



# **BERMUDA MONETARY AUTHORITY**

## **CONSULTATION PAPER**

### **PROPOSED INTRODUCTION OF RECOVERY PLANNING REGIME FOR THE INSURANCE SECTOR**

**June 2022**

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## 1. INTRODUCTION

1.1. This Consultation Paper (CP) sets out the Bermuda Monetary Authority's (Authority or BMA) proposed approach to the regulation of 'recovery planning' for the Bermuda insurance sector<sup>1</sup>. The proposed 'recovery planning' regime, which the Authority plans to introduce in the form of rules, is intended to do the following:

- (a) Aid the insurer in understanding its own risks from severe stress scenarios; and
- (b) Help strengthen Bermuda's insurance regulatory framework by ensuring that the insurer has a plan to act in an orderly and timely manner when dealing with a situation where an insurer<sup>2</sup> is under severe stress.

1.2. The Authority considers the introduction of recovery planning regimes applicable to Bermuda commercial insurers<sup>3</sup> as essential pillars in strengthening the Authority's prudential framework. These proposals are broadly divided into two sections, the introduction of recovery plans and the definition of the scope of proposed recovery planning rules

1.3. In order for the Authority to introduce the recovery planning regime the Authority will amend section 6A (1) of the Insurance Act 1978 to add the power to make rules for recovery planning.

## 2. BACKGROUND INFORMATION

2.1 Following the 2008/2009 global financial crisis (financial crisis), the Financial Stability Board (FSB) set out new standards applicable to systemically important financial institutions (i.e., Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes)<sup>4</sup>), which include recovery planning requirements. The overall goal of these Key Attributes is to reduce the probability of financial institutions failing and the impact of such failures with minimum

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<sup>1</sup> The concept of 'recovery' is defined/explained in section three of this paper.

<sup>2</sup> For the purpose of this CP, insurers also include reinsurers and insurance groups for which the Authority is the group supervisor.

<sup>3</sup> Commercial insurer includes an insurer registered, under section 4 of the Bermuda Insurance Act 1978, as Class 3A, Class 3B, Class 4, Class C, Class D, Class E and insurance groups.

<sup>4</sup> [https://www.fsb.org/wp-content/uploads/r\\_111104cc.pdf](https://www.fsb.org/wp-content/uploads/r_111104cc.pdf)

public support, and to promote resolvability as part of the overall supervisory process.

- 2.2 The financial crisis also highlighted that insurers were not immune to financial vulnerabilities<sup>5</sup>. Based on this view, the International Association of Insurance Supervisors (IAIS), in November 2019, adopted a list of revised Insurance Core Principles (ICP) and related Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) elements<sup>6</sup>, including a comprehensively revised ICP 16.15 (and related ComFrame elements), which sets standards for supervisory requirements in relation to recovery planning<sup>7,8</sup>.
- 2.3 The primary objectives of the FSB Key Attributes, the IAIS' ICPs (and related ComFrame elements), on recovery planning are generally aligned and involve the identification and planning for the deployment of recovery options that an insurer could reliably execute when under severe stress to restore its financial strength and viability.
- 2.4 In line with these objectives, the Authority recognises the growing importance and need for insurers to have a formal and structured recovery planning process that meets international standards. Having such a process in place will help enhance the Authority's overall regulatory mandate (i.e., to promote the safety and soundness of the insurers it regulates and the Bermuda financial system).
- 2.5 The Authority is committed to the viability of the Bermuda insurance market and aims to maintain a regulatory environment that aligns with international development/standards and appropriately protects policyholders. To this end, the Authority is proposing to introduce the recovery planning framework for the Bermuda insurance sector, as set out below in this CP.

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<sup>5</sup> See EIOPA's report "Failures and near misses in insurance"

[https://www.eiopa.europa.eu/sites/default/files/publications/pdfs/eiopa\\_failures\\_and\\_near\\_misses\\_final\\_1\\_0.pdf](https://www.eiopa.europa.eu/sites/default/files/publications/pdfs/eiopa_failures_and_near_misses_final_1_0.pdf)

<sup>6</sup> See IAIS (2019) Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups (<https://www.iaisweb.org/activities-topics/standard-setting/icps-and-comframe/>)

<sup>7</sup> The BMA is a member of the IAIS Resolution Working Group which was responsible for draft ICP 16.15. Thus, the Authority has been actively engaged in the discussions and development of the recovery and resolution standards for the insurance sector.

<sup>8</sup> On 22 September 2021 the European Commission adopted a proposal for an Insurance Recovery and Resolution Directive (i.e., <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0582&from=EN>)

- 2.6 This proposed framework is informed by relevant standards/material from the FSB, IAIS and other international bodies and, to the extent appropriate, also draws from experiences of other comparable jurisdictions. Additionally, to ensure it is appropriate and relevant for Bermuda, the framework also considers the unique features of the Bermuda financial system, particularly its international insurance sector.
- 2.7 Importantly, the Authority will implement and apply this proposed framework in line with the IAIS' 'proportionality principle', which provides Authorities with, "*the flexibility to tailor their implementation of supervisory requirements and their application of insurance supervision to achieve the outcomes stipulated in the Principle Statements and Standards*". Specific to recovery planning, and according to the IAIS, 'the principle of proportionality' allows a jurisdiction, such as Bermuda, to implement a recovery framework, "*in a manner appropriate to its legal structure, market conditions and consumers...and allows the supervisor to increase or decrease the intensity of supervision according to the risks inherent to insurers, and the risks posed by insurers to policyholders, the insurance sector or the financial system as a whole.*"
- 2.8 As part of its regulatory and supervisory framework, the Authority applies a risk-based approach at both the micro and macro-prudential level, which enables it to focus on risk and, in so doing, minimise the excessive and unnecessary burden. The introduction of a recovery planning framework will follow the same risk-based logic and will address the following issues:
- (a) If and when a recovery plan is required; and
  - (b) Where a plan is required, the plan's frequency, form, content and level of detail would be in line with the nature, scale and complexity of institutions within the Bermuda insurance marketplace.
- 2.9 The risk-based approach will take into account and, in appropriate cases, will defer to instances in which an insurer is included in a recovery plan required by and filed with a group-wide supervisor in another jurisdiction.

### 3. PROPOSED RECOVERY PLANNING REGULATIONS

- 3.1 Recovery planning is an additional tool available to prudential supervisors and aimed at ensuring that insurers prepare for a range of possible adverse situations ahead of any severe stress conditions. Ultimately, this should assist insurers in taking effective and thoughtful measures in a timely manner in crisis situations without unnecessary pressure.
- 3.2 Accordingly, a recovery plan should be developed and owned by the insurer and should identify the insurer's own credible options to survive a range of severe but plausible stressed scenarios. In addition, a recovery plan should be integrated within the insurer's overall Enterprise Risk Management (ERM) framework and should be pre-emptive in nature. The intent is for recovery planning to complement other ERM tools already available to insurers, such as the Commercial Insurer's Solvency Self-Assessment (CISSA).
- 3.3 Notably, the Authority recognises that the objectives of some of an insurer's existing ERM tools, to a certain extent, may overlap with the objectives of the recovery planning<sup>9</sup>. In such cases, the insurer may leverage and should ensure alignment with existing tools within its ERM framework. Thus, to ensure efficient use of resources, the insurer may use the existing tools within its ERM framework as a source of input when drafting and developing the recovery plan.
- 3.4 A recovery plan is also a critical supervisory tool that can allow the Authority to identify and assess an insurer's options to recover financial strength and viability under severe stress. Consequently, the Authority should have appropriate powers to evaluate and challenge the insurer's recovery plan's robustness and soundness (e.g., credibility, depth, strength, governance). In addition, the Authority should have appropriate powers to require an insurer to take action for recovery if the insurer comes under severe stress, consistent with the principle that the insurer

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<sup>9</sup> For example, CISSA requires insurers to perform an assessment of their own risk and solvency requirements over their planning horizon. When carrying out such an assessment, insurers are required to take into consideration all reasonably foreseeable material risks arising from both on and off balance sheet exposures of its business/operations. This must include appropriate stress and scenario testing measures to determine the insurer's ability to manage its business with appropriate levels of capital under conditions of severe but plausible stress and contingency plans to restore capital to adequate levels after an adverse event. On the other hand, a recovery plan specifically focuses on severe stress scenarios that may ultimately threaten the viability of the insurer and, critically, identifies in advance options to restore the financial position and viability of the insurer if such threats materialise.

should monitor, escalate and activate the appropriate range of responses for an emerging stress event.

### *Scope and proportionality*

3.5 The Authority may, at its discretion, require insurers to take recovery planning measures (i.e., evaluating specific risks and options in possible recovery scenarios) as necessary without putting together a formal plan. Alternatively, in some instances, and particularly for insurers considered to be of economic importance or systemically significant or whose failure could pose a threat to the financial stability of Bermuda, the Authority may require such insurers to prepare a formal recovery plan.

3.6 In assessing if an insurer is of economic importance or could be systemically significant or critical to Bermuda if it fails, and therefore required to have a recovery plan, the Authority will, among other things, take into consideration the class of registration, size or market share, external and internal interconnectedness, complexity, business model, risk profile, substitutability and cross-border activities of the insurer.

3.7 Specifically, the Authority will use the following criteria as a guide for determining which insurers will be required to have a recovery plan in place subject to appropriate proportionality and risk analysis:

- (a) A designated internationally active insurance group for which the Authority is the group-wide supervisor;
- (b) Insurance group as defined in the Insurance Act 1978, and where the Authority is the group-wide supervisor;
- (c) A domestic insurer as defined in the Insurance Act 1978;
- (d) An insurer, on a three-year rolling average that has:
  - i. Total assets of at least \$10 billion; or
  - ii. Total gross written premiums of at least \$5 billion; and
  - iii. A commercial insurer under close monitoring.

#### **4. FUTURE WORK ON BERMUDA'S RECOVERY PLANNING REGULATIONS**

4.1 The Authority will be drafting the actual recovery planning rules in the near future, taking into consideration any feedback received from this consultation. The rules will also be subject to public consultation.

##### **General Question**

**Question:** Do you see any practical issues that the proposals above may introduce?

*The views of the insurance industry and of other interested persons on the proposals set out in this CP are invited. Comments should be sent to [FSRD@bma.bm](mailto:FSRD@bma.bm) no later than Friday, 29 July 2022.*