



12 October 2022

Dear Stakeholders,

Re: Consultation Paper: Designating the Head of an Internationally Active Insurance Group

The Bermuda Monetary Authority (Authority or BMA) would like to thank stakeholders for their continued engagement as the Authority enhances its insurance supervisory framework to ensure it remains effective and aligned with evolving international standards, particularly the International Association of Insurance Supervisors (IAIS) Common Framework (ComFrame) for Internationally Active Insurance Groups (IAIG). The Authority appreciates your feedback and is committed to ensuring Bermuda’s regulatory regime remains fit-for-purpose.

The Authority sought feedback on proposed amendments to the Insurance Act 1978 (Act) to outline the process that may be used in determining which entity within the IAIG will be designated as the head of the IAIG for group supervision purposes.

RESPONSE TO INDUSTRY FEEDBACK

The Authority received feedback from stakeholders; responses to the **key substantive comments** are outlined below.

Criteria for designating the head of the IAIG

Request 1: The Act’s proposed revisions that are the consultation’s subject would insert a new Section 27I. Proposed Section 27I(2) sets forth criteria for identifying the head of the IAIG. The proposed criteria, however, are materially less detailed than those found in ComFrame. While it is understood that the Authority prefers to keep statutory provisions in the Act as succinct as practicable and to provide more substantive provisions in rules or guidance, the stakeholder emphasised the importance of balancing the need for succinct language in the Act against the need for predictability regarding the Authority’s approach.

Request 2: Proposed Section 27I(2)(b) references that the head of the IAIG should exercise control over “*other members of the group, which may pose a risk to the insurance business of the group.*” Nevertheless, it does not provide any guidance as to how “*risk to the insurance business*” is to be

identified or scoped. ComFrame, however, provides some guidance on the nature of the risk that a group-wide supervisor should consider when determining the head of the IAIG. See ComFrame 23.1.d. Accordingly, the stakeholder recommended that rules or guidance include language adapted from ComFrame along the following lines:

- (c) The Authority will consider that a non-insurance legal entity within the IAIG poses a risk to the insurance operations where there is:*
- (i) a linkage between the insurance operations and the non-insurance legal entity (other than an investment in or from the non-insurance legal entity) that could adversely affect the insurance operations; and*
 - (ii) a lack of adequate safeguards to mitigate risks from any such linkages.*

The intermediate holding company as the head of the IAIG

Request 3: The stakeholder strongly agreed with the recognition in the consultation that, depending on its structure, an IAIG may have more than one entity that meets the criteria of the head of the IAIG. ComFrame also recognises this possibility in ComFrame 23.1.c. The stakeholder believes rules or guidance must include recognition, such as the following:

- (5) If there is more than one entity which controls all of the insurance legal entities, the Authority will consider which entity exercises the greatest level of control by considering the following factors:*
- (a) the proportion of the insurance business relative to other business it controls;*
 - (b) the degree of operational control; and*
 - (c) the degree of shareholder control.*

The Authority will weigh the factors identified here and those contained in the written representations from the IAIG on a case-by-case basis after considering the IAIG's structure and the Authority's ability to supervise it effectively. Considering such factors may lead the Authority to determine that the head of the IAIG is an intermediate holding company rather than the ultimate parent company of the IAIG.

Response to Requests 1-3: The Authority acknowledges the proposed wording outlined by the respondents and will take the suggestions under advisement when drafting supporting rules and/or guidance. The Authority will consult on all proposed rules and/or guidance before issuing them as standard practice. The Authority is looking to consult on the IAIG supervision rules in the fourth quarter of 2023, which are expected to be largely in line with what is expressed within Comframe.

The Authority's notice of the head of the IAIG designation

Request 4: Proposed Section 27I(3) and (4) establish a right of notice to and response from the IAIG regarding the designation of a member of the IAIG as head of the IAIG. Nevertheless, the process around this right of notice and response is vague, without timelines or review standards. The stakeholder recommended that the notice and response process be formalised in rules or guidance to include elements such as the following:

- A timeline in which the Authority’s notice must be provided to the IAIG
- A timeframe by which the IAIG may provide written representations to the Authority in response to the notice
- A requirement that the Authority respond to the IAIG’s written representations and the timeframe within which that communication must occur
- Appeal rights if the IAIG disagrees with the Authority’s designation

Response: Currently, ComFrame does not contemplate an appeals process for the head of the IAIG designations, but the Authority’s process for designating an entity as the head of the IAIG will provide the insurance group adequate opportunity to express their views in advance of such designation. Further, stakeholders are reminded that designation decisions by the Authority as the group-wide supervisor will be made following the same approach as other group supervisory decisions and will include input from all other supervisors.

Additionally, Part VIII A of the Act makes provision for appeals relating to the Act’s contraventions or any condition imposed on a registered person. Therefore, persons aggrieved by a decision taken by the Authority through its formal powers may appeal the said decision. As the head of IAIG designation is not an enforcement matter at the designation stage, the Authority believes it would be inappropriate to include such matters under this part of the Act. Please be advised that the Authority’s intent regarding the process of designating the head of the IAIG shall be similar to the process undertaken when determining whether it is appropriate for it to be designated as a group supervisor of an insurance group (i.e., where such decisions are not appealable under section 44A(1) of the Act). The Authority notes that the above process provides sufficient opportunity for an insurance group’s views to be considered before making a decision.

The Authority will consider whether further procedural details regarding the designation of a member of the IAIG as head of the IAIG are necessary when drafting supporting rules and/or guidance.

Next steps

The Authority intends to finalise the wording for the recommended amendments to the Act in light of the feedback received.

The Authority would like to thank stakeholders for their feedback and remains committed to working with insurers and other interested parties as the implementation of ComFrame proceeds. Any stakeholder who wishes further clarification or additional information on ComFrame’s implementation should contact the Authority directly at InsuranceInfo@bma.bm.

Sincerely,
The Bermuda Monetary Authority