

June 25, 2024

Mr. Shigeru Ariizumi
Chair, Executive Committee
Mr. Jonathan Dixon
Secretary General
International Association of Insurance Supervisors (IAIS)
Bank for International Settlements
CH-4002 Basel
Switzerland



Re: IAIS Draft Revisions to Supervisory Material Related to the Holistic Framework

Dear Messrs. Ariizumi and Dixon:

The Institute of International Finance (IIF) and its insurance members are pleased to respond to the IAIS's consultation on Draft Revisions to Supervisory Material Related to the Holistic Framework in ICPs 12 (Exit from the Market and Resolution) and 16 (Enterprise Risk Management for Solvency Purposes) and related ComFrame standards (collectively, the Holistic Framework Revisions). We appreciate the IAIS's monitoring of potential sources of systemic risk in the insurance sector through an integrated and holistic approach consisting of enhanced supervisory policy measures for macroprudential purposes, a global monitoring exercise, and the assessment of jurisdictional implementation of the framework.

Overarching Comments

The Holistic Framework Revisions reflect an unduly prescriptive approach and an approach that may not be suitable for all jurisdictions. We find that the Holistic Framework Revisions deviate from the IAIS's integrated and holistic approach by prescribing rigid standards rather than offering guidance to supervisors that can be incorporated into the regulatory and supervisory regimes in place across jurisdictions with different insurance resolution frameworks at varying levels of development. An overly prescriptive approach does not provide the needed supervisory flexibility and discretion to develop and implement a recovery and resolution framework that reflects a jurisdiction's insurance markets, its legislative and judicial frameworks, and the specificities of the jurisdiction's insurance recovery and resolution framework and/or insurance guarantee scheme. In response to Question 2 of the Consultation questions, we do not favor the application of certain recovery and resolution planning requirements to all insurers.

A more proportionate approach to insurance resolution would also better reflect the wide range of regulatory and supervisory initiatives that have been implemented in recent years, including supervisory colleges for internationally active insurance groups (IAIGs), own risk and solvency assessment (ORSA) guidance, enterprise risk management frameworks and assessments, corporate governance reporting and disclosure, IAIS global monitoring exercises and individual insurer monitoring, and regulatory capital calculations and analyses. These initiatives materially reduce the potential for systemic risk to arise from the insurance sector that could impact negatively and to a material extent the global financial system and the real economy.

The Holistic Framework Revisions are reflective of the recent development in the European Union (EU) of the proposal for an Insurance Recovery and Resolution Directive (IRRD).¹ While the IRRD may be considered appropriate for the EU, it may not be equally well suited for other insurance markets with different (and, in some cases, long-standing and tested) frameworks for insurance recovery and resolution. We encourage the IAIS to develop a more principles-based approach to supervisory guidance on recovery and resolution that can meet the needs of different markets and regulatory and supervisory approaches.

The Holistic Framework Revisions should reflect an activities-based approach (ABA) to potential sources of systemic risk in the insurance sector. An ABA shifts an overly narrow focus on an individual company and a single “solution” to systemic risk before it is even found to exist to a broader view of insurance markets and the full range of available responses to any systemic risks that do arise. The broader view of potential risks and policy responses under the ABA also serves to minimize the potential for competitive market distortions that can be amplified when a firm is singled out for enhanced regulation and supervision but its peers conducting similar activities are not. An ABA permits the consistent treatment of activities across the insurance sector, reducing fragmentation and facilitating a level playing field.

The current approach to potential systemic risk in the Holistic Framework Revisions appears to move back to the entity-based approach (EBA) that was in large part replaced by the IAIS with an ABA at the time of adoption of the Holistic Framework in 2019. The Holistic Framework was endorsed by the Financial Stability Board (FSB) in 2022 as an important improvement to and evolution of the former EBA designations of global systemically important insurers.² While certain elements of the Key Attributes³ remain relevant to the resolution of insurers, the Key Attributes should be read in light of the 2022 FSB endorsement of the Holistic Framework.

Specifically, the IAIS’s website includes the following statements with respect to the consultation on the Holistic Framework Revisions (emphasis added):

- *At the ICP standard level, the IAIS proposes to include a requirement for supervisors and/or resolution authorities to have a process to prepare for resolution in general; and a separate requirement for a process to regularly assess which insurers must have a resolution plan.*
- *This means that it is proposed to move the resolution plan requirement from ComFrame to the ICPs, to be applied to all insurers as necessary based on established criteria, and at a minimum for any insurer that is assessed to be systemically important or critical if it fails.*
- *These proposed changes are being made to ensure consistency in determining insurers in scope of the requirement, **and to align the standards with the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions**, in recognition of the fact that resolution plans may also be necessary for certain insurers that are not an IAIG, to the extent their disorderly failure may have a systemic impact.*

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0582>

² <https://www.iaisweb.org/2022/12/fsb-endorses-the-iais-holistic-framework-and-discontinues-identification-of-global-systemically-important-insurers-g-siis/>

³ <https://www.fsb.org/wp-content/uploads/P250820-1.pdf>; <https://www.fsb.org/wp-content/uploads/P250424-3.pdf>; <https://www.fsb.org/2020/08/key-attributes-assessment-methodology-for-the-insurance-sector/>

These statements do not adequately reflect that the 2022 endorsement of the Holistic Framework by the FSB has changed in some respects the interpretation and application to insurers of some aspects of the Key Attributes. The Holistic Framework Revisions should be considered in light of this more recent history of the approach to systemic risk in the insurance sector and the Revisions should reflect an ABA.

Moreover, this apparent reversion to an EBA in the Holistic Framework Revisions would send 'mixed signals' to insurance supervisors that could lead to significant inconsistencies across jurisdictions, including a return to entity designation in some jurisdictions. (See e.g. Section 12.4.) Retaining the explicit adoption of an ABA would send a clear signal to insurance supervisors that would significantly mitigate the negative impacts of regulatory fragmentation.

In implementing an ABA, there should be clear evidence of a connection between activities and the potential for the propagation of material levels of systemic risk to the global financial system and to the real economy through the transmission channels of asset liquidation or counterparty exposure. The quality of the insurer's risk management, the availability of risk mitigants and solutions such as run-off or risk transfer, as well as the high degree of substitutability of traditional insurance products and services, should be taken into account in determining whether and to what extent an insurance activity could give rise to material systemic risk impacts on the global financial system and real economy (hereinafter referred to as 'systemically relevant activities').

The determination of which insurers should be subject to resolution planning should be based on a holistic, activities-based approach that considers the potential impact of the failure of an insurer engaged in systemically relevant activities on the global financial system and the real economy. Simplistic proxies based on size, market share and global footprint are not proportionate nor are they consistent with the holistic approach to systemic risk developed successfully by the IAIS and endorsed by the Financial Stability Board (FSB). Specifically, in response to Question 3 of the Consultation questions, we would not agree with a blanket approach that recommends the development of resolution plans for all IAIGs.

IIF insurance members see an important role for contingency and/or recovery planning, combined with a more flexible approach to formal plans. The Holistic Framework Revisions could better emphasize the important role of contingency and/or recovery planning in avoiding the need for the resolution of an insurer. Contingency planning exercises can encompass a broad range of situations that may present financial challenges to an insurer. Contingency planning exercises can be holistic, encompassing contingency measures, liquidity risk management measures and recovery planning.

Planning exercises allow an insurer to address challenges proactively before the need for supervisory intervention arises. A focus on planning as opposed to formal plans reflects the fact that contingency or recovery planning is a dynamic exercise. The exact course of action needed to restore an insurer is context-dependent and cannot be specified in advance. Senior management needs to retain the flexibility and discretion to take appropriate actions under a wide range of potential circumstances and in light of both internal and external factors affecting the insurer. Whether to adopt a formal contingency and/or recovery plan should be at the discretion of the company, in consultation with its lead or group supervisor.

Relatedly, contingency and/or recovery planning should be the primary responsibility of the insurer. The company has the best understanding of how to structure a planning exercise in light of the organizational and management structure of the insurer. Contingency planning can also be embedded in a company's ORSA, its internal capital or liquidity frameworks, or other risk assessment and management plans, as is considered in Section 16.9.7. We believe that the IAIS should advise supervisors to adopt a flexible approach that allows for the development of planning exercises that best reflect the activities, risk profile and organizational structure of the company.

The development of a resolution plan should be reserved for extraordinary situations and should be led by the group supervisor in close collaboration with the supervisory college, the Crisis Management Group (CMG), if one exists, or any resolution authorities or administrators of a policyholder protection scheme (PPS) that would be involved in the resolution of the insurer.⁴ In the rare event that a resolution plan needs to be developed, the supervisory college, any CMG, and any resolution authorities or PPS administrators that would be involved in the resolution of the insurer should coordinate closely in the design of the plan. In designing a resolution plan, authorities should be mindful of the impacts on customers of any restrictions on an insurer's business activities, particularly when those restrictions impact essential product lines.

The group supervisor and resolution authorities should also coordinate closely with local supervisors through the supervisory college or CMG mechanisms and establish clear lines of authority and responsibility.

Insurance critical functions should refer to functions that are necessary for the proper functioning of the global financial system, rather than to functions that are necessary for a particular insurer. In order to be deemed an insurance critical function, there should be a clear linkage between a specific function and the propagation of *material* levels of systemic risk to the global financial system and to the real economy should that function suffer a serious and prolonged interruption or cease to be performed without adequate substitution.

The IAIS should refer to the FSB's definition of insurance critical functions⁵, which is a function that has *all* of the following three elements:

- The function is provided by an insurer to third parties not affiliated with the firm;
- The sudden failure to provide that function would be likely to have a material impact on the financial system and the real economy; and
- It cannot be substituted within a reasonable period of time and at reasonable cost.⁶

In the first instance, the company should be responsible for the identification of the critical functions it performs, if any, subject to supervisory discussion and review. The company is best suited to determine the materiality and criticality of its key functions. A supervisory determination of critical functions without adequate input from the company could result in determinations

⁴ If a resolution authority is responsible for the development of the resolution plan, close coordination with the group supervisor as well as the company is imperative.

⁵ See e.g. CF 12.3.a.3.

⁶ <https://www.fsb.org/2023/11/identification-of-critical-functions-of-insurers-practices-paper/>

based on incomplete information and could give rise to inappropriate and harmful supervisory interference in the company's business activities as a going concern.

Critical shared services provide the essential infrastructure the firm needs to provide critical functions; however, some critical shared services can be interrupted for a short period of time without leading to the failure of a critical function. Therefore, it is important to understand the severity of the consequences of a failure of a critical shared service and how quickly the failure of a particular critical shared service could cause the collapse of a critical function. According to the FSB, a critical shared service has the following elements:

- An activity, function or service is performed by either an internal unit, a separate legal entity within the group or an external service provider;
- That activity, function or service is performed for one or more business units or legal entities of the group;
- The sudden and disorderly failure or malfunction would lead to the collapse of or present a serious impediment to the performance of critical functions.⁷

Market share and other size-related criteria should not be a proxy for whether a function performed by an insurer should be deemed 'critical'. Rather, critical functions should be defined according to the impact on the global financial system and the real economy should they become unavailable. Any such potential impact should be assessed to be materially negative before the function is deemed to be 'critical'.

Specific Comments

The guidance in **Section 12.3.1** should direct supervisors to involve the insurer in establishing any necessary processes and procedures for resolution. The words 'as appropriate' in the last sentence of this Section should be deleted. In the rare event that the resolution of an insurer is necessary, the success of the resolution plan and the minimization of adverse policyholder impacts will depend on close coordination among the group supervisor, the CMG, if one exists, and any involved resolution authorities and/or PPS administrators.

With respect to **Section 12.3.2**, it should be noted that it can be extremely difficult for supervisors to identify in advance options for resolving all or part of an insurer (or certain types of insurers). The need for resolution can arise from a wide range of circumstances and resolution planning is conducted in a dynamic and fluid environment subject to a wide range of internal and external factors, including rapidly changing valuations.

The criteria contained in **Section 12.4.1** with respect to resolution plans and **Section 16.16.2** with respect to recovery plans mirror the former EBA criteria for determining whether an insurer could be systemically important. The use of these outdated criteria is not consistent with a holistic approach to the mitigation of systemic risk in the insurance sector. Rather, a flexible and proportionate approach that takes a 'whole of business' view of the insurer, its activities and available risk mitigants would better allow for a determination of the extent to which the company should engage in resolution planning or develop a formal plan. The suggestion that resolution

⁷ https://www.fsb.org/wp-content/uploads/r_130716a.pdf

plans could be required for all insurers, a minimum share of the jurisdiction's insurance sector, or for all IAIGs promotes an arbitrary approach that is not consistent with a holistic, risk-based and proportionate approach to systemic risk.

The need for close coordination among group and local supervisors and with resolution authorities should be particularly highlighted in the text on Group and Branch Perspectives (**Section 12.8.15 et seq.**). We strongly encourage the retention of the reference to adequate safeguards and proportionality in **CF 12.8.a**. The supervisor and/or resolution authority should not have unfettered discretion to exercise the range of powers described in CF 12.8.a without the proper checks and balances.

We would restore the deleted **CF 16.9.c.5**, which provides that the supervisor may allow an IAIG's contingency funding plan to be developed as part of a recovery plan, should the insurer determine that such a plan is necessary. The insurer should have the necessary flexibility and discretion to engage in planning exercises that best reflect the activities, risk profile and organizational structure of the company.

Section 16.9.7 should refer to contingency funding planning, as opposed to formal plans. While contingency funding planning is appropriate for a broad range of insurers, those plans can be incorporated into enterprise risk management in a variety of ways.

We refer the IAIS to our comments in the IIF's August 15, 2019 comment letter on Draft Supervisory Materials related to the Holistic Framework,⁸ for further detail on ICP 16 and related ComFrame provisions.

We appreciate the opportunity to comment on the Holistic Framework Revisions. We welcome the opportunity for further dialogue on the important issues raised in this consultation.

Respectfully submitted,



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⁸ https://www.iif.com/portals/0/Files/content/Regulatory/iif_iais_comment_letter_on_sup_material.pdf