

IAIS Consultations

Print view of your comments on "ComFrame in ICP 12" - Date: 30.10.2018, Time: 17:02

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Question	
	Q1 General Comment on ComFrame in ICP 12
Answer	<p>GFIA highlights that revisions to the text of ICP 12 are needed. Reference is made to the comments provided in response to the IAIS' consultations of ICP 12 from June 2017.</p> <p>In particular, ICP 12.6.1 should be amended: "The insurance legal entity is in breach of a minimum capital requirement (MCR) defined by local in force regulations". There is no regulatory reference for the MCR in ICP12 from IAIS (ICP 12.6.1, page 103). As the MCR is the main trigger for entry into resolution, it is absolutely necessary to mention the regulatory reference for this MCR.</p> <p>GFIA is of the view that ComFrame elements should serve as illustrative guidance, rather than prescriptive standards. Allowing for flexible and proportionate application would avoid unnecessary changes to time-tested resolution and supervisory regimes. Moreover, ComFrame and the ICPs should focus on desired outcomes and broad objectives, not strict compliance with defined requirements, and must be sufficiently adaptable to accommodate multiple jurisdictions' supervisory and resolution frameworks.</p> <p>GFIA urges against the creation of a special resolution regime to a select group of insurers due to their size, scope or complexity. Given the nature, tenor and design of traditional life insurance products, portfolio transfers and run-offs are generally sufficient to deal with the vast majority of insurance failures. Unlike bank liabilities, which are short-term in nature and payable on demand, life insurance policyholders pay premiums upfront and contractual payments are generally made only if and when an insured event has occurred. Furthermore, typical insurance policies and other products are generally either not surrenderable or contain terms, like surrender charges and tax penalties and other protective product features which create powerful disincentives to surrender or early withdrawal. This meaningfully reduces the likelihood of a "run" on an insurer, obviating the need for a bank-style emergency recapitalisation or bail-in resolution strategy.</p> <p>Finally, traditional life insurers do not provide critical functions and the typical products they issue--life insurance, annuities, retirement plans, and disability insurance--are highly substitutable and offered by multiple industry competitors. For these reasons, among others, systemic impact from the failure of a life insurer is exceedingly rare.</p> <p>In addition, GFIA would stress that to avoid unnecessary duplication and overlap host supervisors and/or resolution authorities should not require separate resolution plans where a group resolution plan exists that covers material entities within the group. Host supervisors and/or resolution authorities having their own plans is inconsistent with the desire for group planning and supervisory coordination and cooperation set out in CF 12.3a.2, and would introduce added cost and complexity. GFIA suggests that this Guidance is amended to make it clear that host supervisors and/or resolution authorities should not develop separate plans where group plans exist.</p>
	Q2 Comment on ComFrame Guidance CF12.2.a.1

Answer

The objectives of the resolution of insurers should be clear. This is currently not the case in CF12.2a.1, which states that a jurisdiction may choose to rank resolution objectives (policyholder protection and financial stability) at its discretion. It is not clear what is intended by this.

On one reading, this suggests different IAIGs could have different resolution objectives in a single jurisdiction. In GFIA's view, resolution objectives should not explicitly differ between insurers in a jurisdiction because the interests of various stakeholders in a resolution process should be protected in the same way. In practice, some objectives may be more relevant than others (depending on the circumstances of the IAIG).

On another reading, the wording in CF12.2a.1 could suggest that the same IAIG could have different resolution objectives over time, or that different jurisdictions could have different objectives for a single IAIG. GFIA does not support these approaches either. The objectives of the resolution and the rationale for those objectives should be made clear to the IAIG.

GFIA is also concerned that further explicit emphasis on financial stability as an objective for the resolution of IAIGs will reinforce the common and erroneous assumption that insurance business written by IAIGs poses the same contagion risk as banking.

Q3 Comment on ComFrame Standard CF12.2.b

Answer

CF 12.2.2b is unnecessary, as ICP 12.2.3 already states that "Resolution should seek to minimise reliance on public funding".

Q4 Comment on ComFrame Standard CF12.3.a

Answer

The rights and obligations of the CMG shall be carried out by the Group Supervisor.

Q5 Comment on ComFrame Guidance CF12.3.a.1

Answer

It is not clear how "the number of jurisdictions where the IAIG operates" relates to either resolution objective; other considerations seem significantly more important in the context of the policyholder protection objective (eg the current financial state of the institution, whether entry into resolution is likely, whether financial difficulty could happen suddenly, the extent to which the institution directly insures policyholders).

GFIA agrees that taking into account the IAIG's risk management mechanisms; and the expected costs, benefits and outcomes of the resolution planning requirement is the right approach. But GFIA suggests that these two elements should be referenced along with the four that precede them, so it is clear that all six are equally important factors for a group-wide supervisor and/or resolution authority and IAIG CMG to consider when determining if a resolution plan is needed and/or the degree of resolution planning required.

An IAIG with effective group-wide risk management processes in place, including ORSA and stress testing, would be unlikely to reach a point of non-viability or insolvency without experiencing intermediate material events of financial distress, such as not meeting required Risk Based Capital or other financial strength measurements.

GFIA therefore takes the view that the requirement for insurance supervisors (with the IAIGs involvement) to establish a resolution plan should not be triggered until a material event or condition of financial stress has occurred.

Q6 Comment on ComFrame Guidance CF12.3.a.2

Answer

GFIA agrees that the resolution plan, if deemed necessary, should be developed by the group-wide supervisor and/or resolution authority and welcomes the clarification that the IAIG should be involved in the process as relevant (GFIA is of the view that the IAIG should usually be involved). This would ensure that the resolution plan is based on realistic assumptions and is manageable if applied. It is particularly important that the plan offer enough leeway to adequately react to the concrete crisis situation.

The IAIS should substantiate what is meant by "data requirements" in the third bullet point. Data requirements should be limited to data needed to execute the resolution plan, in

respect of the proportionality principle.

Q7 Comment on ComFrame Guidance CF12.3.a.3

Answer

The leading sentence should begin with: "Following the coordinated development process as set forth in CF 12.3.a.2, "

In general, GFIA takes the view that the resolution strategy should guide the development of the resolution plan and the degree of coordination between supervisors. Choosing a "topco" approach for resolution clearly calls for a single resolution plan. In an "opco" approach, jurisdictions may have a greater influence on local entities but even then, the whole resolution planning effort should be coordinated. In all cases, host supervisors should first assess the existing group resolution plan before embarking on an isolated effort.

Resolution plans at entity level should remain an exception. Group-wide resolution plans could recognise existing economic interdependence and take into account the interest of all customers and creditors. Therefore, group-wide resolution plans should be prioritised. GFIA suggests that this Guidance should recognise the risks associated with having separate plans.

Q8 Comment on ComFrame Guidance CF12.3.a.4

Answer

GFIA welcomes the removal of the requirement for annual review.

Q9 Comment on ComFrame Standard CF12.3.b

Answer

GFIA appreciates the revisions to CF 12.3.b. which, together, recognise and support the utilisation of multiple-point-of-entry strategy for resolving subsidiary-based IAIGs.

Resolvability assessments seem a sensible instrument to provide a degree of comfort about the validity of resolution plans. However, where resolvability assessments lead to requirements for the IAIG to take actions to improve resolvability, this is extreme in the insurance context. In most cases, the future benefits of a priori actions to do not outweigh the immediate costs posed to policyholders, in particular when such actions involve restructuring.

Therefore, GFIA strongly supports a specific reference to the proportionality principle. The necessity, frequency and comprehensiveness of resolvability assessments should be carried out proportionally to the supervisor's assessment of the risks posed by an insurer.

Q10 Comment on ComFrame Guidance CF12.3.b.1

Answer

Q11 Comment on ComFrame Guidance CF12.3.b.2

Answer

A jurisdiction may have alternative/additional resolution objectives to those identified in this paragraph. GFIA suggests that, instead of the current wording, this paragraph refers instead to the feasibility of resolution achieving the jurisdiction's resolution objectives, i.e. "to resolve the IAIG in a way that achieves the resolution objectives".

Q12 Comment on ComFrame Guidance CF12.3.b.3

Answer

In addition to the resolvability assessment being undertaken within the IAIG CMG, it would be appropriate for the outcome of that assessment to be shared with the IAIG. Therefore GFIA would propose to amend the final sentence of CF12.3.b.3 as follows: "These assessments should also be subject to regular reviews within the IAIG CMG, and the outcome of those reviews should be shared with the IAIG".

Q13 Comment on ComFrame Standard CF12.3.c

Answer

The group-wide supervisor and/or resolution authority should take care to not to place an overly burdensome requirement for the Head of the IAIG to have and maintain group-wide MIS.

Q14 Comment on ComFrame Guidance CF12.3.c.1

Answer

Q15 Comment on ComFrame Guidance CF12.3.c.2

Answer

GFIA welcomes the clarification in this Guidance that the IAIG may rely on its existing management information system.

Q16 Comment on ComFrame Guidance CF12.3.c.3

Answer

It should be clarified that resolution plans are only applicable if deemed necessary by the group-wide supervisor. GFIA suggests that this bullet point be amended as follows: “where resolution planning is required by the group-wide supervisor and/or resolution authority, demonstrate, as part of the resolution planning process, that it is able to produce”.

Q17 Comment on ComFrame Standard CF12.7.a

Answer

CF 12.7.a repeats many of the resolution powers in ICP 12.7.4. This is redundant.

In the leading sentence, after “subject to adequate safeguards”, it should say “including courts where applicable, for the resolution of an IAIG may include, at least, the following:”

The use of stay and suspension powers as part of the resolution toolkit can be helpful to preserve value and prevent the need to use more drastic measures. However, a cost-benefit analysis is required before considering the use of these powers, as they would likely have a commercial impact and/or increase the cost of impacted transactions and would also introduce a potential source of contagion.

Where resolvability assessments lead to requirements for the IAIG to take prospective actions to improve resolvability, this is extreme in the insurance context. In most cases, the future benefits of a priori actions to do not outweigh the immediate costs posed to policyholders, in particular when such actions involve restructuring.

GFIA supports the provision that “powers are used only if suitable and necessary to meet the resolution objectives”, because the proportionality of the measures taken in resolution is essential. The analysis of what is to be required should take into account the extended period of time available to resolve an insurance entity – a key difference with banking where very little time is available for resolution.

The powers of the supervisor must also not be in conflict with local law. In particular, the mentioned supervisory actions would require an explicit and transparent legal basis in local law, subject to the principle of proportionality, and shall not conflict with other binding laws and procedures (e.g. in some jurisdictions, the insolvency administrator and not the supervisor is by law responsible for the resolution of an IAIG).

In relation to the content of CF 12.7.a, GFIA has the following comments: The reference to ‘at least’ in the initial sentence in CF12.7.a implies a minimum set of requirements and is inconsistent with the earlier statement that ‘authorities may exercise’ which implies a degree of discretion. Therefore, GFIA considers the reference to ‘at least’ should be deleted from CF12.7.a to ensure discretion at a jurisdictional level over resolution powers.

The second bullet under CF12.7.a should acknowledge that contract law may limit the ability to recover monies, therefore the focus should be on encouraging claw-back provisions to be included in relevant employment contracts. The claw-back of variable remuneration components (other than malus components) shall always refer to individual misconduct only. The seventh to twelfth bullet points under CF12.7.a should be set out as sub bullets under the fifth bullet point as they are all actions that may be taken once control of the IAIG has been assumed. For the eighteenth bullet referring to establishing a bridge institution, the IAIS should elaborate on how this may be useful in an insurance context, e.g. under what circumstances would the withdrawal of permissions to write new business

and/or portfolio transfers prove inadequate?

Q18 Comment on ComFrame Guidance CF12.7.a.1

Answer

GFIA welcomes the fact that supervisory measures to improve resolvability are only to be exercised in a proportionate manner and agrees that, before powers to require an IAIG to take actions to improve its resolvability are used, the IAIG should be given the opportunity to propose its own remedies. GFIA also considers that there should be some safeguards surrounding the use of powers to improve resolvability so that an IAIG has a right to appeal and challenge such actions if it disagrees with their appropriateness.

Q19 Comment on ComFrame Guidance CF12.7.a.2

Answer

GFIA welcomes the amendment to this Guidance to recognise the role of the IAIG in making its own proposals to improve its resolvability. However, GFIA also considers that there should be some safeguards surrounding the use of powers to improve resolvability so that an IAIG has a right to appeal and challenge such actions if it disagrees with their appropriateness.

Q20 Comment on ComFrame Guidance CF12.7.a.3

Answer

Q21 Comment on ComFrame Guidance CF12.12.a.1

Answer

GFIA would welcome a requirement of cooperation and coordination among involved authorities, including those in charge of other sectors of the financial system. Any resolution requirements for branches should be within the supervisory remit of the home supervisory authority (ie of the legal entity to which the branch belongs), in cooperation and coordination with the host authority. No additional resolution responsibilities of the host authorities of the branch should be established; otherwise, this would create an additional layer of uncertainty and burden regarding cooperation and coordination between home and host supervisors.

Q22 Comment on ComFrame Guidance CF12.12.a.2

Answer