclusion of the resolvability assessment). Also, ICP 12.3 may be implemented through engaging with insurers on these issues as part of the day-to-day supervision, such as their crisis management and business continuity procedures, as well as contingency capital and funding plans.

107. The existence of financial and economic functions that need to be continued to achieve the resolution objectives should be taken into account when considering the need for proportionate resolution planning. An assessment process based on the key elements listed in paragraph 125 should allow identification of those insurers whose failures might have a systemic impact on the financial system and the real economy, and should be based on

[17] See ICP 16 (Enterprise Risk Management for Solvency Purposes) and ComFrame integrated therein and the Application Paper on Recovery Planning.

supervisory experience. At the same time, it would contribute to ensuring consistency across jurisdictions in the scope of resolution planning.

108. In cases where an insurer is approaching the resolution triggers, and a resolution plan as such has not been developed in advance, it can be assumed that an "ad-hoc" resolution plan would be needed, mapping the resolution powers available to the particular situation. Successful resolution may be complicated where the markets are in stress (eg in case of multiple simultaneous failures) and/or in a context in which the resolution needs to be done within a short period of time (the so called "over-the-weekend" resolution).

109. ComFrame provides that for certain IAIGs, resolution plans need to be in place as necessary. For those IAIGs, the remainder of section 5 provides guidance for its development. Therefore, in subsection 5.3 and 5.4, it is assumed that a resolution plan is developed for an IAIG.

110. In deciding whether or not a resolution plan is necessary, the group-wide supervisor and/or resolution authority should consider at least the following (see CF 12.3.a):

- "The IAIG's activities and its lines of business, for instance the type of insurance products;
- The number of jurisdictions where the IAIG operates;
- The complexity of the IAIG's group structure; and
- The potential impact of failure of the IAIG on the financial system and real economy in the jurisdictions in which the IAIG operates."

Examples of criteria applied by jurisdictions, based on the Member Survey, include:

- Size of the insurer (eg total assets above USD 50 bln);
- Market share of the insurer, considered globally and/or in specific lines of business, particularly those where substitutability would raise concerns;
- Number of policyholders (eg more than a million policyholders and/or a certain percentage of the population of the jurisdiction);
- Type of insurance products; and
- Interconnectedness of the insurer with the financial system.

111. Ways to apply proportionality in the development of resolution plans include:

- Limiting the content and level of detail of a resolution plan;
- Limiting the level of detail of information requested from the insurer, and/or the level of detail in developing the resolvability assessment and strategy;
- Implementing a phased approach whereby the focus initially is on the larger, more complex insurers and other plans are only developed in later stages; and/or
- Lowering the frequency of updating a resolution plan.

5.3 Information needs

112. Authorities need to ensure that they are able to obtain the information needed to develop and implement the resolution strategy and plan (see CF 12.3.b). Also, CF 12.3.c introduces a requirement for all IAIGs to have and maintain group-wide management information systems (MIS) to respond on a timely basis to any information request, and ICP 12.3 requires other insurers, as necessary, to also have procedures in place to that same effect ("to provide necessary information to a relevant organisation in a timely manner when

the insurer enters into resolution"). Authorities should identify any impediments to providing up-to-date and reliable information in a timely manner and require the insurer to address these, where applicable.

113. Relevant information needs may relate to:

- General information on the insurance group:
    - Information specific to legal entities, a mapping of legal entities to essential functions, and a description of interconnectedness of group entities and relevant intra-group transactions;
    - Insurance policies and benefits under those policies;
    - A description of the relevant lines of business carried out by the legal entities of the group and of the localisation of the policyholders;
    - The reinsurance coverage in place;
    - Assets backing insurance liabilities (and details of location and custodians, fungibility of surplus assets between jurisdictions, etc.);
    - Insurance contracts or financial products of the insurer that could be prone to "runs";
- To facilitate the execution of certain resolution powers:
    - Information needed to facilitate the transfer of insurance business (including all the assets and liabilities) to another insurer;
    - Information needed for the valuation of insurance business and for carrying out 'due diligence' by any potential purchaser of all or parts of the insurance business;
    - Information needed for the purpose of carrying out a run-off of the insurance obligations;
- Other:
    - Policyholders covered by a PPS (where it exists), and the estimated amount or proportion of protection provided; and
    - Information needed to facilitate continuity of essential services and functions, eg information about arrangements and service level agreements with internal and external service providers that support critical shared services.

114. When developing resolution plans and conducting resolvability assessments, the group-wide supervisor and/or resolution authority should aim at collecting the information in a manner that is efficient and limits the burden to the insurer. As a first step, therefore, it is advised to request necessary information from other officials responsible for supervising the group. These could include legal entity supervisors in other jurisdictions or market sectors, and also the group-wide supervisor when the resolution authority is a different agency or is an autonomous office within the supervisor's agency. The resolution authority can then request any information that is not (yet) available directly from the insurer. Also, it may be considered to organise interactive workshops with the insurer to retrieve information necessary for the resolution planning.

115. Another source of information may be the recovery plan, which, according to ICP 16.15 and CF 16.15.a, is required to be developed by all IAIGs and other insurers as necessary. For instance, a recovery plan would provide inputs on the insurer's operational business structure,

legal structure, key jurisdictions in which it is active, entities covered by the plan, functions and/or services that are significant for the continuation of business, key dependencies or inter-dependencies, and any other relevant information.

5.4 Key elements of a resolution plan

116. The remainder of section 5 discusses the key elements of a resolution plan, which will often include:

- An executive summary of the most important elements of the resolution plan, including the resolvability assessment;
- A description of the insurance group that outlines the group legal structure, its main activities, its financial and operational dependencies and key financial and operational characteristics;
- A trigger framework for entry into resolution;
- An analysis of the impact of the failure of the insurance group on other parts of the financial system, or on the real economy, including the identification of any financial and economic function that need to be continued to achieve the resolution objectives;
- A description of the preferred resolution strategy, which includes a mapping and a description of the resolution powers available and considerations of appropriateness dependent on relevant factors and scenarios;
- An operational plan for the implementation of the resolution strategy;
- 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).

117. As indicated in ComFrame, “the group-wide supervisor and/or resolution authority should lead the development of the group-wide resolution plan, in coordination with members of the IAIG CMG, and involve the IAIG as appropriate”. In practice, in most jurisdictions, the group-wide supervisor and/or resolution authority develops and maintains the resolution plan, and not the insurer. In some jurisdictions, however, the insurer is required to develop and maintain the resolution plan. In such cases, the group-wide supervisor and/or resolution authority should provide oversight, review and non-objection or approval of the resolution plan. The process should require correction of any deficiencies.

118. While the remainder of this section describes the development of the plan from the perspective of the supervisor and/or resolution authority, in cases where insurers play a larger role in resolution planning, some of these may actually be the responsibility of the insurer. In such cases, this guidance may be helpful for both the insurer (in developing the plan) and the authority (in reviewing the plan).

5.4.1 Executive Summary

119. It may be useful to develop an executive summary of the main components of the group-wide resolution plan, in coordination with members of the IAIG CMG. It is considered to be good practice to include a summary of the resolvability assessment (including possible impediments to resolution), the most significant trigger resolution points, key resolution strategies, and the operational plan for implementation. An executive summary would provide:

- A high-level overview of the resolution plan, including material changes since the previous version of the plan;
- Information about the governance of the resolution planning processes; and
- Information about the key elements of the resolvability assessment.

120. The purpose of the executive summary is to serve as a roadmap to the resolution plan to enable the group-wide supervisor and/or resolution authority, and the Board of the insurer to the extent they are involved in the elaboration of the plan, to quickly understand and assess the governance, trigger framework, resolution options and communication strategies for effectively responding to a severe stress.

121. It may be helpful to use tables and flow charts to summarise these operational steps. It may also be useful if the group-wide supervisor and/or resolution authority documents a record of all material changes incorporated into the resolution plan as it is updated. The executive summary can also serve as a useful aid for the group-wide supervisor and/or resolution authority when reviewing and assessing resolution plans, as such a summary should reflect any material changes made and outline the operation components for a credible resolution plan.

5.4.2 Description of the insurer

122. A resolution plan should describe the insurer's operational business structure, legal structure, key jurisdictions in which it is active, legal entities covered by the plan, essential services and/or functions that are significant for the continuation of the insurer, key dependencies or interdependencies, key risks to the insurer, and any other relevant information. This will enable group-wide supervisors and/or resolution authorities to assess the implications of different resolution actions for the insurer. Specifically, a resolution plan should provide a description and overview of:

- The insurer's business divisions;
- Financial and economic functions that need to be continued to achieve the resolution objectives;
- Essential services and functions, ie services and/or functions that are significant for the continuation of the insurer (for example, shared services, such as information technology services and outsourced functions);

and for groups, additionally:

- The group's corporate structure (eg a diagram), identifying also the location of the different legal entities and respective supervisors and/or resolution authorities;
- The legal entities that fall under each jurisdiction with more detailed corporate structure diagram (for example the whole group for a single jurisdiction – ie intermediate holding company); and
- The legal entity(ies) that fall in scope of the resolution plan, with a more detailed corporate structure including subsidiaries, branches, relevant lines of business, reinsurance arrangements, counterparty risks, interconnectedness, ancillary (including investment management) services arrangements and any outsourcing arrangements.

5.4.3 Entry into resolution

123. The resolution plan should clearly articulate the triggers for entry into resolution in the relevant jurisdictions and refer to any condition assessment(s), and the internal processes and

governance arrangements for determining that the resolution conditions have been met. The group-wide supervisor and/or resolution authority may find it appropriate to present the information in a summarised form in the resolution plan, referring to other documentation, ie statutory or policy documentation, which provides the relevant information in more granular detail. See section 3 for discussions on entry into resolution.

5.4.4 Analysis of potential financial stability impacts of failure

124. The resolution plan should allow an assessment of its feasibility and credibility in light of the likely impact of the insurer's failure on the financial system and real economy, taking into account the financial and economic functions that need to be continued to achieve the resolution objectives.

125. These functions should include those that are material for the financial system and the real economy, at the international and/or national level. The identification of these functions could be made taking into account the following elements:

- The nature and scope of the activity and the material impact on third parties to carry out economic activity (considering volume and number of transactions, the number of customers and counterparties materially impacted, the number of customers for which the insurer is a significant insurance partner);
- The significance of the insurer's operations, which may be assessed on the basis of its size, market share, external and internal interconnectedness, complexity and cross-border activities;
- The nature of the customers and other stakeholders affected by the function, such as retail customers, corporate customers and public entities, taking into account possible reputational effects on the insurance sector;
- The potential impact of disruption of the function on markets, infrastructures, customers and public services; or
- The potential losses to taxpayers, as well as possible pressures for government interventions if the insurer fails.

126. The analysis of the impact of failure of an insurer should be related to the relevance of the business carried out by the insurer in a certain market, also considering the features of the market and the substitutability of the insurer's products. For instance, the impact of failure could be very high if the failure caused a consistent reduction of the number of insurance products offered in a certain geographic area, without the capacity of other insurers to readily offer same or similar products.[18] When a particular segment of activities is considered vital for the real economy (eg air and road circulation, medical practice), the sudden withdrawal of insurance coverage in that segment could cause the interruption of significant economic activities. The likely impacts at various levels (supra-national, national, regional, local) should be distinguished.

127. To develop resolution strategies, the group-wide supervisor and/or resolution authority should have regard to insurance functions in light of their economic importance. For instance, depending on the nature of the activities of the individual insurer, disruption of a particular function or discontinuity of specific types of coverage could have a material impact on the financial system or, more broadly, on the real economy.

[18] This is often referred to the issue of "limited substitutability".

5.4.5 Resolution strategy

128. A resolution strategy should set out the key elements of the proposed approach to resolution, setting out the actions necessary to implement the strategy and best achieve any institution-specific resolution objectives. The strategy should set out the conditions for entry into resolution (see section 3) and explain the activation of the operational resolution plan and funding arrangements.

129. The resolution strategy may also describe the key operational issues and the approaches that may be adopted following resolution. The resolution strategy should address the continuity of essential services and functions performed by non-regulated entities, both within and outside of a group.

130. The strategy should provide a summary of the key options for resolving the failing insurer in a way that safeguards financial and economic functions that need to be continued to achieve the resolution objectives, public funds and financial stability, and otherwise achieves relevant resolution objectives. The resolution strategy should also explain that the activation of the resolution options depends on internal and external circumstances as well as the potential sequence or combination of the resolution options.

131. The group-wide supervisor and/or resolution authority should develop a preferred resolution strategy. The group-wide supervisor and/or resolution authority should develop a preferred resolution strategy that is best capable of achieving the institution-specific resolution objectives given the structure and the business model of the insurance group, the resolution regimes applicable to the legal entities of the group and the resolution tools available to authorities in all relevant jurisdictions. The development of a preferred resolution strategy may depend on many factors such as the existing structure and business model, the need for recapitalisation or the degree of internal interconnectedness within the group. In addition, a fall-back strategy should be developed in case the preferred strategy turns out to be infeasible.

132. The resolution strategy needs to recognise that resolution schemes play out very differently depending on the type of business involved: for example, the difference between contracts where premium is calculated year-to year and claims are closed shortly after the end of the policy period; long-duration claims that might be paid out for decades after the losses have incurred; and long-term contracts where the premium paid in early years is intended to subsidise the insurer's long-term obligations when claims are much more likely to occur. This distinction is important for liquidation as well as for non-liquidation alternatives. Both resolution legislation, and PPS powers and operating plans where applicable, need to be designed with this principle in mind.

133. The resolution strategy needs to be tailored to the specific risks to which each individual insurer may be exposed, the insurance functions that it provides and the potential systemic impact of its failure, with the aim of protecting policyholders and, as applicable, contributing to financial stability.

134. The resolution plan should contain the description of the preferred resolution strategy/strategies that could be adopted, whereby a comparison can be made between a "TopCo" strategy (entry into resolution at the level of non-operating holding or sub-holding company strategy) and an "OpCo" strategy (entry into resolution at the level of individual operating entities), outlining the two approaches and the factors that would lead to preference of one over the other (eg, group structure/intragroup arrangements or the nature of the stress

event triggering resolution, such as holding company debt or a particular operating company's loss portfolio), see Box 3.

Box 3: TopCo versus OpCo strategy

Certain types of insurers may be better suited to a resolution strategy that takes place at the TopCo level in a manner that maintains the structure of the group and preserves diversification benefits. The TopCo may be an insurance (or reinsurance) undertaking or a holding company that carries out no financial business other than acting as a holding company. Group structures that may be more suited to a resolution strategy that takes place at the TopCo-level typically have many of the following characteristics:

- Fungibility of capital and liquidity between parent and subsidiary entities;
- Systematic intra-group support with financial exposure between group entities;
- Ability of the holding or sub-holding company to support its subsidiary entities financially or provide intra-group guarantees;
- Centralised group funding;
- Interdependencies arising from shared services provided by affiliates.

Group structures that meet these conditions typically include groups that pool risks and capital in one place and that distribute centrally held capital through reinsurance contracts. Although the determination of the preferred resolution strategy will be based on the structure and business model of the individual insurer, it is possible that there will remain obstacles to resolution that are related to the insurance group structure or business model (see section 6).

Group structures that may be more suited to a resolution strategy that takes place at the OpCo level typically have many or all of the following characteristics:

- Local subsidiaries managed as stand-alone entities with respect to governance and often with only limited fungibility of capital and liquidity;
- Local client basis;
- Limited amount of intra-group transactions, executed at arm's length;
- Intra-group reinsurance that is generally conducted at arm's length and collateralised against default risk;
- Intra-group shared services that are generally provided by separate legal entities that are funded by revenues from the services they provide; or
- Legal and operational separability.

These conditions may be met by subsidiary-based insurance groups (for example, many insurance legal entities that provide direct life and non-life insurance and similar business models).

135. Resolution strategies should be adaptable to different scenarios by setting out alternative options that may be used. Accordingly, resolution plans should identify and set out how to execute options for actions (including a fall-back option(s) where preferred options are not available) for a range of severe scenarios, including both idiosyncratic and market wide stress with failure at a parent level and, alternatively, isolated failure of one or several legal entities. Resolution strategies and plans should also distinguish between fast and slow-moving scenarios, as the adequate responses to these might differ materially. Especially when there is no preferred strategy and the choice among available tools may depend on actual circumstances, the supervisor and/or resolution authorities may benefit from defining a limited set of scenarios to determine the preferred strategy for each scenario. The range of scenarios

should be reasonably comprehensive (eg, asset shock, liability shock, idiosyncratic shock (fraud or cyber risk) and/or combination).

5.4.6 Operational aspects

136. The resolution plan should provide operational detail of how the strategy might be implemented. The plan may include the following elements:

- Cross-border aspects of the operational plan and actions (recognition or support) that will be needed by authorities in other jurisdictions to ensure that resolution measures are effective;
- Transfer of reinsurance (if any) and impact on cover;
- Operational and practical arrangements for ensuring continuity of cover and payment under insurance policies; and
- Treatment of any derivatives portfolio, and possible need to maintain or replace hedges.

137. In resolution planning, the group-wide supervisor and/or resolution authority should also take into account the time required to implement the resolution options. In particular, in some jurisdictions, the courts may play a role in the application of certain resolution powers. Where the implementation of resolution options requires judicial authorisation or intervention, authorities should have regard to any implications for timing that this process may entail. In the event where time constraints implied by the resolution strategy and the preferred powers could jeopardise the resolution objectives, authorities should consider alternative powers that would not be subject to similar constraints.

138. The operational plan should also discuss group risks. Paradoxically, failure at a parent level can sometimes be more "isolated," as a practical matter, than failure of one or more legal entities. In a simplified example, it could be a matter of writing down debt as a failed investment risk, and either maintaining the group as a going concern or selling off some functional business units. But stress at the parent level has its unique challenges as well, in particular, preventing contagion to the operating companies (including blocking the flow of assets upstream), and in some jurisdictions, the complication that the parent company will be resolved as an ordinary business corporation, with no formal institutional role for insurance supervisors or resolution authorities.

139. The group-wide supervisor and/or resolution authority should develop a clear understanding of a number of factors relevant for triggering resolution actions, including:

- The resolution triggers under applicable regimes;
- The processes needed to coordinate action among the authorities involved in the preceding period as it becomes certain that failure will take place; and
- Any automatic effects (domestically or in other jurisdictions) of triggering resolution.

140. Where a resolution strategy provides for the preservation of parts of the business of the failed insurer, for example through recapitalisation via bail-in or through the use of a bridge institution, the resolution strategy and the resolution plan need to set out clearly how exit from the resolution process will be achieved. This includes setting out measures to restore the viability of the operations that the resolution will preserve, for example, transfer of decision making and of other governance functions to a new Board and Senior Management. It also includes the consideration of legal requirements that need to be met, including, for example, licensing and other regulatory approvals; limits on the duration for bridge institutions;

restrictions under competition law; governance and requirements under securities laws (such as listing rules); and suitability assessments for new management.

5.4.7 Resolution planning governance

141. This subsection addresses appropriate governance arrangements for resolution plan processes. Each jurisdiction should appropriately translate processes and governance in line with its resolution framework.

142. As mentioned in paragraph 117, in most jurisdictions, the supervisor and/or resolution authority develops and maintains the resolution plan. In some jurisdictions, however, the insurer is required to develop and maintain the resolution plan. In such cases, the group-wide supervisor and/or resolution authority should provide oversight, review and non-objection or approval of the resolution plan. The process should require correction of any deficiencies. In addition, the insurer should be required to have a robust governance process to support its resolution planning and this should be integrated into the insurer's overall Corporate Governance and Enterprise Risk Management.

143. For resolution to be effective, authorities need to have a clear governance structure for appropriate oversight of the resolution planning processes. Thus, authorities should have a documented process that provide a clear and sufficiently detailed description of the operational development process, the schedule and process for updating resolution plans, and operational procedures for activation of the resolution plan and any escalation processes, including a process for interaction with the insurer in resolution planning.[19]

144. In order to enable the resolution authority to draw up a resolution plan it is necessary that it has the power to require the insurer to submit all necessary information for the development of the resolution plan (see CF 12.3.b). The authority may also use other avenues to request information, as discussed in subsection 5.4.

145. A formalised governance process around developing, maintaining and updating the resolution plan will benefit from the participation of all relevant authorities involved in supervision and resolution of an insurer; and were appropriate, CMGs and the insurer itself. A governance process that includes such active participation in the development of the resolution plan will increase the likelihood of a feasible resolution while meeting important policy goals. For example, a successful resolution of an insurer would not cause severe systemic disruption and/or expose taxpayers to loss.

146. The resolution plan should also have an embedded governance process for monitoring resolution triggers and for activating the resolution plan, which includes a description of the key roles and responsibilities of the authorities, stakeholders and key persons relevant in the plan.

147. Timing is critical in the ability of resolution plans to achieve their objectives. As events and stressors may materialise at short notice and/or within short periods of time, it is essential that the event or stressor is quickly recognised and the resolution plan is activated in a timely manner, even though full resolution may take some time. Clear governance policies and procedures should be developed and maintained to support this.

[19] Where court orders are required to apply resolution measures, resolution authorities should take this into account in the resolution planning process, so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution actions.

148. Resolution plans should not commit authorities to take any action without first evaluating relevant information and deliberating on the best course of action. In fact, authorities may, in some circumstances, exercise flexibility and conclude that implementation of resolution options may be unnecessary, premature or no longer the best alternative, based on an evaluation of the relevant information. It can be helpful for the authorities to consider their resolution options through development of operational guides or manuals, but this should not bind or limit the actions taken when stress actually occurs.

149. The resolution plan should establish adequate procedures for notifying relevant authorities of an emerging stress scenario, and to share plans on the resolution powers contemplated for implementation, including adequate time and governance controls. Keeping other involved supervisors and/or resolution authorities informed is particularly important for groups with significant cross-border operations. In such cases, relevant authorities may benefit from establishing coordination or information sharing agreements (see section 7).

5.4.8 Communication strategy

150. Before, during and after resolution, the group-wide supervisor and/or resolution authority need to be in regular contact with insurer's management and also needs to consider communication with external stakeholders, including policyholders and other creditors. As such, as part of the resolution planning, a communication strategy should be developed in advance. A communication strategy would describe means for effective and clear communications with relevant stakeholders, how to manage external stakeholders' expectations, and how to retain (or restore) their confidence if necessary. In the lead-up to an actual resolution, the communication strategy may need to be updated into a concrete communication plan.

151. The development of the communication strategy should be led by the group-wide resolution authority and coordinated with the CMG to ensure consistent creditor and market communications across jurisdictions. When appropriate, the resolution authority should take advantage of the communication infrastructure of the insurer in resolution to deliver communications, and consider any extra resources that will be needed to support communication to creditors and the market.

152. The communication strategy should also consider circumstances where confidentiality needs to be maintained regarding the resolution strategy or the exercise of resolution powers. When developing the communication strategy, the group-wide supervisor and/or resolution authority should be mindful of any legal requirements regarding disclosure and confidentiality around information sharing (see ICP 3 (Information Sharing and Confidentiality Requirements) and ICP 20 (Public Disclosure)).

153. The communication strategy should provide clear unified messaging, and should cover all relevant stakeholders. This could include:

- Shareholder(s);
- Employees;
- Policyholders and other creditors;
- Insurance intermediaries;
- Relevant financial market participants, including key counterparties in reinsurance or derivative contracts and FMIs;
- Other interested parties, such as rating agencies;

- Media and general public; and
- Administrative or judicial bodies. The communication strategy should clearly identify the moment when the supervisor and/or resolution authority is expected to notify the relevant authorities in accordance with jurisdictional law and resolution regime policy.

In addition, it would be helpful to also include a concrete list of all persons or institutions (eg PPS, other regulators in jurisdiction) that will need to be informed.

154. The communication strategy with external stakeholders should consider possible options for the detail and timing of information to be provided, and the level and form of communication. It may also be needed to have separate communications for the holding company versus legal entities, as appropriate. These communications may support the effectiveness of certain types of resolution actions. The communication strategy should also consider website updates and possible joint CMG communications strategy.

155. The communication strategy should address the different communication tools to be used, depending on the circumstances and the stakeholder involved, which may include written notices, press releases, conference calls and physical meetings. Examples of communication channels for policyholders may include:

- Agents and employees who are in direct contact with policyholders (contact centre and customer relationship managers);
- Proactive communication (websites, press releases, email and social networks) in order to ensure real time communication, particularly in the event of an emergency; and
- Reactive communication (inbound calls in contact centres, emails, online chats).

156. The supervisor and/or resolution authority should also develop a comprehensive creditor and market communication strategy with the objective of promoting confidence, informing creditors and the market of the implications of the resolution, limiting contagion, and avoiding uncertainty and potential runs.

157. The supervisor and/or resolution authority, in coordination with other relevant authorities, should make a public announcement of the resolution action as soon as reasonably practicable following entry into resolution, unless the measures that have been taken are confidential. The group-wide resolution authority's initial communication should provide clear and robust information to mitigate the risk of inconsistent communications and limit the need for subsequent additional announcements. Relevant host authorities should consider making a corresponding announcement alongside that made by the home resolution authority, and home and host authorities should coordinate the timing and content of their respective announcements in line with their responsibilities.

5.4.9 Impact on the PPS

158. For jurisdictions that have a PPS, considerations should be made for the potential scope and magnitude of impact that the resolution plan may have on the PPS.

159. As part of the resolution planning process, the resolution authority could consider, given the PPS specific coverage scope, eligibility, and protection limits, the extent that the protection coverage provided by the PPS could provide loss-absorbing capacity in the resolution of the insurer.

160. For example, analysing the breakdown of the policyholders that are eligible/ineligible and insurance liabilities that are protected/unprotected could assist the resolution authority in understanding:

- The total value of eligible policyholder liabilities protected by the PPS;
- The total value of policyholder liabilities that are neither eligible nor protected, and therefore show the total value of policyholder liabilities where any losses would be imposed directly on the policyholder; and
- The extent to which the PPS may be required to provide resolution funding depending on the severity of the insurance failure. For example, the anticipated financial impact on the PPS if the insurer had a shortfall in assets of X million, Y million, and Z million.

161. The resolution authority could also consider the 'affordability' of the loss absorbing capacity provided by the PPS depending on the structure of its funding model. For example, if the PPS is funded by an ex-post levy on the industry, resolution authorities may find it beneficial to understand the magnitude of losses required to exhaust various degrees of capacity of the PPS based on any limits of its levying capacity. Additionally, if the PPS has access to a credit facility, the time needed for the PPS to replenish its financial resources and repay any loan to cover the funding provided could also be considered.

6 Resolvability Assessments

162. If a resolution plan is required for an IAIG, then it is also required for the group-wide supervisor and/or resolution authority, in coordination with the IAIG CMG to undertake resolvability assessments (see CF 12.3.b).[20] The (group-wide) supervisor and/or resolution authority may also see benefit in conducting resolvability assessments for other insurers where they have determined it to be appropriate to require resolution planning.

163. A resolvability assessment allows the group-wide supervisor and/or resolution authority to evaluate the feasibility and credibility of available resolution strategies. A resolvability assessment also allows the measurement of the level of readiness, of both the resolution authority and the insurer, to implement the resolution strategy if necessary.

164. Furthermore, a resolvability assessment may support the consideration of the systemic impact of the insurer to the financial system and real economy. The group-wide supervisor and/or resolution authority may also consider implications to financial stability if the resolution plans of several insurers would result in turning to the same sources of capital.

165. CF 12.3.b requires resolvability assessments to be undertaken on a regular basis. For example, this could be done an on annual or biennial basis as considered appropriate. Resolvability assessments should also be updated 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. The group-wide supervisor and/or resolution authority may use the resolvability assessment in an iterative manner so as to refine the resolution planning process and the resolvability of the insurer.

166. The resolvability assessment could benefit from the following elements:

[20] CF 12.3.b.1 states that "resolvability assessments should be conducted at the level of those entities where it is expected that resolution actions would be taken, in accordance with the resolution strategies for the IAIG, as set out in the resolution plan".

- Regularly assessing the plan for the insurer's resolvability. The group-wide supervisor and/or resolution authority may check whether the plan can be activated and implemented in a timely manner and that the operational procedures and implementation governance of the plan are effective. This may include the assessment of the availability of timely, sufficiently detailed and accurate information to support an effective resolution.
- A process for assessing if the resolution strategies will be capable of achieving its objectives:
    - Protecting policyholders, notably limiting the negative impacts on policyholders;
    - Contributing to financial stability, notably ensuring that those financial and economic functions that need to be continued to achieve the resolution objectives can be continued; and
    - Minimising reliance on public funds.
- As part of the resolvability assessment, there should be a process of identifying any impediments to resolution that may arise from the legal and or operational structure of the insurer (see section 6.1).
- Assessment of operational resolvability could focus on improving execution and training for escalation processes and communication strategies, or engaging in simulation exercises working through the resolution plan in a time-accelerated exercise with relevant key persons. It should be noted that such simulation exercises may be resource-intensive and that different exercises may focus on different aspects of the resolution plan, such as effectiveness of resolution options, communication or governance.
- The insurer's existing stress testing framework can also be an effective way to test areas of the credibility of the resolution plan, particularly in relation to the menu of resolution options and the calibration of the trigger framework.
- As part of resolvability assessment, there should also be an assessment if there are appropriate mechanisms in place, including adequate legal tools and operational capacity, to ensure effective coordination between the group-wide resolution authority and other involved resolution authorities in carrying out resolution.
- There should also be a process to ensure that the results of the resolvability assessments contribute to the on-going improvements of the recovery and resolution planning and plans of the insurer. This should include consideration of the types of resolution capabilities that insurers may need to build in order to make plans more credible at the point of execution.

6.1 Resolving impediments

167. Where impediments are identified, authorities should have a process for requesting insurer to take prospective action to address such obstacles so as to improve its resolvability where necessary. Any lessons learned should be incorporated in the update process.

168. Thus, the regular conduct of resolvability assessments should help identify any impediments (barriers) to resolution that may arise from, for instance, the legal and operational structure of the insurer.

169. Any action required to resolve impediments should be appropriate and proportionate. The decision to impose any such requirement should take due account of the effect on the

soundness and stability of the ongoing business. Also, as indicated in ComFrame guidance, the insurer may be given the opportunity to propose its own prospective actions to improve its resolvability.

170. Examples of impediments that may be identified are listed below. These examples are illustrative and should not be considered an exhaustive list.

- Intra-group considerations (which may materialise in an OpCo strategy):
    - Financial interconnectedness. This may include intragroup reinsurance, loans, guarantees and capital support deeds. Also, noting what is collateralised and what is not; and
    - Operational dependencies. This may include custodian services with third parties, intragroup IT services, treasury services, asset management services, staff signing authority, critical staff (ie decision makers outside of the legal entity in resolution);
- Legal issues. This may include legal risk of implementation of a specific resolution power;
- Complex policies. Complexities could for instance derive from reinsurance arrangements, guarantees which would fall away in case of a transfer (due to policy wording), or similarly policy benefits that are non-transferable; and
- Termination of derivatives and reinsurance.[21] Regulatory intervention is not an uncommon termination clause in financial contracts.

7 Cooperation and Coordination

171. Cooperation and coordination have proven to be essential for effective crisis management. Lack of cooperation and coordination, where all involved parties seek their own interest without considering the effectiveness of the overall resolution process, could lead to a suboptimal resolution outcome, particularly in cross-border cases.

172. ICP 12.0.12 states: "(…). 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." Indeed, 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. This section has been structured along these lines.

173. Cooperation and coordination both in normal and crisis times must be undertaken with confidentiality in mind. Cooperation and coordination require exchanging information that may be of (highly) confidential nature. If leaked, it could deteriorate the situation of a troubled insurer even further, complicate the resolution process and potentially affect financial markets. This calls for a "need-to-know" principle when sharing the information among interested parties. In line with ICP 3, supervisors should obtain from and share information with relevant supervisors and authorities subject to confidentiality, purpose and use requirements.

[21] This impediment is likely to only be relevant in those jurisdictions that do not yet have temporary stay powers, which, in line with CF 12.7.a, is required to be available to resolution authorities that are responsible for the resolution of an IAIG.

174. Although the primary function of a PPS is the compensation of policyholders for losses in the event of a liquidation, in several jurisdictions PPSs also play a relevant role in the resolution process, eg funding the transfer of the insurer's portfolio or acting as a bridge institution. As a consequence, cooperation and coordination with the PPS, where they exist, should also be considered to the extent allowed by the legislation, and taking into account confidentiality requirements. This cooperation and coordination could be considered both in normal times (eg sharing the necessary information with the resolution authorities, supervisors and CMGs in order to develop the resolution strategies and, more in general, for the resolution planning purposes) or in times of crisis (involving them in the resolution process). This will help the PPS to carry out its duties more effectively, contributing to a better outcome of the resolution process.

7.1 Cooperation and coordination in normal times

175. The resolution of an insurer may have implications beyond the jurisdiction of the head of the insurance group. This is true for any group with cross-border business, in particular IAIGs. Therefore, ComFrame in ICP 25 requires CMGs to be set up for all IAIGs.

176. In normal times, cooperation and coordination should focus on the exchange of views and the development of all necessary processes and procedures to prepare for an orderly resolution when needed. This could include the following issues:

- Progress in coordination and information sharing within the CMG and with host authorities that are not represented in the CMG;
- Any differences in legal resolution frameworks between jurisdictions, such as related to available resolution powers or applicable triggers for entry into resolution in the respective jurisdictions;
- The recovery and resolution planning process for an insurer under institution specific cooperation agreements; and
- The resolvability assessment of the insurer.

177. Cooperation and coordination can take different forms. An example could be the CMGs. CF 25.7.a requires the group-wide supervisor to establish a CMG with the objective of enhancing preparedness for the recovery and resolution of the IAIG.

178. As noted in ICP 12.0.4, "whatever the allocation of responsibilities between the supervisor and the resolution authority, a transparent and effective resolution regime should clearly delineate the responsibilities and powers of each authority involved in the resolution of insurer. 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." Also the FSB Key Attributes stress that there should be a certain degree of operational independence, to avoid potential conflicts of interest.[22]

179. Authorities may also decide to extend these cooperation platforms to other insurers with cross-border operations that are not classified as IAIGs. Alternatively, where the setup of such a body is not deemed necessary, another type of arrangement could be considered, such as the IAIS Multilateral Memorandum of Understanding (MMoU) or the supervisory college.

[22] See the FSB KAAM (2020), notably KA 2.5, which stresses that "[t]he resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures" and its explanatory note EN 2(F).

Parties to the cooperation agreement(s) should include all relevant authorities within the jurisdiction that could be involved in the resolution process in cross-border situations. The participation, besides the group-wide supervisor and/or resolution authority, would normally include relevant involved supervisors and/or resolution authorities, taking account of the materiality and proportionality principle (see ICP 25.7).

180. Cooperation with host authorities of IAIGs that are not represented in the CMG, and cooperation with host authorities of other internationally active insurers, should follow the principle of proportionality. A group-wide supervisor or resolution authority should consider to cooperate with a host authority for crisis preparation if the insurer's activities are significant in the host jurisdiction (eg they represent a sizeable part of the market in the host jurisdiction), even though the part of the host jurisdiction in the total activity of the insurer is small.

7.2 Cooperation and coordination in times of crisis

181. In crisis times, the main objective of cooperation and coordination should be achieving a cooperative solution with authorities in other jurisdictions who are concerned with the resolution of the insurance group (ICP 12.5). Intensive and continuous dialogues, sharing all relevant information and reciprocal trust among supervisors and resolution authorities are key factors of success of the resolution process.

182. The management of the crisis should ideally rely on the preparatory work carried out in normal times. Although crises cannot be foreseen in all their dimensions and a high degree of flexibility is needed, it is clear that the preparatory work will be useful to ensure the success of the resolution process, eg, to understand what functions should be preserved in resolution, which powers are available or what the resolution strategy should be.

183. Two of the main elements of cooperation and coordination in a crisis situation are the exchange of information between supervisors and resolution authorities and effective communication with external stakeholders.

184. Ideally, the nature and scope of all relevant information to be shared in crisis times should be agreed in normal times. This could be done, for example, by developing a template that includes all information expected to be relevant in times of crisis, organised around the following topics:

- Background information. It is important to know what triggered the stress of the company, the possible impact on other parts of the financial system and the real economy and the current state of basic financial information on assets, liabilities, own funds, technical provisions, capital requirements, rating changes, etc;
- Measures taken. Timely notification to resolution authorities where recovery measures are taken in order to improve their preparedness, followed by a description of the recovery measures taken and an explanation of the reasons why they were not effective. Any resolution action that has already been taken should also be identified and described; and
- Possible actions to take. As stated in ICP 12.5.6, cooperation and coordination are crucial when considering resolution actions 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.

185. The effective exchange of information also requires identifying and removing (to the extent possible) all legal, regulatory or policy impediments that hinder the appropriate exchange of information. For this reason, it is important that all relevant parties participate in cooperation arrangements. Furthermore, the supervisor should assess whether insurers required to maintain MISs are able to produce all necessary information on a timely basis, both in normal times and in the course of the resolution process (see section 5.3).

186. Aligning communication during a crisis has proved to be very important. Misaligned timing or messages can increase the uncertainty and exacerbate the impact of the crisis and hinder the resolution process. A coordinated communication strategy should be described in the resolution plan (see section 6.10) and should be implemented by all parties involved in the resolution process.

7.3 Coordination agreements

187. The functioning of a CMG is supported by a coordination agreement, which according to CF 25.7.a and its guidance, describes at least the roles and responsibilities of the respective members of the IAIG CMG and the process for coordination and cooperation, including information sharing, among members of the IAIG CMG.

188. Coordination agreements need to be firm-specific and support the development and implementation of the resolution strategy and operational plan. They should be agreed by the group-wide supervisor and other involved supervisors (or resolution authorities) represented in the CMG and in particular they should:

- Establish the objectives and processes for cooperation through CMGs;
- Define the roles and responsibilities of the authorities in the recovery and resolution planning phases and during a crisis;
- Set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG and the PPSs, if applicable, for the resolution planning purposes;
- Set out the processes for coordination in the development of the resolution plan, including parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement, the PPSs, if applicable, and for engagement with the insurer as part of this process;
- Set out the processes for coordination among home and host authorities in the conduct of resolvability assessments;
- Include agreed procedures for the group-wide supervisor to inform and consult host authorities, and PPSs if applicable, in a timely manner when there are material adverse developments affecting the insurer and before taking any significant action or crisis measures;
- Include agreed procedures for the host authority to inform and consult the group-wide supervisor in a timely manner when there are material adverse developments affecting the insurers and before taking any discretionary action or crisis measures;
- Provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including the use of a bridge institution and bail-in powers;
- Provide for meetings to be held regularly, or when there are material changes, involving senior officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy; and

- Provide for regular reviews by appropriate senior officials of the operational plans implementing the resolution strategies.

189. As regards information exchange within CMGs, the IAIS MMoU provides a global framework for cooperation and information exchange between insurance supervisors. All signatories to the IAIS MMoU undergo a validation of their laws and regulations to demonstrate compliance with the MMoU's strict confidentiality regime, based on the confidentiality requirements in ICP 3. For this reason, if all relevant parties are signatories to the IAIS MMoU, it is the preferred framework for multilateral information exchange.

Annex: Examples of relevant existing and proposed legislation on resolution powers

Based on the Member Survey, the availability of resolution powers varies widely. Whereas some powers are available in almost all Member jurisdictions that participated in the Survey, some other powers have been established in legislation by only a few jurisdictions. As noted in section 1.5, the Survey was conducted during Q4 2019 and the implementation of resolution frameworks is still evolving.

The more widely available resolution powers (where around 90% of jurisdictions indicate this power is available), include: to prohibit the payment of dividends to shareholders or the transfer of assets; withdraw the licence / put the insurer into run-off; retain, remove or replace Members of the Boards and other Key Persons; to take control of the insurer or appoint an administrator; and to initiate liquidation.

Resolution powers that are available to a majority of surveyed Members (around 60 to 80% of jurisdictions indicate this power is available), include: prohibit the payment of variable remuneration (including claw-back); impose a temporary suspension of payments to unsecured creditors; override rights of shareholders; sell or transfer the shares of the insurer to a third party; transfer or sell the whole or part of the assets and liabilities to a solvent insurer or other third party; and terminate, continue or transfer certain types of contracts.

Resolution powers that are available to only a minority of surveyed Members (between 35% to 50% of jurisdictions indicate this power is available[23]), include: restructure, limit or write down liabilities (including insurance liabilities), and allocate losses to creditors and policyholders; 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 ceding insurer in resolution; establish a bridge institution; take steps to provide continuity of essential services and functions; and temporarily stay early termination rights associated with derivatives and securities financing transactions.

The remainder of this Annex provides some examples of jurisdictions that have established resolution powers into jurisdictional legislation, or are in the process of doing so. Some of the material referred to in this Annex may not be available in the English language.

Australia

In 2018, the Financial Sector Legislation Amendment on Crisis Resolution Powers and Other Measures came into effect, which applies to the financial sector as a whole, including insurance.

- The Final Act can be found under this link.
- The explanatory memorandum is available under this link (see notably page 7 onwards for a summary overview).

[23] Some of these powers are required in ComFrame only, to facilitate the resolution of IAIGs.

European Union (EIOPA)

On 17 December 2020, EIOPA published its Opinion on the 2020 Review of Solvency II[24], which recommends a comprehensive framework for the resolution of insurers, including:

- the designation of a resolution authority in each Member State, to be granted a set of resolution powers to be exercised in a proportionate way;
- a list of objectives for resolution without an ex-ante predefined ranking;
- the introduction of pre-emptive recovery and resolution planning requirements. These requirements should cover, respectively, a "very significant share" and a "significant share" of each national insurance market; and
- the establishment of cross-border cooperation and coordination arrangements between national resolution authorities for crisis situations and for the safe and secure exchange of information between jurisdictions.

With regard to resolution powers, EIOPA has proposed a comprehensive list, in line with the list provided under ICP 12.7. EIOPA also believes that traditional resolution tools, such as portfolio transfer or (solvent and insolvent) run-off, which have proven to be adequate in the past, should be given priority when resolving insurers. The appropriateness of the use of resolution powers should be assessed on a case-by-case basis, and the use of powers should be subject to adequate safeguards, in particular the NCWOL principle.

France

France has introduced a recovery and resolution framework at the end of 2017, whose provisions came into force in 2018 and 2019. The framework provides as objectives of a resolution action:

- the protection of policyholders' interests;
- the projection of financial stability and of public funds; and
- the maintenance of critical functions.[25]

These objectives are not ranked. A resolution action can be taken if it better achieves one or several of these objectives, than would "ordinary" (= judicial) liquidation.

The framework also provides details of recovery and resolution planning, where both requirements have the same scope. The scope includes all insurers with (consolidated) balance sheet above EUR 50 bln, and insurers with "critical" functions. All in all, ≈ 90% of the French insurance sector (in terms of size of balance sheet) is submitted to planning.

Relevant texts (in French) can be found here (1) (law), here (2) (decree) and here (3) (sub-decree).

[24] See in particular the documents 'Opinion' and 'Background Analysis', the Chapters 12 on recovery and resolution.

[25] Critical functions" here means activities, services or operations of [an insurer] which have the following characteristics: they are provided by [Insurer] to unrelated third parties; the inability of [Insurer] to continue carrying on these functions would be likely to have a significant impact on financial stability or on the real economy; [Insurer] cannot be replaced for providing those functions at a reasonable cost and within a reasonable time (see link). See also a note (in English) on the identification of critical function of insurers.

Italy

In Italy, there is no resolution regime in place for the insurance sector yet. However, most of the resolution powers are available in the current national framework and exercised by different bodies (supervisory authority, Ministry for the Economic Development, court, special administrators, commissioners, and liquidators) within the supervisory actions, the extraordinary administration and the compulsory winding up of the insurer.

Where particular market conditions or insurer-related circumstances occur, IVASS may, for instance: limit or suspend the allocation of remunerations; prohibit or limit the distribution of dividends and other assets; prohibit insurers to carry out certain operations, also of corporate nature, or order limitations, temporary restrictions or deferral of some kinds of operations or options that the policyholders may carry out; order to strengthen the systems of governance, including risk containment; order to remove one or more corporate officers or holders of key functions; prohibit the writing of new business; or appoint an administrator or a manager to take over the control of, and manage, the insurer.

These powers are envisaged by art. 188 (3-bis) and by Title XVI of Code of Private Insurance which includes safeguards, reorganisation and winding up measures. In particular, winding-up proceedings for an insurer are defined from article 245 to article 265 of the Insurance Code, while specific provisions concerning the winding up of the companies belonging to an insurance group are ruled in art. 276 and further.

The Netherlands

On 1 January 2019, the Act on the Recovery and Resolution of Insurers came into effect.

- De Nederlandsche Bank published a factsheet that provides information on several key aspects of the act, including on the resolution tools and on resolution planning.
- The Act on Recovery and Resolution of Insurers (only available in Dutch)

Romania

The framework regarding the recovery and resolution of insurers consists of both the law adopted by the Romanian Parliament (Law no. 246/2015) and the rules issued by the FSA (11 rules). The main issues that are addressed in the recovery and resolution mechanism are related to:

- Recovery and resolution planning;
- Early intervention measures;
- The objectives of the resolution;
- Triggering the resolution;
- Resolution tools; and
- The mechanisms for financing the resolution.

The (main) instruments of resolution are: sale / transfer of the activity and the portfolio and the bridge institution. These instruments are complemented by the competence to reduce the value or convert debt into relevant equity instruments.

At the moment there are 10 insurers that meet the legal requirements regarding the mandatory planning of recovery and resolution. These requirements relate to exceeding a market share of 5% or the value of the insurer's gross technical provisions exceeding 5% of the total value of gross technical provisions at market level.

The resolution fund for insurers is administered by the Insured Guarantee Fund, has accumulated resources amounting to over 52 million lei, and these resources consist mainly of contributions from insurers (0,4% from received premium for non-life and 0,25% from life).

Switzerland

Currently applicable insurance supervision law obliges the Swiss Financial Market Supervisory Authority (FINMA) to order bankruptcy proceedings as soon as an insurance undertaking gets into financial difficulty. However, restructuring would often be better from the insured parties' standpoint, as they generally have an interest in seeing their insurance policies continue.

On 21 October 2020, the Swiss Federal Council adopted the dispatch on a partial revision of the Insurance Supervision Act. The bill closes the existing gap by means of the proposed right to restructure, thereby strengthening consumer protection. There are formal and material provisions.

Formal aspects include, among other things:

- Restricting creditors' right to appeal;
- Lifting of the suspensive effect for decrees in insolvency law;
- Empowering FINMA to open and perform a formal recovery procedure;
- Engaging a recovery mandatary to assist it in performing its duties; and
- Authorising FINMA to issue implementing provisions.

The material recovery provisions serve to enable recovery within a company, as well as recovery through the transfer of insurance portfolios to another insurer and transfer to a rescue company (~bridge institution).

Parliamentary debates concerning the partial revision of the Insurance Supervision Act have started in 2021 and are ongoing.

United Kingdom

Currently, there is no UK domestic resolution regime for insurers. In addition to some existing modifications to the UK corporate insolvency regime specifically for insurers, existing arrangements for dealing with insurers in difficulty include the use of various powers under the Financial Services and Markets Act 2000 (FSMA) by the Prudential Regulatory Authority (PRA). To take some limited examples:

Section 55J of FSMA: Variation or cancellation on initiative of the regulator: the PRA may, of its own initiative, vary or cancel a PRA authorised person's Part 4A permission in certain circumstances. This power includes the ability to both the withdrawal of permission to write new business (ie to place an insurer into run-off) and the withdrawal of the permission to carry out insurance contracts, and can extend to all or specific lines of business.

Section 55M of FSMA: Imposition of Requirements by the PRA: the PRA may impose, vary, or cancel requirements on a PRA-authorised firm in certain circumstances. This can include, but is not limited to dividend/remittance payments or requiring PRA non-objection to dividend/remittance payments.

Section 192C FSMA: Power to direct an unregulated parent holding company: the PRA may in certain circumstances direct a qualifying parent undertaking to take specified action or refrain from taking specified action.

Part VII of FSMA: An insurance business transfer is a regulatory mechanism, governed by Part VII of FSMA which allows a (re)insurer to transfer (re)insurance business from one legal entity to another, subject to the sanction of the court without obtaining the consent of individual policyholders. The procedure is often used to give effect to group reorganisations and consolidations. An Independent Expert is required to report to the Court on the impact of the proposed transfer on the various groups of affected policyholders

Section 377 of FSMA: Reduction in value of contracts as an alternative to winding up: the Court has the (as yet untested) power to reduce, subject to such conditions (if any) as it may determine, the value of one or more of any of its insurance contracts, as an alternative to winding-up. S.377 applies in relation to an insurer which has been proved to be unable to pay its debts. This provision is aimed at expediting the payment on or transfer of the contracts in question, in an attempt to avoid any delays associated with leaving such matters to be resolved at the end of a lengthy insolvency process.

Under Part XXIV of FSMA, the PRA is given extensive powers to initiate and become involved in insolvency proceedings in relation to insurance companies.

United States

Insurer Receivership Acts

The US National Association of Insurance Commissioners (NAIC) Financial Regulation Standards and Accreditation Program provides that a state should have a receivership scheme as set forth in the NAIC Insurer Receivership Model Act (IRMA). Accordingly, every state in the US has a receivership law that requires the appointment of the insurance supervisor as the Receiver of an insurer in a rehabilitation or liquidation proceeding. These laws are consistent with IRMA or a predecessor model act, such as the Uniform Insurers Liquidation Act or the Insurers Rehabilitation and Liquidation Model Act.

While rehabilitation and liquidation proceedings contain some distinct procedures, they both encompass resolution powers listed in ICP 12. The Receiver is vested with the insurer's property and all rights to deal with the insurer's business. The Receiver has all of the powers of the insurer's directors and officers, whose authority is suspended except as allowed by the Receiver. The Receiver may direct, hire and discharge employees, and appoint deputies or other personnel. The Receiver also has the power to:

- Recover property of the insurer transferred to an affiliate if the transfer was made within a specified period of time before the receivership petition;
- Avoid unauthorized post receivership transfers;
- Avoid preferences, which is defined to include certain transfers made for an antecedent debt that enable a creditor to receive more than he would receive in liquidation; and
- Avoid a transfer of certain interests in the insurer's property if the insurer received less than a reasonable value.

In a rehabilitation proceeding, the Receiver may take action to reform the insurer, including transferring policies to an assuming insurer. The Receiver may propose a rehabilitation plan, which can include the imposition of liens on policies or a moratorium on loan and cash surrender rights under policies. IRMA and established case law require that the plan must:

- Provide no less favourable treatment of a claim or class of claims than would occur in liquidation, with limited exceptions; and

- Be fair and equitable to all parties concerned.

The Receiver has the exclusive power to seek liquidation. If the insurer is in rehabilitation, the Receiver may seek a liquidation order if further attempts to rehabilitate the insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile. Policies are cancelled in liquidation, except for policies covered by a life and health insurance guaranty association, which is a PPS established in each state.

Receivership laws and court orders impose a broad stay of actions against the insurer or its assets. The stay avoids the dissipation of assets, and the costs of defending actions in multiple forums.

Insurance Holding Company System Model Regulation

The NAIC Insurance Holding Company System Model Regulation requires that cost sharing and management agreements within a holding company system specify that if an insurer is placed in receivership, an affiliate providing services: (i) has no automatic right to terminate the agreement, and (ii) must continue to maintain systems, programs, or other infrastructure, and make them available to the Receiver for so long as timely payments for services are made.