



Chairman

5 September 2011

Mr Mario Draghi
Chairman
Financial Stability Board
CH-4002 BASEL SWITZERLAND

Ref: 11/134

Dear Mr Draghi,

IAIS Response to FSB Consultative Document on the Resolution of Systemically Important Institutions

The IAIS would like to thank the FSB for the opportunity to provide comments on its recent consultative paper on the resolution of systemically important financial institutions. The IAIS supports the FSB in ways to identify the most appropriate resolution regime applicable to these institutions.

In response the IAIS wishes to highlight the differences occurring between the banking and insurance sectors. Unlike banks, insurers receive their premiums up front and are required to meet policyholders claims at all times. Insurers which are in imminent threat of becoming non-viable are not exposed to runs like banks given that insurance claims in general can only materialise upon the occurrence of the insured events. Additionally, insurers typically experience longer term building-up phases in their risks and are subject to longer lasting resolution opportunities than banks.

There are already a number of tools used to effectively resolve traditional insurance business and which have already been proven in practice. These tools provide for the orderly resolution of insurers in case they become no longer viable. Although these tools could still be of use when insurers engage in non-traditional activities (and to the extent that they become potentially systemically important), the tools may well need to be supplemented with other tools tailored towards those activities. It is acknowledged that difficulties may arise when cross border activities occur, therefore supervisors should have a wide range of resolution tools and the flexibility to tailor the tool to the specific situations and allow for relevant cross sectoral and cross border activities. It is expected that the IAIS Common Framework (ComFrame) will address this issue.

The IAIS requests the FSB take these points into consideration when proposing its policy recommendations.

A table of responses to the individual questions along with specific remarks to particular areas of the paper is attached in Annex A. A summary of IAIS observations received from members is also enclosed with this letter.

Yours sincerely,

Peter Braumüller
Chairman, Executive Committee

Main Observations

1. Proposal to amend text

We would like to propose that the current reference to resolution powers under 4.1 (iv) be made into a separate sub point to highlight the unique nature of insurance business. Proposed text as follows

4.2 In the case of insurance firms, resolution authorities should have specific legal powers that apply as appropriate across the complex structure of SIFIs, and also the operational capacity to implement orderly resolutions. These include powers to

i) require portfolio transfer where the business of an insurer which is under stress could be sold-off (all or in part) at an early stage.

ii) run-off insurance business so that the writing of new business can be discontinued while continuing to administer existing contractual policy obligations for existing business.

iii) hold underlying assets for derivatives

2. Timelines

The IAIS considers the timelines proposed may not allow affected jurisdictions sufficient time to implement the legislative changes that could be needed to comply with the proposals being put forward. The IAIS is undertaking an exercise to identify insurers that are of systemic importance and it is proposed the timelines be extended for 6 months. Even more preferable would be that the timelines only start after the identification of G-SIFIs has been determined.

3. Bail in

Greater consideration of the introduction of bail in for insurers is needed. There might be circumstances even in traditional insurance, e.g. insufficient reserves, where a re-capitalization is needed. However, traditional business can be resolved in an orderly manner and mechanisms are already in place to facilitate this. For the insurance sector timing refers to the speed at which regulatory intervention occurs rather than the duration of the process. In the case of traditional insurance there is no immediate refinancing pressure and the process of time can even have a positive effect, for example in run-off portfolios. This should be allowed for in the design of resolution programmes.

4. Cross-border Cooperation

Bi-lateral and multi-lateral agreements should be promoted to assist supervisors in cross-border cooperation.

To facilitate cross-border cooperation the IAIS is building its Common Framework for the supervision of internationally active insurance groups (ComFrame). ComFrame will facilitate information sharing between supervisors. It will especially look to address both the group-wide and host supervisors' perspectives by defining roles for cooperation and interaction, including the use of supervisory colleges. Resolution is to be addressed in Module 4: Supervisory Cooperation and Interaction.

5. Resolution and Recovery Plans

Resolution and Recovery Plans are relevant for both insurance groups and insurers with cross-border operations by way of branches. In some cases supervisory authorities may not have necessary powers to implement such conditions within the time frame required. However for insurance entities, varying levels of supervisory intervention can be undertaken in the event any adverse impact occurs.

6. Policyholder protection

The paper reflects a banking orientation in this regard as the focus is solely on depositors.

In the event of winding-up proceedings of insurance legal entities, the legal framework gives priority to the protection of policyholders and aims at minimising disruption to the timely provision of benefits to policyholders.

There are different forms of policyholder protection schemes in place in various jurisdictions. While policyholder protection schemes provide additional or alternative assurance to policyholders that their contractual obligations will be met when due, the presence of multiple protection schemes for an insurer operating in multiple jurisdictions contributes additional complexity to the resolution process. For insurance regulators the emphasis remains on protection of the policyholder and it is requested the FSB take due regard of this work.

7. IAIS paper on resolution of GSIFs

Work has commenced on a paper that will look to address the proposals being put forward by the FSB in its recent consultative paper. The paper will be finalised later in 2011 and will demonstrate the effectiveness of existing resolution tools used within the insurance sector whilst also reviewing the applicability of these tools for non traditional insurance activities and the need for other tools.

Attachments -

Annex A – Comments from IAIS members to the FSB consultative paper on the effective resolution of systemically importance financial institutions.

ANNEX A - Compilation of responses performed by IAIS to the FSB Consultative document on Effective Resolution of Systemically Important Institutions

SPECIFIC COMMENTS TO THE PAPER IDENTIFYING SECTIONS REQUIRING GREATER RECOGNITION OF INSURANCE

FSB paper reference	Specific comment
Page 11 3rd paragraph	"to the extent insurers conduct activities which are bank like, the application of banking sector resolution tools to such activities rather than to the insurer as a whole...may be appropriate". The use of the phrase "conduct activities" is too vague. Presupposes that insurers themselves can be SIFIs. It would be useful to clarify whether it is envisaged that such activities are themselves the source of systemic stress.
Annex 1 page 27 6.3	Recommends the provision of a deposit insurance scheme or resolution fund which is privately funded. It may be argued that having an industry funded scheme in place ab initio reduces the perception of Government support for systemic institutions but is it necessary to have in place with respect to wholesale markets. Typically deposit insurance schemes are targeted at protecting retail customers. It may be useful to have guidance on how this may apply in terms of wholesale markets e.g. Reinsurance.
Annex 4 page 49 4.3 and Annex 5 Page 53 item 1	The ComFrame has more extensive provisions on these topics and the FSB may wish to refer to the ComFrame work.
Annex 1 page 28 7.5	Suspension of market disclosure provisions. This provision is unbounded in terms of time or circumstances. It is arguably only valid in (a) time of crisis and (b) for as long as necessary to achieve stated objectives such as establish the time needed to transfer liabilities to another institution. Recommend that limits be put on such a suspension
Annex 1 page 30 9.2	"The [Institution-specific cross-border cooperation] agreements, at least their broad structure, should be made public" The sentence may need correction. Whether they should be public is questionable. The public exclusion of a jurisdiction from an agreement, or the relevant CMG, is more likely to be challenged politically than private exclusion. Thus there will be continuing pressure on the membership of the CMG, to the point

	where it becomes quite unwieldy. There will also be pressure for further disclosure: if the agreements for (say) 30 GSIFIs are disclosed, what is the position for those firms just outside the list, or for firms of regional significance?
Page 9	In the insurance context, it is important to keep in mind the importance of rehabilitation. In the US, rehabilitation involves the transfer of all operational authority from insurance company management to the receiver, with the objective of initiating a rehabilitation plan to return the company to a sound financial condition or prepare the company for run-off and/or liquidation. To some degree rehabilitation can be the insurance supervisor's answer to bridge companies and/or bail-in powers.
Page 9	In the paragraph resolution tools, the insurance resolution tools run-off and portfolio transfer should be added either in the second bullet point or as separate bullet point.

IAIS RESPONSE TO THE DISCUSSION POINTS WITHIN FSB CONSULTATIVE PAPER

FSB CP Discussion Point	IAIS response
Effective resolution regimes	
<p>1. <i>Comment is invited on whether Annex 1: Key Attributes of Effective Resolution Regimes appropriately covers the attributes that all jurisdictions' resolution regimes and the tools available under those regimes should have.</i></p>	<p>Resolution tools in the insurance sector are, by nature, designed to ensure that the core insurance function, i.e. to ensure that policyholder obligations are met as they become due, remains intact even under adverse circumstances.</p> <p>However in the insurance sector speed refers to the quick regulatory intervention and not to the duration of the resolution process, as in classical insurance there is no refinancing pressure and time often has a positive effect on run-off insurance portfolios.</p> <p>The FSB key attributes are comprehensive and deal with the attributes and tools available for jurisdictional resolution regimes, however the following should be noted;</p> <ol style="list-style-type: none"> 1. There is a concern that the resolution regime in Annex 1 may not be effective in jurisdictions where company law or insolvency legislation take precedent in Court proceedings over the regulatory authority. The priorities in these cases are likely to be creditors; policyholders may not have preferential status over other creditors. 2. The funding options in practice are limited outside of an insurance entity's own funds and in many jurisdictions these funds may only be used for the benefit of policyholders. In circumstances where funds are injected they will often not be able to be ring fenced and the provider can become a non-secured creditor if the firm is liquidated. <p>Cross border appointments and resolution solutions are extremely difficult to manage. Resolution solutions are often not aligned with the legal process and framework in individual jurisdictions. There are however instances where these have been implemented. In the EU the Liquidation Directive is applicable. This Directive gives preference to policy holders over other creditors.</p>
<p>2. <i>Is the overarching framework provided by Annex 1: Key Attributes of Effective Resolution specific enough, yet flexible enough to cover the differing circumstances of different types of jurisdictions and financial institutions?</i></p>	<p>Annex 1 extends the role of the FSB. CMGs are to report to FSB on adequacy of institution specific cross border cooperation agreements for G-SIFIs. As the provisions in the paper to be subject to an FSAP the extended role of the FSB may not be justified.</p>

Bail-in	
<p>3. Are the elements identified in Annex 2: <i>Bail-in within Resolution: Elements for inclusion in the Key Attributes</i> sufficiently specific to ensure that a bail-in regime is comprehensive, transparent and effective, while sufficiently general to be adaptable to the specific needs and legal frameworks of different jurisdictions?</p>	<p>Greater consideration of the introduction of bail in for insurers is needed. Traditional insurance business can be resolved in an orderly manner and tools for that are already in place. Traditional Insurance resolution has a much longer time element than that of banking.</p> <p>Generally if a bail in occurs it is performed at a company level not product class or line of business level. Partial bail ins at a company level therefore are not possible.</p> <p>Nevertheless, there may be on occasion special cases where capital related tools, such as bail-in, are necessary for the resolution of non-traditional businesses, including bank-like businesses, conducted by insurers and insurance groups. As differences still need to be taken into account appropriately, the IAIS is continuing to discuss the necessity, applicability and effectiveness of capital related tools, such as bail-in capital, for the resolution of non-traditional businesses.</p>
<p>Questions 4, 5, 6, 7</p>	<p>Refer Q3 above. The IAIS will continue to explore the advantages offered by bail in for insurance.</p>
<p>8. What consequences for banks' funding and credit supply to the economy would you expect from the introduction of any such required minimum amount of bail-inable liabilities?</p>	<p>This appears to be more banking focussed. Insurers could potentially be main capital providers for G-SIBS therefore FSB policies should take into account whether a result of their policies may be increased interconnectedness between SIFIs and insurers/other financial market participants</p>
Cross-border Cooperation	
<p>9. How should a statutory duty to cooperate with home and host authorities be framed? What criteria should be relevant to the duty to cooperate?</p>	<p>Greater cross-sector and cross-border use of Supervisory colleges should be pursued. Existing examples in insurance include at the international level; the IAIS has already developed ICP 26 "Cross-border cooperation and coordination on crisis management". Additionally in the EU, colleges have already or will have shortly agreed upon emergency plans. Cross-border cooperation agreements should be sufficiently flexible to cater for the specific characteristics of each group and insurance in general.</p> <p>Additionally the following requirements should be implemented:</p> <ol style="list-style-type: none"> 1. Requirement to develop and maintain plans and tools for dealing with insurers in crisis and seek to remove practical barriers to efficient and coordinated resolutions 2. Requirement for supervisors to coordinate crisis management preparations

	<ol style="list-style-type: none"> 3. Requirement for supervisors to put in place efficient cooperation procedures and share relevant information regularly, including understanding the various jurisdictions' resolution regime, anticipating conflicts, and taking appropriate measures to minimize or avoid said conflicts 4. Establishment of MoUs or MMoUs to facilitate information exchange and maintain appropriate confidentiality procedures 5. Establishment of international principles for policyholder protection schemes
<p>10. Does Annex 3: Institution-specific Cross-border Cooperation Agreements cover all the critical elements of institution-specific cross-border agreements and, if implemented, will the proposed agreements be sufficiently reliable to ensure effective cross-border cooperation? How can their effectiveness be enhanced?</p>	<p>The list seems to be quite comprehensive however public communication does not seem to be discussed. To ensure appropriate effectiveness of agreements they would need to be tested.</p>
<p>11. Who (i.e., which authorities) will need to be parties to these agreements for them to be most effective?</p>	<p>As a first step, bi-lateral agreements between those jurisdictions most likely to have G-SIFI institutions could be sought at a home supervisor level and then cascaded down to host supervisor via multi-lateral agreements i.e. performed on an institutional identified basis and the relevant supervisors involved. Supervisors should be supported to proactively pursue cross border resolution mechanisms that best suit their scope of supervisory power and authority. ComFrame will assist supervisors in this regard.</p>
<p>Resolvability Assessments</p>	
<p>12. Does Annex 4: Resolvability Assessments appropriately cover the determinants of a firm's resolvability? Are there any additional factors to be considered in determining the resolvability of a firm?</p>	<p>The FSB annex covers the determinants of resolvability well & these are also relevant for insurance. The same goes for processes to be followed by home & host supervisors in terms of need for information flows and cooperation.</p> <p>In assessing the resolvability of an insurance legal entity, the factor of "time" is paramount. Where liabilities evolve over time, unique options for resolution in the insurance sector are available.</p> <p>Existing ICPs and ComFrame covers these determinants both on a general level and specifically for insurers. It may be useful for the FSB to make reference to ComFrame</p>

<p>13. Does Annex 4 identify the appropriate process to be followed by home and host authorities?</p>	<p>FSB annex also covers the processes well & these are also relevant for insurance in terms of need for information flows and cooperation. However the described approach should take into account general market conditions in order to make such an assessment concerning systemic implications. This would appear to be very difficult to undertake.</p>
<p>Recovery and resolution plans</p>	
<p>14. Does Annex 5: Recovery and Resolution Plans cover all critical elements of a recovery and resolution plan? What additional elements should be included? Are there elements that should not be included?</p>	<p>RRPs can be relevant for an insurance group as well as insurers with cross border insurance operations i.e. by way of branches. It should be mentioned that in some cases the supervisory authority might not yet have the necessary powers to act accordingly or to be able to put in place regulatory and legal conditions in the time required.</p> <p>The question still remains to what extent insurers fulfil “systemically important functions” and how will that be determined. At a minimum however, supervisory authorities should improve requirements to ensure that the supervised entities are capable of supplying, in a timely fashion, the information required by supervisors in managing a financial crisis.</p> <p>Requirement for supervisors to maintain plans and tools for dealing with insurers in crisis, such plans should extend beyond liquidity and capital arrangements</p> <p>Ability to require changes when an organisational (or group) structure hinders effective supervision.</p> <p>There should be allowance for private sector solutions involving, for example, the issuance of contractual contingent capital instruments, use of reinsurance, allowance for the transfer of liabilities (this may include portfolio transfer), allowance for facilitating sale, merger or acquisition of all or part of an insurer’s operations to a financially sound party or parties.</p> <p>Early intervention measures such as a range of solvency control levels which trigger different degrees of intervention by the supervisor with an appropriate degree of urgency.</p> <p>High priority on the protection of policyholders under a resolution, and no features that would be at the expense of policyholders</p>

	The ComFrame discussions reflected a question as to whether the degree to which the powers envisaged for Resolution are equally warranted for Recovery.
15. Does Annex 5 appropriately cover the conditions under which RRP's should be prepared at subsidiary level?	See above. Systemically important functions become even more critical at the subsidiary level.
Improving Resolvability	
16. Are there other major potential business obstacles to effective resolution that need to be addressed that are not covered in Annex 6 ?	Resolving groups structured with branches may cause more problems than subsidiaries, as different jurisdictions and regimes are involved with the resolution of the same legal entities. A further cross over effect may occur.
17. Are the proposed steps to address the obstacles to effective resolution appropriate? What other alternative actions could be taken?	Difficult to assess further consideration would be needed. Greatest obstacle to effective resolution would be communication breakdown between supervisors; concentration on improvement here should be beneficial. Global payment operations may not be of such high relevance to insurers.
18. What are the alternatives to existing guarantee / internal risk-transfer structures?	More external guarantees or risk transfer (e.g. instead of internal reinsurance, full or partial placement in open market, using same terms internally)
19. How should the proposals set out in Annex 6 in these areas best be incorporated within the overall policy framework? What would be required to put those in place?	Greater legal authority & supervisory powers need to be established. Depending on the status within a jurisdiction, this process may take longer for some to accomplish. To assist, the Common Assessment Framework (ComFrame) for internationally active insurance groups is focussing on aligning supervisory practices amongst jurisdictions with such large insurance groups.
Timelines for implementation of G-SIFI related recommendations	
20. Comment is invited on the proposed milestones for G-SIFIs.	Recovery and Resolution Plans As the determination of insurance G-SIFI is still in progress, it is unrealistic to have first drafts of recovery plans completed by December 2011. This timeline should be extended for insurance G-SIFI by 6 months. Resolvability Assessment & CMG Outreach CMGs are not commonly set up for insurance groups. Either there needs to be time to set them

	up, i.e. timeline should be extended for insurance G-SIFI by 6 months, or there will be a different concept for insurance. A 6 month extension should run from the date that the G-SIFIs, if any, are actually designated or determined.
1. Discussion note on creditor hierarchy, depositor preference and depositor protection in resolution (Annex 7)	General observation – this section appears to be more banking focussed, especially as depositors do not seem to be as high in importance in the context of insurance, unlike that of policyholders. The IAIS does however have a working party concentrating on policyholder protection. Additionally the OECD has released a consultation paper on policyholder protection schemes and it may be prudent to await outcomes from this work in order to respond more effectively.
<i>21. Does the existence of differences in statutory creditor rankings impede effective cross border resolutions? If so, which differences, in particular, impede effective cross border resolutions?</i>	Policyholder protection should be emphasised to the highest degree possible. If a resolution mechanism does not honour policyholder priority, then the mechanism's ability to be calming goes away.
22,23,24,25	Refer to general observation in Q21
2. Discussion note on conditions for a temporary stay on early termination rights (Annex 8)	<p>General comment – Insurance supervisors may not be legally able to cancel or extend financial contracts on a temporary basis, especially in situations with automatic cancellation clauses. The primary concern is whether a stay is possible under local legislation. A secondary concern is if a financial loss occurs in the "extended/stay" period where the Insurer is not able to meet its contractual liabilities.</p> <p>There are however jurisdictions capable of doing so - Under the Emergency Rules of the Dutch prudential regulation (see comment on 1) the appointed liquidator has the power, on approval by the Court to change policy conditions in order to facilitate a portfolio transfer to a solvent company.</p>
26 - 34	Refer to general comment in cell above