

NAIC Comments
to
FSB Key Attributes Assessment Methodology for the Insurance Sector
Consultative Document
February 2018

In the U.S., the business of insurance is regulated primarily at the state level by state insurance regulators. Through the National Association of Insurance Commissioners (NAIC) (the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories) state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

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 Consultation Document on the Key Attributes Assessment Methodology (KAAM) for the Insurance Sector was derived from the KAAM for the Banking Sector. As the methodology retains the structure and many features of the Banking Sector KAAM, there are aspects of the document that remain focused on issues that are more relevant to banks and similar financial institutions. While several characteristics of the methodology have been tailored to the resolution of insurers and insurance groups within the Essential Criteria and the Explanatory Notes, U.S. state insurance regulators are concerned that some elements continue to focus on issues that are less relevant to the insurance sector. For instance, “Bail-in” as defined on page 2, and discussed in EC 3.12 and EN 3 (q-r), is a concept that is suited to banking, but might not be appropriate for liabilities arising from insurance policies. Similarly, bridge institutions and management vehicles are less common in insurance. While bail-in is acknowledged in Insurance Core Principle (ICP) 12 (Exit from the Market and Resolution), we remain concerned that its current definition in the KAAM does not adequately prioritize the protection of policyholders. Therefore we suggest that the definition emphasize policyholder protection, including the legal priority of policyholder claims in the claims hierarchy, as guardrails around bail-in. We are also concerned with the longevity of a methodology that is specific to globally systemically important insurers, given the current discussions at the IAIS and FSB to move more towards an activities-based approach to systemic risk regulation.

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)

There are several definitions within Section I that we feel require revisions to be appropriate for the insurance sector and to achieve consistency across international standards, specifically ICP 12. Specific definitions that require further revisions are the following:

- Pg. 2. The definition of “Bail-in” (see above).
- Pg. 3. Regarding the definitions of the terms “financial group” and “financial conglomerate,” we suggest these two terms should be aligned in the KAAM so they mirror definitions used in the ICPs, where applicable. Alignment of these terms will prevent ambiguity and interpretational differences that could create challenges in implementing the methodology. Significant definitional variances between the ICPs and the KAAMs may cause unnecessary challenges for jurisdictions attempting to implement international standards.
- Pg. 3. Regarding the definition of “Holding company,” the KAAM uses the terms “holding company” while the ICPs use the term “insurance group” and “head of insurance group.” Similar to our comments above, we suggest aligning this and other definitions in the draft KAAM so they mirror definitions used in the ICPs, where applicable.
- Pg. 4. The definition of “Resolution” states that “[t]he exercise of resolution powers may include or be accompanied by an insolvency proceeding”. This implies that resolution is separate and apart from an insolvency proceeding regarding an insurer. We suggest eliminating this bifurcation by deleting “or be accompanied by.” Also, this definition differs from the definition used in ICP 12, therefore, we suggest aligning this definition with ICP 12.
- Pg. 4. Regarding the definition of “Resolution authority,” similar to other comments, this definition differs from the one used in ICP 12 therefore we suggest aligning this definition with the one used in the revised ICP 12.
- Pg. 5. With regard to the definition of “Resolution powers,” this definition requires powers to be exercised “without the consent” of shareholders, creditors, debtors, policyholders or the insurer in resolution. This could pose a conflict for jurisdictions with constitutional due process requirements. We suggest adding, after “...powers available to resolution authorities under the legal framework...”: “taking into consideration any applicable due process requirements.”

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?

Although many of the aspects of the methodology have been tailored to the resolution of insurers and insurance groups within the essential criteria and the explanatory notes, there remain several elements that continue to focus on features and concepts more relevant to banks such as bail-in and bridge institutions which may not be appropriate standards for the resolution of insurers. Further the lack of consistency between the KAAM and the ICPs regarding certain definitions provides unnecessary confusion and may lead to challenges regarding implementation.

Some specific comments and edits that we recommend are as follows:

- Pg. 20, EN 2 (a). This makes clear that KA 2's use of "administrative" authorities may exclude courts and bankruptcy trustees, which could be problematic for some jurisdictions. Suggest using "public" authority throughout, as that term is already used in some places in the document.
- Pg. 21, EN 2 (c), remove reference to "conglomerate" as "group" suffices and is a defined term.
- Pg. 35, EN 3 (s) (previously part of EN 3(t)) states that powers to restructure, limit, or write down insurance liabilities should be exercised in a manner consistent with the ranking of liabilities in the hierarchy of claims. This is one of the safeguards in KA 5 (5.1). However, the other safeguards are not mentioned, particularly the "no creditor worse off than in liquidation" safeguard in 5.2. Suggest including "no creditor worse off than in liquidation" in this section.

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?

- Pg. 8, D. Grading. Return verbs in this section back to mandatory from permissive (e.g., change "may" to "will," etc.). Also, in the last paragraph of "C," change permissive verbs to mandatory.
- Ensure that the FSB collaborates and works with IAIS where appropriate to ensure consistency and avoid overlap with IAIS international standards.
- Establish ongoing periodic review efforts to further refine and better tailor the Key Attributes and Assessment Methodology to insurers and insurance groups by consulting with appropriate insurance expertise.