



February 28, 2018

Secretariat of the Financial Stability Board (FSB)  
Centralbahnplatz 2  
CH-4051 Basel  
Switzerland

**RE: FSB Public Consultation – Key Attributes Assessment Methodology for the Insurance Sector**

To the Secretariat of the Financial Stability Board

The Institute of International Finance (IIF) and the Geneva Association (GA) welcome the opportunity to comment on the FSB’s Public Consultation on the Key Attributes (KA) Assessment Methodology for the Insurance Sector (“the Methodology”) prepared by the Financial Stability Board (FSB) and issued in December 2017. The IIF and GA have been and remain actively engaged with the FSB and global standard setters on the important issue of systemic risk and have contributed to previous discussions on this topic.

The IIF and GA are in broad agreement with the scope and general direction of the Assessment Methodology, and support the further refinement of the work of the FSB and the IAIS in this area to ensure that the outcome is appropriate to the insurance sector. We urge policymakers to keep in mind the unique features of the insurance business model and avoid a bank-centric approach, while avoiding unintended consequences that might undermine financial stability and the ability of the sector to fulfill its critical role in support of financial stability and economic growth, providing sources of long-term financing and risk-stabilizing products to disperse and absorb shocks that may impact the financial sector and the general economy. In the financial crisis of 2008/09, the insurance business model proved resilient, and the long-term nature of the products offered combined with insurers’ conservative risk and capital management practices allowed insurers to withstand the financial crisis better than other financial institutions.

In addition to our responses below to some of the specific questions in the Consultative Document, we offer the following fundamental comments on the Assessment Methodology:

- It is reasonable approach to promote consistent assessments of resolution powers and practices around the globe. However, we urge the FSB to continue to work in cooperation with the IAIS to refine further the underlying framework for resolution in insurance – in the Key Attributes and

accompanying Methodology as well as the IAIS Insurance Core Principles (ICP). This guidance should be proportionate and tailored to the insurance business model recognizing that a failure of an insurer is a rare event and that systemic consequences are exceptional. FSB work in this area should also closely track the policy shift reflected in the activities-based approach being developed at the IAIS relating to systemic risk analysis in the sector.

- We believe fundamentally that the Methodology, especially the Explanatory Notes (EN), should not broaden the substance of the Key Attributes as applied to the insurance sector, and recommend that language be included expressly stating that the document does not broaden the KA and should not be cited as authority for interpretations of the KA.
- The Methodology should provide a framework for assessing whether regulatory, supervisory and legal regimes achieve the intended outcomes of the the KA allowing jurisdictional flexibility in the manner in which those outcomes are achieved. It should therefore not be too prescriptive. Further it should not suggest that assessors analyze “the effectiveness of resolution regimes” [p. 12] in conducting the assessments.
- The FSB focus relative to the KA should be on a proportionate methodology for the identification of functions which might create or amplify systemic risk in the market. In addition, given the longer timelines under which insurance liabilities play out, it is important to recognize the greater importance of recovery processes for insurers relative to banks as reflected in existing regulatory frameworks for insurance.
- The Methodology reinforces the KA as the foundation for the assessment of resolution regimes; however, to date, the KA have not been modified sufficiently to reflect the true nature of the insurance business model and the legal – including resolution – regimes within which insurers and insurance groups operate.
- The Methodology definitions – in particular “systemically significant or critical” – should target concerns that specifically have a potential global impact. For example, EN 1 (c) goes beyond a global impact in stating that even a non-SIFI “could prove systemic [suggest changing to: systemically relevant] as a result of contagion or loss of confidence in the insurance system.” We continue to be concerned with the application of “critical functions” and “essential services” in the insurance context, both primarily applicable to the banking sector. Further, the definition of “resolution authority” should be expanded to appropriately include court-appointed officials, such as a court-appointed administrator.
- More broadly, the Methodology proposed for insurance quite closely tracks the same Methodology for banks, and we urge the FSB to ensure that any effort to maintain consistency with the banking approach does not impede the development of an approach for insurance that is most appropriate to the insurance sector and business model.

- The FSB framework on resolution in the insurance sector – including the Methodology and the KA – duplicates and, at times, clashes with supervisory material in this area developed by the IAIS, the recognized global standard-setter for the insurance sector; in particular, while the IAIS is finalizing its work on recovery and resolution planning, the respective responsibility for setting these standards is unclear. For example, in the explanation for Precondition B [p. 13], the Methodology begins with a reference to the IAIS supervisory framework, but then presents additional considerations for whether an effective supervisory framework exists. In this context, it is also important that the Methodology acknowledge the on-going work of the IAIS to complete its work on integrating resolution concepts into the ICP, and reinforce the IAIS supervisory material as the foundation for developing and maintaining effective global insurance supervisory regimes.
- As a guide to assessments, the Methodology should align with, and not duplicate, the IAIS Coordinated Implementation Framework that incorporates an expert-driven self-assessment and peer review process for the full range of global insurance standards, providing non-binding feedback to supervisory authorities on their observance of the standards under consideration.

### **Responses to Questions for public consultation**

In addition to these overarching comments, we submit the following responses to the questions posed in the Consultative Document:

*1. Is the draft methodology adequately tailored to the specific features of resolution regimes that are needed to deal with insurers or insurance groups that could be systemically significant or critical if they fail? Are there any elements that should be covered or elaborated in more detail in the methodology?*

The Methodology proposed for insurance is closely anchored in the language of the existing Key Attributes Assessment Methodology for the banking sector and in several areas does not accurately reflect the legal and regulatory environment that applies to the insurance business. More importantly this is true for the KA themselves, upon which the Methodology is based.

In the definitions and throughout the document, the language regarding a resolution authority should be applied more broadly to encompass different legal frameworks in place worldwide. In particular, while the definitions within the paper acknowledge that a “resolution authority” may be a public authority that acts alone or together with other authorities, the Essential Criteria and Explanatory Notes seem to be written from the perspective that one authority has overall responsibility, rather than responsibility being shared. (E.g., EC 2.1 – refers to an oversight authority; EN 3 (f) ii refers to “oversight by the resolution authority”; and EN 3 (i) 4 refers to the power to appoint or dismiss administrators.) The guidance in the paper should recognize more clearly that “resolution authority” may be shared, and it is important that the Methodology appropriately recognize the role and function of court-led processes. In this respect, a

court-appointed administrator should be regarded as a resolution authority and the definition within the paper should be amended to reflect this.

One fundamental area is the emphasis on resolution powers relative to the “normal” cycle for an insurer to fail, where traditional tools used to deal with the supervision and insolvency of an insurer become insufficient or inadequate to deal with the potential propagation of systemic risk derived from the failure of an insurer. We urge the FSB (and the IAIS) to continue to explore this model, and specifically the question as to when traditional run-off of insurance businesses ceases to be effective and formal resolution of an insurer becomes necessary. Such transition is still not adequately discussed in the KA.

*2. Should the draft methodology provide any specific guidance on how to conduct an assessment for financial conglomerates that combine insurance business with banking and/or other non-insurance financial business? If so, what guidance should be provided?*

The reference to insurance groups or conglomerates in EN 2 (d) appropriately focuses on the importance of cooperation arrangements (agreements, memoranda of understanding, etc.) with special attention to the need to address situations involving authorities in more than one financial sector.

We believe the FSB should cover the efforts and initiatives that regulators and government officials need to undertake in order to address (and remove) any potential international legal barriers to effective cross border resolution. The IIF/GA would welcome a more forceful statement by the FSB, in coordination with the IAIS, signaling their intention to drive these efforts.

In the context of cross-border cooperation (KA 9), authorities also should address the proliferation of recovery and resolution plans and, through greater coordination, help streamline any such requirements across jurisdictions to achieve greater efficiency for the firms as well as for supervisors and supervisory colleges.

*3. Are the definitions of key terms (for example, ‘creditors’, ‘insurance company’, ‘insurance contract’, ‘insurer’, ‘policyholder’ and ‘policyholder protection scheme’) used in the draft methodology appropriate for the insurance sector? (Section I)*

The definitions closely track the definitions used in the Banking Methodology. Where there are differences, there are some differences that either expand the concept of systemic risk or do not properly capture the insurance business model. For example, the definition of “critical functions” – an important issue in establishing relevant policy on resolution of insurers – the Methodology expands on the banking language to go beyond activities “where failure would lead to disruption...” to activities “that cannot be substituted” and “where the failure to perform would be likely to have an impact...”

As we noted in previous FSB consultations,<sup>1</sup> we have encouraged further analysis to determine if any insurance activities could be critical in this context. In this regard, the definition further expands the

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<sup>1</sup> “While in the banking arena the concept of ‘Key Critical Functions’ has a proper meaning within resolution frameworks, and it is generally assigned to such critical activities such as payment systems, we would argue that

concept of systemic risk to take in “a material impact on the financial system and the real economy” without a reference to whether such a material impact is reasonably possible for any insurance functions or activities, and without a reference to the impact having global repercussions.

The definition of “systemically significant or critical”, which reinforces the entity-based designation process focusing on the failure of an insurer, should more closely reflect the activity-based approach being developed by the IAIS for insurance. The definition also continues to reference the concept of “critical services”, which remains uncertain as applied in the insurance context.

As noted earlier, it is important that definition of “resolution authority” be amended to appropriately recognize the role and function of court-led processes, and that in this respect, a court-appointed administrator be regarded as a “resolution authority.”

*4. Do the preconditions set out in Section V cover the relevant elements that are necessary for resolution regimes for insurers to operate effectively?*

Preconditions for resolution regimes should begin with an assessment of preconditions necessary for a well-functioning insurance sector, as laid out in the IAIS Insurance Core Principles (ICP). To retain that important reference to the IAIS framework for insurance, the Methodology should explicitly refer to the IAIS material as the proper foundation for assessing the insurance regulatory and supervisory framework. There are elements of the Preconditions that, while relevant to the broader financial sector, go beyond the KAs and may not be specifically applicable or designed to apply to the insurance sector (e.g., the reference in Precondition A to a framework for macro-prudential surveillance.)

*5. Do the ECs and ENs proposed in Section VI focus on relevant features of resolution regimes for insurers that need to be in place to comply with the Key Attributes, taking due account of the differences between the resolution of insurers and the resolution of other types of financial institutions? Are any elements inappropriate? What, if any, additional features should be covered in ECs and ENs?*

We are concerned that it is out of the limited scope of this document to ask whether the Methodology appropriately accounts for differences between resolution regimes for the different sectors. These are very important, substantive points and out of place in a consultation about an assessment methodology. These fundamental questions should be in a stand-alone consultation to ensure that the KA themselves take due account of the insurance sector. We are concerned that posing the question in this context will not elicit sufficient attention and debate to generate a proper response.

*6. Do the ECs and ENs proposed in Section VI take due account of the different types of insurance business and insurance products (for example, life insurance, non-life insurance and reinsurance)? What, if any, additional features should be covered in ECs and ENs?*

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functions with such level of criticality can't be found in the insurance world.” IIF comments on FSB Consultation on Key Attributes (Oct. 2013)

*7. Do the ECs and ENs for KA 4 identify the features of the resolution regimes relating to set-off, netting, collateralisation and segregation that are relevant for insurance resolution?*

*8. Does the draft methodology (in particular EC 4.1 and EN 4 (a)) address the treatment in resolution of assets linked to insurance contracts (including segregation of such assets) in an appropriate and comprehensive manner?*

Rather than in the context of an assessment methodology, we recommend that these issues be addressed in a separate discussion of the substance of IAIS supervisory material as well as the FSB Key Attributes for Resolution of Insurers.

*9. Are there any other issues that the FSB should address in its further work, outside of or in addition to the work on the methodology, in order to assist national authorities in their reforms of resolution regimes for insurers and resolution planning for systemically important insurers?*

The Institute welcomes the work initiated by the FSB in order to consider assessing the implementation of the Key Attributes. However, as underscored in a number of areas, we believe that further progress can be made to better align the Key Attributes to the specifics of the insurance business model and the realities of the insurance industry. While the guidance rightly draws attention to the possibility of an insurer failure, it fails to recognize the limited circumstances in which failure causes serious systemic consequences.

At the same time, this work will necessarily be impacted by the development by the IAIS of an activities-based approach (ABA) to systemic risk analysis and the related modifications of the policy measures applied in the insurance sector if and when any such risk materializes. We urge the FSB to continue to support the work of the IAIS on the ABA, and to be prepared to adjust accordingly its contributions to the related standards and guidance on resolution issues.

We would also note that recovery and resolution planning requirements for insurers continue to proliferate across G20 jurisdictions. We appreciate that this assessment Methodology may promote greater consistency in terms of any recovery and resolution planning requirements around the globe. Ultimately, however, we would ask the FSB to work with G20 jurisdictions and the IAIS to create the conditions in which insurers, where applicable, have to produce only one group-wide plan, to be shared within supervisory colleges and crisis management groups (CMG).

In the context of the stated FSB 2017/2018 priorities for resolution in the insurance sector, the IIF/GA are encouraged with the plans to continue work in consultation with the IAIS on “the execution of resolution powers” and “use of resolution tools” and stand ready to contribute to this important work.

The IIF and GA appreciate the opportunity to comment on the draft Methodology and to contribute to the FSB’s efforts to promote consistency in the assessment of resolution regimes, while taking full account of the different legal and regulatory structures already in place. More broadly, we emphasize the need for

on-going engagement on these issues to ensure that the range of global standards are fit for application to the insurance sector, where appropriate.

Very truly yours,

A handwritten signature in black ink, appearing to read 'George Brady', with a long horizontal stroke extending to the right.

George Brady

Institute of International Finance

A handwritten signature in black ink, appearing to read 'Peter Skjoedt', written in a cursive style.

Peter Skjoedt

The Geneva Association