



11 October 2022

Dear Stakeholders,

Re: Consultation Paper – Proposed Introduction of Recovery Planning Regime for the Insurance Sector

The Bermuda Monetary Authority (Authority or BMA) thanks stakeholders for their continued engagement and support in progressing the BMA's critical strategic initiatives. The Authority appreciates all feedback received on the Consultation Paper (CP) issued in June 2022 on the proposed introduction of a recovery planning regime for the insurance sector.

The Authority remains committed to working closely with its stakeholders to ensure that the Bermuda supervisory regime is effective, proportionate and aligned with international standards.

RESPONSE TO INDUSTRY FEEDBACK

The Authority received feedback from several stakeholders, and the response to the **key substantive** comments received on the CP is outlined below.

Scope and proportionality

Stakeholders sought clarification on whether the principle of proportionality will apply to the recovery planning rules.

Response:

As noted in section 2.7 of the CP, the Authority will implement and apply the proposed regime in line with the International Association of Insurance Supervisors (IAIS) 'proportionality principle', particularly in determining if and when a recovery plan will be required. Where a recovery plan is required, the Authority will also apply the proportionality principle in determining the plan's frequency, form, content and level of detail. In doing so, the Authority will, among other things, consider 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. Importantly, the proposed regime only applies to Bermuda commercial insurers (i.e., Class 3A, Class 3B, Class 4, Class C, Class D, Class E and insurance groups).

Specific to the proposed criteria set in section 3.7 of the CP for determining which insurers will be required to have a recovery plan in place, the Authority will consider if an insurer meets, at minimum, any criteria listed in that section. Also, for clarification, under the Insurance Act 1978, a ‘domestic insurer’ is defined as:

“insurance business where, whether the contract of insurance is made in Bermuda or elsewhere, the subject-matter of the contract is either—

- a) property that at the time of the making of the contract is in, or in transit to or from Bermuda; or*
- b) the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Bermuda; or*
- c) a risk of a company formed in Bermuda that is not an exempted company within the definition of that expression in section 127 of the Companies Act 1981”*

This excludes all exempted companies as defined under section 127 of the Bermuda Companies Act 1981.

Insurance groups

Stakeholders sought clarification on whether subsidiaries that are covered by group recovery plans will be required, under the proposed regime, to prepare separate recovery plans.

Response:

The Authority would like to draw attention to Section 2.9 of the CP, which states that the Authority’s *“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.”*

Therefore, the Authority expects that when an insurer is included in a recovery plan required by and filed with a group-wide supervisor in another jurisdiction, the Authority will defer to the recovery plan filed with the group-wide supervisor unless there are material concerns that the group-wide recovery plan does not sufficiently cover the entity in the Authority’s jurisdiction. If the Authority requires an insurer to prepare a separate entity-level recovery plan, the Authority will seek to cooperate and coordinate with the group-wide supervisor to avoid inconsistent recovery planning and actions in times of crisis.

Triggers

Stakeholders sought clarification on when a recovery plan would be used and what may trigger a recovery plan’s activation.

Response:

As noted in section 3.2 of the CP, a recovery plan is developed, maintained and owned by the insurer. Thus, recovery planning is the insurer’s responsibility. Accordingly, insurers should set triggers that reflect their risk profile and operating environment. Broadly, a trigger framework within the insurer’s recovery plan should allow the insurer to promptly identify any emerging risks that may potentially threaten its viability. Also, a trigger framework should be aligned with other contingency plans and processes in the insurer’s Enterprise Risk Management (ERM).

As noted in the IAIS application paper, a trigger framework “*should operate in a cascading manner to reflect the fact that different levels of response will be required, depending on the circumstances and severity of the stress event. For instance, an insurer may choose to use certain criteria as ‘early warning indicators’ to alert it to emerging risks, and determine that these criteria require heightened monitoring. Other criteria may be used as ‘trigger points’ for informing more intensified responses such as instigating escalation procedures and activation of the recovery plan*”. That being so, the Authority expects the insurer to typically set trigger points for the recovery plan’s activation above minimum regulatory requirements.

Governance

Stakeholders sought clarification on the governance requirements, such as recovery plans’ monitoring, review and testing (including frequency), ownership of the recovery plan, responsibilities and whether the board of directors should approve the recovery plan.

Responses:

As noted in section 3.2 of the CP, the insurer develops, maintains and owns the recovery plan. Thus, the recovery planning process’ governance should build on and be fully integrated into the insurer’s corporate governance arrangements. The Authority expects the insurer’s board of directors to be responsible for the recovery plan’s final approval. The Authority also expects the insurer to properly identify and document the process, including key persons and their roles and responsibilities for developing, approving, reviewing, testing, monitoring, escalating and activating the recovery plan.

Overlap with CISSA

Stakeholders sought clarification on whether the recovery plan could be incorporated into the Commercial Insurer's Solvency Self-Assessment (CISSA).

Response:

Where a recovery plan is required, as determined by the criteria noted in section 3.7 of the CP, the Authority expects the insurer to prepare a plan separate from the CISSA. Nevertheless, as noted under section 3.5 of the CP, 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. In such cases, the insurer could incorporate the recovery planning measures into its CISSA.

Where a standalone recovery plan is required, the Authority recognises that the objectives of some of insurers’ existing ERM tools, to a certain extent, may overlap with the recovery planning’s objectives. 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.

Commercial insurer under close monitoring

Stakeholders sought clarification on the definition of a commercial insurer under close monitoring.

Response:

The Authority consider an insurer to be under close monitoring if the Authority has identified any prudential or conduct issues from that insurer that the Authority determines could potentially put the policyholders or the reputation of BMA or Bermuda at risk.

Recovery planning guidance notes

Stakeholders sought clarification on whether, once the recovery planning rules have been developed, the Authority will issue guidance notes providing more detail on the practical implementation of these rules.

Response:

Once the recovery planning rules have been developed, the Authority expects to issue guidance in the future, setting out its expectations on the practical implementation of recovery planning rules. The guidance will also endeavour to clarify some of the issues raised from this consultation process and will also be subject to public consultation before being finalised.

European Insurance and Occupational Pensions Authority (EIOPA) proposal on the development of recovery and resolution directive

Stakeholders sought clarification on whether Bermuda's regime is considering EIOPA proposals on the development of recovery and resolution directive.

Response:

The Authority recognises EIOPA's proposals for establishing a harmonised framework for recovery and resolution. Broadly, the key fundamental elements of EIOPA's proposed recovery planning requirements are aligned with the IAIS Insurance Core Principles 16.15 (and related elements of the Common Framework for the Supervision of International Active Insurance Groups). The Authority will continue monitoring and assessing those developments to determine if they might impact the Bermuda regime.

The Authority would once again like to thank stakeholders for their participation in this consultation exercise. The BMA remains committed to working with industry and other interested parties to ensure that the results achieved are effective, adequate and proportionate. Any stakeholder who wishes further clarification or additional information on these matters should contact the Authority directly at FSRD@bma.bm.

Sincerely,

Bermuda Monetary Authority