An Roinn Airgeadais
Department of Finance

Public Consultation on the Development of a National Resolution Framework for (re)Insurers

1 September 2021

Prepared by the Financial Services Division in collaboration with the Central Bank of Ireland
Department of Finance
finance.gov.ie

Contents

1 Introduction

The prudential framework for the regulation and supervision of most Irish licensed insurers[1] is primarily set out in the European Union (Insurance and Reinsurance) Regulations 2015[2] (the "*2015 Regulations")* transposing the Solvency II Directive ("*Solvency II*"), as amended[3]. These requirements reduce the likelihood of insurers failing, thereby strengthening policyholder and consumer protection. However, the 2015 Regulations do not intend to eliminate this risk completely nor do they provide a resolution toolkit for managing the failure of insurers when such an event occurs. Furthermore, unlike the banking system, the resolution of insurers is not currently harmonised at an EU level[4], therefore the failure of insurers is managed through national, rather than EU, legislative frameworks.

In Ireland, the legislative tools available to deal with an insurer that is failing or has failed were largely introduced before the EU prudential framework was established[5], and therefore are not designed with the prudential framework in mind. A comprehensive and complementary EU approach to manage insurer failure has yet to be developed at EU level. In addition, while the recent introduction of recovery plan requirements for insurers[6] ensures preparedness in the face of financial stresses, an effective insurance resolution framework could further contribute to achieving policyholder protection, as well as at the macro level maintaining financial stability and minimising the State's financial exposure.

In this context, and also reflecting the increasing scale and complexity of the Irish insurance sector, the Department of Finance (the "*Department*"), in collaboration with the Central Bank of Ireland (the "*Central Bank*"), considers that there is merit in considering the viability of a national resolution framework for facilitating the orderly resolution of failing or failed insurers where there is a public interest in doing so.

The Department and the Central Bank are aware that the European Commission (the "*EU Commission*") will soon present a legislative proposal to the co-legislators on recovery and resolution, as part of the Solvency II Review in the European Parliament and the Council in Autumn 2021. It is envisaged that any national resolution framework would align with the core principles of resolution being discussed at EU level.

The objective of any potential domestic framework would be to ensure that policyholders, public funds, and critical insurance services are protected and financial stability is maintained in failure scenarios. Central to the Department's and the Central Bank's considerations is that the proposed framework should be fit for purpose, ensuring that efficient and effective processes and

[1] Throughout this document, the term 'insurance' or 'insurer' is used to cover both insurance or reinsurance liabilities or insurance or reinsurance firms, unless otherwise specified.
[2] S.I. No. 485 of 2015.
[3] Directive 2009/138/EC (recast).
[4] Outside of certain matters provided for in Title IV of Solvency II as transposed in Part 18 of the 2015 Regulations.
[5] The EU prudential framework has been in development since 1973 with the first Non-Life Directive issued. Considerable change has occurred over the subsequent years culminating in the issuance and transposition of the 2015 Regulations.
[6] Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021 [S.I. No.184 of 2021].

empowerments are appropriately enshrined in the legislation, cognisant of international best practice, and apply the principle of proportionality where appropriate.

The purpose of this consultation is to obtain submissions applicable to the development and scope of a possible domestic resolution framework. Feedback to this consultation, along with any relevant legislative proposal from the EU Commission, will assist in the consideration of the way forward. While no decisions have been taken, potential next steps could include, amongst other things, a legislative proposal for a national resolution framework for insurers.

The questions that this consultation considers centre primarily on the scope of the application of any new powers and requirements, in addition to the concept of public interest in resolution. Other issues, such as the appropriateness or otherwise of before the event resolution planning, additional loss absorption requirements for significant insurers, and the resolution tools that may be required to achieve the public interest objectives are also explored. Some proposals for enhancements to existing non-resolution failure pathways for insurers, i.e. the current corporate insolvency mechanisms, are also discussed. Lastly, issues relating to resolution funding arrangements are outlined.

How to Respond

This consultation will be subject to a three-month consultation period, from 1 September to 30 November. Comments are sought on the questions set out in the consultation document and on any other pertinent considerations related to the proposal set out in same and should be sent in writing, preferably by email, no later than 30 November 2021. Any submissions received after this date may not be considered.

The Department shall issue an email acknowledgement to all responses received where possible. Parties should note that responses to the consultation may be published on the Department's website. It is important, therefore, that stakeholders do not include commercially confidential information in any response. The Department accepts no liability for the content of stakeholders' consultation responses that may be subsequently published by the Department.

The Department will issue a feedback statement when all submissions have been considered. This will be published on the Department's website.

When responding, please indicate whether you are a professional adviser, representative body, corporate body or member of the public. The preferred means of response is by email to: insurance@finance.gov.ie.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts.

Meetings with Stakeholders

The Department may also invite key stakeholders to meet with it and the Central Bank as appropriate, including representative bodies and other interested groups or individuals.

After the Consultation

The submissions received in response to this consultation will be taken into consideration before next steps are considered.

Disclaimer

Nothing in this consultation document constitutes legal advice or any other form of advice, nor should it be construed as such.

Please note that neither the Department, the Minister for Finance, nor the Central Bank assume any liability for the accuracy or completeness of the information contained in this consultation document.

2 General Background

i) Insurance Market in Ireland

The Irish insurance sector has undergone significant change and growth over the past number of years. The sector now accounts for circa €82 billion in Gross Written Premium ("*GWP*") with over 189 active insurers in Ireland, which are regulated by the Central Bank[7]. Brexit has also contributed to an increase in the number of Freedom of Establishment ("*FoE*")/Freedom of Services ("*FoS*") providers in the lines of insurance business written out of Ireland[8].

Table 1: Growth in GWP

	2017	2018	2019	2020 (Estimate)
GWP Euro billion	73.4	69.7	77.8	82.0
Annual Movement		*-5.0%*	*+11.6%*	*+5.4%*

Source: Central Bank calculations

Table 2 below details the cross border activity, both out of and into Ireland, as at 31 December 2019. According to this data, Irish insurers write considerably more premiums in respect of non-Irish risks than of Irish risks. For example, premiums written in Ireland by Irish regulated insurers amounted to €21.9 billion in 2019, whereas premiums written overseas by Irish insurers amounted to €55.9 billion. Much of this outward business is written into other EU countries under FoS/FoE, demonstrating that Irish insurers have a significant international orientation. While EU insurers do write business into Ireland, it is of a lesser order to that undertaken by Irish insurers writing outward business as demonstrated by the data in Table 2.

Table 2: Breakdown of significant outward FoS/FoE business in 2019

	Life	Non-life	Health	Reinsurance	Total
Premiums written overseas by Irish firms	€23.3bn	€14.8bn	-	€17.8bn	€55.9bn
Premiums written in Ireland by Irish firms	€15.1bn	€4.0bn	€2.0bn	€0.8bn	€21.9bn
FoE Premiums written in Ireland by other EU firms	€0.4bn	€1.0bn	€0.2bn	€0.7bn	€2.3bn
FoS Premiums written in Ireland by other EU firms	€0.6bn	€0.7bn	€0.9bn	€5.7bn	€7.9bn

Source: European Insurance and Occupational Pensions Authority ("EIOPA") and Central Bank calculations

[7] https://www.centralbank.ie/regulation/industry-market-sectors/insurance-reinsurance/solvency-ii/solvency-and-financial-condition-report-repository. Note: The 2020 figures are estimates.
[8] New pan-European specialty risks that have previously been written from the UK are now increasingly written from Ireland. This includes low frequency but high severity (i.e. on the occurrence of an insurable event) risks including marine, aviation, trade credit & political risk, financial lines, and cyber risk.

Consequently, the Irish insurance sector's importance to the domestic as well as the international economy is developing and deepening. In this context, policy and regulatory entities are mindful of the increased risk that such developments present to financial stability, and for policyholders and beneficiaries in the event of a disorderly failure of important insurers or lines of insurance.

ii) Resolution as a means of improving current processes for dealing with failure

Robust prudential regulation and supervision of authorised insurers are paramount to protecting policyholders, consumers, the taxpayer and broader financial stability.

As mentioned previously, the 2015 Regulations are the primary prudential framework in Ireland for insurance supervision and transpose Solvency II into Irish law. The Solvency II framework sets out strengthened requirements around capital, governance and risk management in all EU authorised (re)insurance undertakings. Solvency II also introduces increased regulatory reporting requirements and public disclosure requirements. The requirements are intended to reduce the likelihood of an insurer failing and should also provide policyholders with increased protection. In addition, the recently introduced recovery plan requirements for insurers will increase insurers' preparedness in the face of future potential financial stresses.

However, as the prudential framework does not envisage a zero failure rate of insurers, it is incumbent on policymakers to consider how the impact of failure events, when they occur, may be mitigated.

At present, the Central Bank has certain powers at its disposal under national legislation to deal with such failures. However, past instances of insurers failing in Ireland have demonstrated the limitations of those powers, including: (i) the accountability of the administrator; (ii) the ability to establish a liquidation committee; and (iii) the grounds available to seek the appointment of a liquidator. Further details of these limitations are discussed in Section 4.2 of this consultation document.

The fact that Ireland is a primary hub for insurers, but does not have as comprehensive a framework as is now considered appropriate to manage the orderly resolution of an insurer in the event of failure, represents a potential gap in the overall policy toolkit. There are grounds to suggest that the existing non-resolution failure pathways for insurers could, under certain circumstances, put policyholders and businesses at risk, without coverage, and potentially leave claimants exposed to not receiving claims, or experiencing delays in receiving settling claims.

iii) Resolution as a means of reducing calls on the ICF

Notwithstanding the above, it is also important to acknowledge that in Ireland, there is an established insurance guarantee scheme ("*IGS*") for non-life insurance which serves a role in protecting policyholders in the face of insurer failures. The Insurance Compensation Fund ("*ICF*") is primarily designed to facilitate payments to policyholders in relation to risks in the State where an Irish authorised non-life insurer, or a non-life insurer authorised in another Member State, goes into liquidation and the approval of the High Court has been obtained for such payments[9]. The ICF has some limitations in terms of its scope and use. For example, health, dental and life policies are currently not covered, meaning these policyholders do not enjoy protection from the ICF. For non-life insurance, the cap on the amount to be paid out of the ICF in the event of a liquidation is 65 per cent of the claim or €825,000, whichever is the lesser. However, in the case of third party motor insurance claims, where an insurer is in liquidation, the ICF can make a payment of 100 per cent of the claim.

Accordingly, given the current ICF funding arrangements and position, this may imply a role for public funds in a failure event, which is likely to increase over the long term should the EU Commission proposal for harmonised IGSs progress as currently envisaged. As such, the availability of domestic resolution tools could help mitigate the exposure of the ICF to pay-out events which in turn could decrease the reliance on public funds in the event of a failure of a systemic insurer.

iv) Impact on industry and resolution financing consideration

The Department and the Central Bank are cognisant of the need to ensure that costs to the insurance sector resulting from the introduction of a resolution framework should be kept to a minimum. In addition, any new national regime should follow the principle of proportionality. As all insurer failures do not necessarily pose the same risks, many insurers could remain out of scope for much of the day-to-day requirements of any such future national resolution framework. The financing arrangements related to same also need to be explored. There are different models, such as collecting a levy in advance on an *ex-ante* basis, or contributions could be collected if necessary after a failure event occurs on an *ex-post* basis. (See Section 5.1 for more details).

v) Initiatives at EU level, in other EU jurisdictions and supranational initiatives

The EU Commission, the European Insurance and Occupational Pensions Authority ("*EIOPA*"), the Financial Stability Board ("*FSB*") and the International Association of Insurance Supervisors ("*IAIS*") have each respectively published documents supporting the harmonisation of recovery and resolution frameworks for insurers proposing, amongst other things, a common set of resolution powers for resolution authorities[10]. Some EU Member States[11] have already established national resolution frameworks for insurers, and strengthened administrative and insolvency proceedings accordingly.

EU Commission Review and EIOPA Opinion

The Department and the Central Bank continue to engage at a number of EU fora on the review of Solvency II and other European insurance legislative matters.

[9] Central Bank 'Insurance Compensation Fund Explanation Note', 30 November 2018. https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/insurance-reinsurance/solvency-ii/insurance-compensation-fund/gns-4-4-10-1-9---insurance-compensation-fund-ex-note.pdf?sfvrsn=8.

[10] For the purpose of this proposed framework and in the event of any EU framework, it is assumed that the Central Bank will be designated the role of resolution authority in Ireland.

[11] Such as: France, the Netherlands, and Romania.

As part of its review of Solvency II, the EU Commission issued a formal 'call for advice' ("*CfA*") to EIOPA seeking technical and policy recommendations in a number of areas including whether there was a need for harmonised rules regarding the resolution of insurers, resolution planning, the tools needed to address the failure or risk of failure of insurers, and whether there was a need for harmonised rules for IGSs. The EU Commission also issued a public consultation[12]. In its response to the CfA, EIOPA issued an Opinion outlining a range of proposals for the future amendment of Solvency II[13]. EIOPA has recommended, amongst other things, the introduction of a comprehensive regime for the resolution of EU insurers. These EIOPA recommendations broadly align with IAIS[14] and FSB[15] views in this area and are based on the principles of proportionality[16] and minimum harmonisation[17].

It is expected, that the EU Commission will present a legislative proposal to the co-legislators on recovery and resolution, as part of the Solvency II Review in the European Parliament and the Council in Autumn 2021.The Department is broadly supportive of the scope of the EU Commission's Solvency II Review and sees merit in a harmonised EU framework for managing insurer failure events, ideally one complemented by a harmonised IGS that would be available, amongst other things, for use in resolution as a last resort. It is anticipated by many Member States that meaningful progress on this initiative is considered unlikely in the medium-term, however there should be more clarity on the timeline as this proposal progresses over the year. The Department and the Central Bank will continue to engage with the EU Commission and other authorities on this important work.

In any possible development of a domestic regime, it is desirable, to the greatest extent possible, to align the approach with international best practice, and in particular with the recommendations outlined by EIOPA in its Opinion and any forthcoming proposals from the EU Commission.

However, as previously noted, notwithstanding the general consensus amongst supervisory authorities that an EU level resolution framework for insurers is required, such an approach has yet to be established. In addition, it should be noted that, irrespective of developments at an EU level, the limitations identified in this consultation document with respect to existing national administrative and insolvency processes could present an argument for this to be addressed at a national level. Therefore, regardless of the pace at EU level, it is considered that now is an opportune time to take stock of current tools available in Ireland in managing insurer failures and

[12] European Commission 2020 Solvency II Review Consultation document.
[13] https://www.eiopa.europa.eu/content/opinion-2020-review-of-solvency-ii_en.
[14] IAIS Public Consultation Application Paper on Resolution Powers and Planning, November 2020. https://www.iaisweb.org/page/consultations/current-consultations/application-paper-on-resolution-powers-and-planning/file/93107/application-paper-on-resolution-powers-and-planning.
[15] FSB 'Key Attributes Assessment Methodology for the Insurance Sector', August 2020. https://www.fsb.org/wp-content/uploads/P250820-1.pdf.
[16] The proportionality principle means that, to achieve its aims, the EU will only take the action it needs to and no more. The principle is enshrined in the Treaty on European Union under Article 5, which states: *"the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties".*
[17] In the case of minimum harmonisation, an EU Directive sets minimum standards to be transposed into national law in Member States, often in recognition of the fact that the legal systems in some EU countries have already set higher standards. Member States however maintain the right to set higher standards than those set in a minimum harmonisation Directive.

also to consider how establishing a domestic resolution framework may be appropriate given the risks it could mitigate for both policyholders and the wider financial system.

Other EU Member States

In the absence of an EU wide recovery and resolution framework, lawmakers in France, the Netherlands, and Romania have independently introduced national resolution regimes for insurers. In addition, it is understood that while there may not be a dedicated recovery and resolution framework in place, certain powers for this purpose are also available in other Member States[18]. The respective national resolution regimes include requirements regarding before the event resolution planning, a toolkit and legal framework for resolution, and associated funding mechanisms.

Given the scale of the Irish market and the fact that much of the activity is cross-border in nature, it can be argued that a domestic recovery and resolution framework is now required. Therefore, the scope of the possible domestic framework envisaged in this consultation document is broadly consistent with the approaches of the Member States that currently have insurance resolution regimes in place.

[18] For instance, in Austria, Belgium and Germany.

3 Key Pillars of the Proposed Resolution Framework

3.1 Resolution Objectives

A disruption of critical insurance services poses potential risks to policyholders and the beneficiaries of such cover, and in some cases to overall financial stability. The presence or absence of such risks must be a central consideration of any decision to deviate from the existing tools to manage the failure of an insurer in Ireland. It is important that a defined set of objectives be established as a benchmark to decide whether there is a clear public interest in taking a resolution action in the event of an insurer being declared failing or likely to fail.

A number of objectives have been proposed by the FSB and EIOPA for protecting the public interest in the context of insurer failure. Both the FSB[19] and EIOPA[20] at a technical level consider that those insurers whose failure would negatively impact one or more of the below objectives to an unacceptably high degree would be better managed in failure by the deployment of resolution tools, with a particular emphasis on the protection of policyholders.

Objectives that could necessitate deployment of resolution tools in failure include:

- To protect policyholders, beneficiaries and claimants;
- To maintain financial stability, in particular, by preventing contagion and by maintaining market discipline;
- To ensure the continuity of functions of insurers whose disruption could harm the financial stability and/or real economy;
- To protect public funds;
- To avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and/or
- To consider the potential impact of resolution actions on financial stability in other jurisdictions.

[19] FSB Key Attributes Assessment Methodology for the Insurance Sector, August 2020.
[20] EIOPA Opinion on the 2020 review of Solvency II, December 2020.

Public Consultation Questions

1. Should any resolution objectives and the basis for completing a resolution action under a new domestic framework be aligned with the principles set out in the FSB's Key Attributes of Effective Resolution Regimes as applicable to the insurance sector and EIOPA's recommendations contained within its Opinion on the Review of Solvency II?

3.2 Scope of Application

As mentioned previously, the Department and the Central Bank consider that the scope of the proposed framework should be applied to insurers in a proportionate manner.

While it is likely that a domestic resolution framework would apply to all insurers in-scope of Solvency II, and would facilitate the application of resolution tools to any failing or failed insurer that meets the public interest test, the before the event requirements, commonly referred to as '*ex-ante* resolution planning requirements', on insurers may vary in proportion to the risk they pose. *Ex-ante* resolution planning requirements should therefore apply primarily to insurers whose failure due to, amongst other things, their complexity, market coverage or a lack of substitutability, would jeopardise the achievement of the resolution objectives discussed in Section 3.1. Basing the decision to use resolution tools on a public interest assessment should ensure that the resolution toolkit is applied in exceptional cases only.

While there are a range of characteristics of in-scope insurers that may be relevant for gauging the appropriateness for the application of resolution planning requirements, it is considered that those set out by EIOPA[21] may be suitable for determining the scope of resolution planning requirements domestically. Additionally, the availability of the Central Bank's 'Probability Risk and Impact System[22]' ("*PRISM*") impact ratings, which help guide the focus of the Central Bank's supervisory activities, may be informative in this regard. Leveraging such existing regulatory insight, particularly for higher risk and higher impact insurers, could help to reduce the regulatory reporting burden of any new domestic framework.

Accordingly, the number of insurers within scope of full resolution planning requirements is, therefore, expected to be relatively limited. In this regard, the scope and application of the recently introduced Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021 should be noted. These regulations set out pre-emptive recovery planning requirements for insurers and apply to all insurers authorised under the 2015 Regulations, subject to certain exclusions. While there are interlinkages between the topics of recovery and resolution planning in terms of protecting the public interest, these mechanisms foresee different outcomes. In order to ensure proportionality, a resolution framework should be focused on the areas where it will deliver the most added value, i.e. protecting the public interest. Therefore, it should be expected that the scope of any resolution planning provisions within any

[21] EIOPA opinion on the 2020 review of Solvency II, Dec 2020. Section 12.14.
[22] https://www.centralbank.ie/regulation/how-we-regulate/supervision/prism.

domestic framework would be narrower and more focused than that of the pre-emptive recovery planning regime. While the majority of insurers are required to develop pre-emptive recovery plans, resolution plans may only be applicable to a subset of insurers.

Another element of the scope parameters is that the resolution of branches of third country insurers generally falls to the resolution framework of the home jurisdiction. Not all jurisdictions have resolution frameworks; therefore, consideration could be given to including provisions for Irish branches of third country insurers, similar to those within the banking resolution framework, in the scope of the proposed framework.

Public Consultation Questions

2.

a) Should the proportionality principle be applied with regard to defining the insurers that are in-scope for resolution planning?

b) Should the Central Bank's PRISM impact ratings be used as a guide when considering the scope of application?

c) Should third country branches be considered within the scope of application of relevant provisions of any envisaged domestic framework?

3.3 Public Interest Assessment in the deployment of resolution tools

Insurers perform a range of critical economic functions including, amongst other things, risk management and investment functions. These functions help to facilitate economic activity and provide financial certainty and protection for citizens, businesses and financial markets, and can therefore also contribute to financial stability. Insurers are deeply embedded in the economic fabric of society and have significant links and interdependencies with other financial services providers, including the banking system. The continuity of the provision of these services, and the protection of assets, in the interest of policyholders, beneficiaries, the real economy and the taxpayer must be safeguarded in a failure event.

It is acknowledged that, due to the specificities and nature of the Irish insurance sector, not all insurance lines and insurers pose the same risks in failure. However, under the tools currently available, risks to the public interest objectives can be identified across the respective life, non-life and reinsurance sectors. This can be due to a concentration in the provision of certain critical insurance lines within a small number of providers, or in some cases a single provider. Such concentration may make substitutability difficult to achieve in crisis scenarios[23]. Risks can also arise due to contagion effects of failure which could be expected in life insurance markets due to

[23] Substitutability for insurers refers to the capacity of other insurers in the market to absorb, by way of transfer/sale, insurance portfolios from a failing or failed insurer to another insurer to ensure a continuity of service provision in a reasonable timeframe.

the nature their business models. The risks posed by the disorderly failure of certain providers and/or lines of business are, in some cases, likely to impose an unacceptably high burden on, and serious risk to, the public interest, given limits to substitutability, the size, complexity and interconnectedness of such providers and/or lines, and in cases where societal, economic and public funding costs would be most keenly felt.

It is envisaged that resolution tools would be used only if necessary in the public interest. Indeed, there may be a case that many of the existing non-resolution failure pathways for insurers will typically be suitable for the majority of insurers as the impact of the idiosyncratic failure of these insurers would likely be minimal. However, there are a number of higher impact insurers whose failure might threaten the maintenance of the public interest objectives outlined in Section 3.1.

A fundamental test, therefore, may be to determine whether a public interest exists for the deployment of one or more resolution tools at the point of an insurer's failure. Such an assessment could be undertaken on a before the event planning basis and in the lead-up to a failure event, and would determine whether the public interest objectives are better served in resolution or existing failure pathways on a case-by-case basis.

It is seen as important that a public interest assessment (*"PIA"*) be carried out by the relevant resolution authority in advance of the deployment of resolution tools. The factors for determining the PIA and the timing of the PIA decision will be considered further as part of developing any proposals around a national resolution framework.

Public Consultation Questions

3.

a) Should a public interest assessment (PIA) be used to ensure that the deployment of resolution tools would be on an exceptional basis, i.e. for the few rather than the many?

b) Are there sectoral specific considerations that should be taken into account when determining the public interest rule for deploying resolution tools?

3.4 Resolution Tools & Powers

The establishment of any domestic resolution framework is predicated on a resolution authority having the tools available to effectively manage the orderly resolution of a failing insurer. As outlined in Section 3.3, there will be circumstances where a public interest exists for the deployment of resolution tools in order to achieve the relevant resolution objectives. While under the existing non-resolution failure approaches specific corporate insolvency mechanisms are currently available to deal with a failing insurer, these exhibit significant limitations, as discussed in further detail in Section 4.1, namely that the protection of the interests of policyholders and consumers is not fully embedded as a primary objective in their deployment.

As a result, central to the development of any domestic resolution framework is the protection of consumers, policyholders and beneficiaries, and the preservation of financial stability**.** Any domestic resolution framework should also be consistent, in terms of scope and resolution tools, with Member States that have developed or are in the process of developing a resolution framework and with EIOPA principles on this topic.

The resolution tools that could form part of the proposed framework are as follows:

- Sale of business;
- Bridge insurer;
- Asset or liability transfer; and
- Write-down of capital instruments and conversion of eligible liabilities.

These resolution tools could be used individually or on a blended basis, and are similar to those that are available in the banking resolution framework. Further details on the resolution tools, and on proposed ancillary resolution powers and obligations, are provided in the subsequent section.

3.4.1 Overview of options under consideration

Sale of Business

A sale of business ("*SoB*") tool would facilitate the directed transfer of a failing insurer by the resolution authority, and could be used in one of the following ways: either by selling the business in its entirety (i.e. a share sale); or by way of a partial sale, which would involve the identification and transfer of policyholder obligations and corresponding assets to the purchaser(s).

The SoB tool could be deployed where market conditions allow, and the outcome of the action would be expected to be optimal to that of administration or liquidation. The benefits of using the SoB tool, rather than placing the failing insurer into liquidation for instance, would be:

- Continuity of cover, service and protection for all transferred policyholders, which in turn facilitates continuity of wider economic and business activity;
- A reduction in the risk of disruption to the financial sector and wider financial stability; and
- The anticipated costs for the completion of a SoB action are likely to be less than those associated with the completion of an action under the corporate insolvency mechanisms.

Bridge Insurer

A bridge insurer tool would allow for the creation, by the resolution authority, of a temporary Central Bank-licensed corporate entity**,** the purpose of which would be to receive and hold all or selected portfolios, assets and liabilities transferred to it from the failing insurer.

By doing so, the provision of essential services, cover and protection for policyholders would be maintained. The bridge insurer would be a temporary measure**,** ensuring the continuation of transferred policies, but would allow flexibility and time to find a suitable purchaser(s) for some or all of the bridge insurer entity, particularly in circumstances where there may be delays in finding a suitable purchaser(s) due to the nature of insurance products or lines being offered, or wider market concerns at the time of resolution. It is acknowledged that the bridge insurer should be in place for a limited time only and for a specific purpose, in order to ensure that it is a 'bridge to somewhere'.

Asset or Liability Transfer

An asset separation tool ("*AST*") would enable the identification and transfer of all or selected non-strategic assets, rights, and liabilities from the failing insurer to a separate corporate entity, known as an asset management vehicle ("*AMV*"), which could be controlled by the resolution authority.

The AMV would manage the assets transferred to it with the view of maximising their value through an eventual sale or orderly wind down, and the insurer would be able to continue to provide its essential services, cover and protection for policyholders, but be free from certain non-performing or non-core assets and legacy liabilities.

The deployment of this resolution tool would likely occur in specific circumstances, such as where the transfer is necessary to preserve the proper functioning of the insurer under resolution or to avoid significant adverse effects on the financial system. In order to ensure that the AST is not simply used as another form of restructuring, such as to cease a line of non-performing business, it is envisaged that this tool would only be used in conjunction with one or more of the other proposed resolution tools.

Write-down of Capital Instruments and Conversion of Eligible Liabilities

A write-down and conversion tool would allow for the write-down and/or conversion of suitable capital instruments or eligible liabilities of the failing insurer. This would apply specifically with regard to equity shareholding or other non-debt financing liabilities which could be written down or converted to ensure that the burden of resolution is first borne by the shareholders and creditors of the insurer, and therefore eliminate some of the costs and risk to the policyholders, other insurers and the taxpayer. In the absence of a legislative burden-sharing mechanism at present, there is a higher likelihood of such costs being borne by the ICF if a non-life insurer in Ireland fails.

It is envisaged that this resolution tool would also be used in combination with one or more of the other proposed resolution tools, which could have many benefits, including, for example, for a potential purchaser as the balance sheet of the failed insurer would be 'cleaned' prior to a sale or partial transfer process.

It should be noted that in deploying this tool, and also generally in relation to the use of the other proposed resolution tools, caution would need to be exercised in any amendment to policies and/or subsequent impacts on policyholders. The ‘no creditor worse off’ (“*NCWO*”) principle[24] would be fundamental to the protection of policyholders, meaning that at an absolute minimum they would be in a better position following the implementation of the resolution tool(s) than if an action under the corporate insolvency mechanisms was strictly applied[25].

As well as financial protection, the use of a write-down and conversion tool may also ensure continuity of cover, service and protection for certain policyholders. This would be a substantially better outcome than that under a liquidation scenario, where an immediate termination of cover would occur.

Ancillary Resolution Powers and Obligations

In addition to the resolution toolkit, it would also be beneficial for certain additional ancillary resolution powers to be provided and resolution obligations to be applied as part of the proposed framework. This would support the resolution process and assist in the effective implementation of the selected tools at the point of failure.

Such ancillary resolution powers and obligations could include the following:

- The power to suspend certain payment and delivery obligations of the insurer for a specific and limited period of time;
- The power to appoint a special manager to the insurer to assist in the execution of the resolution action; and
- The power to direct the insurer to take certain action(s) to remove identified impediments to resolvability.

Public Consultation Questions

4.

a) Would a resolution toolkit be of benefit to the resolution authority in seeking to protect policyholders in situations where liquidation or administration may not offer the same level of protection?

b) Are the resolution tools proposed in this consultation document appropriate to the Irish insurance sector, or are there other options that should also be considered?

c) Would the use of a write-down and conversion tool in limited circumstances be a means to facilitate burden-sharing, with the cost of failure borne by the insurer’s investors in the first instance rather than by policyholders, the broader industry, or by the public/taxpayer?

[24] The principle that appropriate safeguards are in place to ensure that the affected policyholders, shareholders and creditors will not be worse off than in a case where the insurer had entered into a normal failure pathway. In other words, impacted parties cannot incur greater losses than those they would have incurred if the insurer had been liquidated.

[25] As part of this NCWO assessment, compensation that may be payable to in-scope policyholders under the ICF would form part of any calculation and determination that a resolution action returns a better outcome than an action under corporate insolvency mechanisms.

3.5 Resolution Planning

3.5.1 Overview & Key Objectives of Resolution Planning

A forerunner, and critical to the successful activation of resolution powers, would be the completion of a before the event (‘*ex-ante’*) resolution planning process. This process, as a distinct activity from supervisory and recovery planning, assumes insurer failure and analyses how best to intervene to ensure the objectives of resolution are satisfied.

Given the potential additional administrative burden on the resolution authority and insurers in completing such planning activities, it is envisaged that any domestic resolution framework would limit the requirement to complete resolution planning to a subset of insurers that would be in-scope for a resolution action in the event of a failure given, for instance, their systemic importance.

Varying approaches to resolution planning are taken in different jurisdictions, with the onus on the insurer to produce and maintain a resolution plan in some cases. It is envisaged that in the Irish case, the responsibility in developing resolution plans and conducting resolvability assessments would rest with the resolution authority in any developed national resolution framework. In-scope insurers would input into this process by providing certain information to assist in the development of resolution plans and addressing impediments to resolvability. Resolution plans would be reviewed and, where appropriate, updated at least annually.

3.5.2 Resolution Planning Process

Taking account of previous experience, it is envisaged that a resolution planning cycle would broadly follow four stages:

- *Information gathering:* Completed between the in-scope insurer and the resolution authority, with the aim of providing sufficient relevant information to successfully complete an adequate resolution plan.

- *Setting the Preferred Resolution Strategy (“PRS”) and developing a plan that operationalises that PRS:* Core to the resolution planning process is the determination of a PRS, which needs to be both feasible and credible, and is determined by the resolution authority. The PRS would be subject to reassessment at the point of failure and prior to any resolution action being undertaken.

- *Assessing the insurer’s resolvability:* Once the PRS has been established, the resolution authority would work to ensure that the action can be successfully completed by the insurer and highlight areas where impediments to resolvability exist.

- *Addressing impediments to resolution:* The insurer, in collaboration with the resolution authority, would, where practicable and reasonable to do so, work on addressing issues identified that would prevent the successful completion of a resolution action.

Public Consultation Questions

5.

a) Should a resolution plan be prepared on a before the event basis for insurers where there may be a public interest in using resolution tools in the event of failure?

b) Do you agree that this plan be developed by the resolution authority? Or do you see a role for the insurers in developing such plans?

c) Where an Irish authorised insurer is a subsidiary of an international regulated entity, should the resolution authority liaise with the resolution/competent authority of the parent entity for resolution planning purposes?

3.5.3 Loss Absorbing Capacity

As outlined in Section 3.4, a write-down and conversion tool could form part of the proposed framework. Unlike banks and other financial institutions, insurers, apart from systemically important ones, are less likely to use debt financing, and as such there would be less loss absorbing capacity available at the time of failure.

In order to assist in the resolvability of insurers and to protect policyholders from potential losses or being subject to a write-down power, one option is for a requirement for a minimum loss absorption capacity to be placed on insurers that are in-scope of the proposed framework. However, any such requirement would need to be aligned to the capital requirements provisions under Solvency II, and ensure that insurers are not required to hold additional capital beyond regulatory minimums. If introduced, a transition period allowing insurers to reach this target and ensure compliance would be afforded.

There are certain benefits from an increased loss absorbing capacity at the time of resolution, specifically to ensure the protection of the interests of policyholders and consumers. However, it is also recognised that it could have an impact on insurers and the insurance industry.

Public Consultation Questions

6.

a) Should insurers, which may require resolution tools in the event of failure, hold an additional buffer of capital or eligible debt to enhance loss absorbing capacity and minimise the risk of costs being borne by policyholders or the public?

b) What is the anticipated impact of the holding of additional capital buffers on the Irish market in terms of costs and supply?

4 Administration and Winding-Up

4.1 Overview

Under the existing corporate insolvency regime, there are three mechanisms available to deal with a failing insurer: liquidation, administration, and/or examinership. An overview of these processes is provided below.

Liquidation

The appointment of a liquidator to an insurer is governed primarily by the Insurance Act, 1936 (the "*1936 Act*") and the Companies Act 2014 (the "*2014 Act*"). The key objectives of the liquidator are to realise the assets and to satisfy creditor claims as appropriate. The liquidator can avail of a wide range of powers to assist in this regard, including to do what may be necessary for winding-up the affairs of the company and distributing its property.

As liquidation results in the company ceasing to exist, it should be used as **a means of last resort** when all other available and suitable options have been reasonably and practicably exhausted.

At present, the Central Bank can present a petition for the winding-up of an insurance firm when the company is unable to pay its debts (i.e. it is cash flow insolvent),[26] and there are no explicit grounds on which the Central Bank can petition for the winding-up of a reinsurer. A gap, from a public policy perspective, is that in the current process there is a lack of consideration given to the wider concept that the winding-up should be undertaken in the interest of policyholders, consumers and/or the wider public.

Administration

The appointment of an administrator to an insurer is governed by the Insurance (No. 2) Act, 1983 (the "*1983 Act*"). Only the Central Bank can petition for the appointment of an administrator to an insurer. The objective of the administrator is to take over the management of the insurer and carry it on as a going concern with the aim of returning it to a sound commercial footing. Wide-ranging powers are afforded to the administrator to assist in this regard, and include the power of sale, incorporating the disposal of all or any part of the insurance business, undertaking or assets.

The administrator has an obligation to protect the interest of all creditors of the insurer, including policyholders. This results in the interests of policyholders being ranked on equal footing, i.e. *pari passu*[27]*,* as opposed to preferentially, to other creditors during the administration process. The appointment of an administrator is also subject to the satisfaction of certain statutory conditions, including, amongst other things, that it "*would assist in the maintenance, in the public interest, of the proper and orderly regulation and conduct*" of the insurer[28]. While a reference is made to the

[26] Section 45, the 1936 Act.
[27] The mandate of the administrator is to consider the business of the insurer as a whole, and he or she is not mandated to consider the interests of policyholders or consumers over and above the interests of other creditors of the company.
[28] Section 2(2)(b), the 1983 Act.

public interest, it is not defined, and it cannot be assumed that it would necessarily align with the concept of public interest as contained in the proposed resolution objectives.

Examinership

The appointment of an examiner to an insurer is governed by the 2014 Act. The examinership process operates as a means to protect a company that is, or is likely to be, unable to pay its debts, from its creditors for a specific and limited period of time (up to a maximum of 100 days) while the examiner conducts an assessment of the company's affairs. Only the Central Bank can petition the High Court (the "*Court*") to place an insurer into examinership[29], and the Court will grant such an order only where it is satisfied that there is a reasonable prospect of survival of the company as a going concern.

Within the period of protection the examiner is required to formulate a restructuring plan, known as a scheme of arrangement, for the company detailing how, amongst other things, investment will be secured and the debts of the company settled. When developing the scheme of arrangement, the examiner is not obliged to treat policyholders preferentially to other creditors, resulting in the interests of policyholders being ranked *pari passu,* as opposed to preferentially, to other creditors.

4.2 Enhancements to the Current Insolvency Framework

As outlined earlier, the corporate insolvency mechanisms currently serve as the default failure and resolvability pathway approach for the majority of insurers. As part of establishing a possible national resolution framework, some enhancements to the governing insolvency legislation could also be addressed, and further details on this are provided below.

Increasing the Accountability of the Administrator

As a means to ensure that the core proposed resolution objectives, namely the protection of the interests of consumers, policyholders and financial stability, are embedded into the day-to-day activities of the administrator, the Central Bank[30] could be afforded a more involved role in the administration process.

This could be achieved by requiring the administrator to report to and, and where appropriate, to seek guidance from the Central Bank with respect to the performance of their duties and the progression of the administration process. Consultation between the administrator and the Central Bank could also occur in relation to key decision-making processes, including, for instance, the approval of the administrator's remuneration and the incurred costs or expenses. This would also serve to ensure other considerations are taken into account, including for instance, amongst other things, value for money in the administration process.

[29] Sections 998, 1210, 1122 and 1224 of the 2014 Act amend Section 510 of that Act for DACs, unlimited companies, PLCs and CLGs respectively to read as follows: *"Where the company referred to in Section 509 is an insurer or the holding company of an insurer, a petition may be presented only by the Central Bank, and subsection (1) shall not apply to the Company".*
[30] Currently the role of the Central Bank in an administration process is limited and in line with normal regulatory engagement and reporting.

Facilitating the Establishment of a Liquidation Committee

Under the current process, the liquidator of an insurance firm operates as a Court appointee, and a committee of inspection may be formed following the liquidator's appointment. It may be appropriate, however, for the Central Bank, as the petitioner and competent authority, to also have the ability to establish and participate in a liquidation committee[31].

Such a committee could, for instance, ensure that the objective of safeguarding policyholder claims and interests operates as a central priority for the liquidator throughout the course of the winding-up process.

Expanding the Grounds to Petition for Liquidation

There is currently a limited basis upon which the Central Bank can seek to petition the Court for the appointment of a liquidator to an insurance firm, which is on the basis that the insurance firm is unable to pay its debts. Currently there are also no explicit grounds on which the Central Bank can petition the Court for the winding-up of a reinsurer.

It is possible that the grounds on which the Central Bank can petition the Court for the winding-up of an insurer could be expanded and mirror some or all of the grounds on which: (i) creditors can petition for the winding-up of a company, under the 2014 Act, and (ii) the Central Bank can rely to place a designated credit institution into liquidation, under the Central Bank and Credit Institutions (Resolution) Act 2011.

Such an expansion could incorporate a consideration for the appointment of a liquidator in the interests of policyholders, consumers and/or the wider public, in any decision regarding the placing of a failing insurer into liquidation and impact of same. This could ensure better protection for policyholders and other impacted consumers throughout the winding-up process.

Public Consultation Questions

7.

a) In order to offer greater protection to policyholders, is there merit in amending the existing insolvency legislative processes? And if so, what would be the key issues of concern to stakeholders?

b) Are there other enhancements that should be considered to strengthen the administration and winding-up processes?

[31] Such an enhancement would be akin to the Central Bank's existing powers to establish and participate in a liquidation committee when a designated credit institution is being wound-up, and the express objectives of the liquidator in this regard, pursuant to the Central Bank and Credit Institutions (Resolution) Act 2011.

5 Resolution Funding

5.1 Resolution Financing Arrangements

The funding of a resolution action is a key component to ensuring its overall effectiveness and success. In order to design any possible domestic resolution framework, consideration needs to be given to how such an action could be funded. There are different options available in the structure of such a fund, which include (i) having a standalone resolution fund (separate to the ICF); or (ii) expanding the ICF to provide for resolution financing.

In Ireland, the ICF is designed to facilitate payments to Irish non-life insurance policyholders in relation to risks in the State where an Irish authorised non-life insurer or a non-life insurer authorised in another Member State enters liquidation[32], and operates on a host basis. The ICF is, therefore, available to compensate policyholders in the event of a failure of certain insurance firms, and has been utilised in previous failure events, with funding facilitated on an after the event (commonly referred to '*ex-post*') basis. The ICF has limitations in terms of its scope and use, with both health and life sectors not covered, and such policyholders therefore not enjoying protection from the ICF. While non-life policies are in principle covered by the ICF, the cap on the amount to be paid out of the ICF in the event of a liquidation is 65 per cent of the claim or €825,000, whichever is the lesser. However, in the case of third party motor insurance claims, and where an insurer is in liquidation, the ICF can make a payment of 100 per cent of the claim.

Given the current ICF funding arrangements and position, this may imply a role for public funds in a failure event. Taking account of developments at EU level which could see a harmonisation of the IGSs and their operation on a 'home' basis, the ICF may also be more exposed in years to come. The availability of resolution tools would aim to reduce the exposure of the ICF to pay-out events, which could thereby in theory decrease the reliance on public funds in the event of a failure of a systemic insurer. An effective recovery and resolution framework should mean that when failure occurs it should have less recourse to use an IGS, and by extension less exposure to the State, as there should be more assets available in the insurer as a result of the better managed and structured resolution process.

The scope of the ICF could potentially be enhanced to include resolution activities, as outlined below, including all insurers in-scope of any possible domestic resolution framework (incorporating life, non-life and re-insurance firms, potentially). The ICF, if acting as both a compensation and resolution fund, could then be subsequently used as a support in the enactment of the possible resolution tools, for instance in assisting a SoB resolution action and/or the establishment of a bridge insurer or AMV. The expansion of the ICF to cover resolution activities would also be in keeping with:

[32] The ICF is also available to cover costs associated with administration actions concerning non-life insurers, where certain preconditions are satisfied.

1. Funds that are already in place across other financial sectors to assist in the completion of resolution actions, such as the Credit Institutions Resolution Fund (which can be utilised by Credit Unions) and the Bank and Investment Firm Resolution Fund / Single Resolution Fund (which can be utilised by Investment Firms and Banks respectively); and
2. Funding models implemented in countries[33] that have already introduced a resolution framework.

Irrespective of the funding model, contributions from industry may need to be collected in a failure event depending on the scenario. A resolution fund funded through industry levy contributions collected on a before the event[34] ('*ex-ante*) basis would reduce the need for public funds to be used and ensure sufficient burden-sharing across the sector. Alternatively, the insurance industry could be required to cover the costs associated with the resolution action through an after the event ('*ex-post*') levy. The amount of any such levy and its period of existence would depend on the cost of the resolution action, and would represent a lesser financial imposition to insurers.

It is important to recognise that in reality funding may not be a requirement in certain failure events. As part of a decision to complete a resolution action by the resolution authority, the principle of 'least cost' would be applied, whereby the cost of such a resolution action would aim to be less than the total exposure to the ICF in the event of a disorderly failure of the insurer.

Public Consultation Questions

8.

a) In the event of resolution actions requiring additional financing, should the ICF be utilised or a separate resolution financing facility established?

b) Should such a fund be built up using contributions collected on a before the event or after the event basis?

c) Should arrangements be put in place to ensure any levy contributions are not directly imposed on the policyholders?

[33] Such as in: France, Netherlands, and Romania.
[34] An example of an *ex-ante* contribution is the Motor Insurers Insolvency Compensation Fund (MIICF) operated by the Motor Insurers' Bureau of Ireland (MIBI). The MIICF is an *ex-ante* fund set up in 2018 to collect contributions from motor insurers in order to fund the increase in compensation from 65 per cent to 100 per cent for third party motor claims payable through the ICF.

6 Conclusion and next steps

Resolution is an outstanding item yet to be developed as part of the overall national and EU insurance legislative toolkit. As such, establishing a resolution framework for the insurance sector is likely to become an important objective domestically and at EU level over the next few years. Some Member States have introduced or are in the process of developing their own national schemes. The EU Commission, as part of the Solvency II Review, is likely to address aspects of a recovery and resolution framework. In the Irish circumstance, it is clear that while prudential rules and recovery requirements are fit for purpose, there are limitations to resolving a failing or likely to fail insurer in an orderly manner.

The Department and the Central Bank believe that it is now timely to assess the policy considerations relevant to resolution, including the implications and benefits that will arise for policyholders, financial stability, industry and the Exchequer. The Department invites submissions on the proposed framework as detailed in this consultation document from interested stakeholders. Such views will assist in the preparatory steps in any decision to introduce a resolution legislative framework for insurers in Ireland.

As noted earlier, when responding to this consultation process, please indicate whether you are a professional adviser, representative body, corporate body or member of the public. The preferred means of response is by email to: insurance@finance.gov.ie. **Submissions received after 30 November 2021 may not be considered.**

Financial Services Division,
Department of Finance
(In consultation with the Central Bank of Ireland)

Annex 1. List of Abbreviations

AST	Asset separation tool
AMV	Asset management vehicle
CfA	Call for advice
EIOPA	European Insurance and Occupational Pensions Authority
EU	European Union
FoE	Freedom of Establishment
FoS	Freedom of Services
FSB	Financial Stability Board
GWP	Gross Written Premium
IAIS	International Association of Insurance Supervisors
ICF	Insurance Compensation Fund
IGS	Insurance guarantee scheme
MIBI	Motor Insurers' Bureau of Ireland
MIICF	Motor Insurers Insolvency Compensation Fund
NCWO	No creditor worse off
PIA	Public interest assessment
PRISM	Probability Risk and Impact System
PRS	Preferred Resolution Strategy
SoB	Sale of business

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