

6 May 2025



Dear Stakeholders,

Re: Consultation Paper- Proposed Enhancements to the Insurance Group Supervision Framework

In December 2024, the Bermuda Monetary Authority (Authority or BMA) issued the Consultation Paper *Proposed Enhancements to the Insurance Group Supervision Framework*. Through the proposed enhancements to the Insurance Act 1978 (Act), the BMA primarily sought to:

- i. Ensure that insurance group supervision is mandatorily triggered by the presence of both a registered insurance entity and its ultimate parent company in Bermuda, where the ultimate parent company also controls insurance entities domiciled outside of Bermuda (i.e., mandatory group supervision does not apply in cases where there are no operating insurance entities in Bermuda); and
- ii. Apply a direct approach to the supervision of insurance groups by introducing provisions to allow for the designation and registration of a designated insurance holding company through which supervision would be exercised.

The BMA wishes to thank industry stakeholders for their engagement with this consultation exercise. The Authority remains committed to working with stakeholders as we continue to enhance the insurance regulatory framework. The objective is to remain aligned with international standards, facilitate the protection of policyholders, consider the impact of the industry on financial stability, and safeguard the reputation of Bermuda.

The Response to Stakeholder Feedback

The general feedback indicated the need to proceed with care to minimise the risk of the proposals potentially leading to operational disruptions within groups, including disruption in some cases where key long-standing supervisory relationships exist. Respondents also underscored the need to apply the proposals in a proportionate and transparent manner, with regard to due process and firm-specific circumstances.

The Authority has carefully reviewed the feedback and considered the proposals made by all stakeholders. The BMA knows these matters are important to industry stakeholders and is committed to ongoing engagement. Further, the Authority will engage with impacted insurance groups and the relevant supervisors and/or the college of supervisors to facilitate any group supervisor transition arrangements that are required.

The following paragraph summarises the feedback received and the BMA's responses to such feedback.

I. Group Supervision by the Authority

Mandatory Group Supervision

Respondents expressed concern about the lack of discretion for the Authority to defer to other group supervisors or relevant competent authorities. It was asserted that there are specific scenarios where Bermuda insurance groups are currently subject to group supervision by another insurance regulator outside of Bermuda. It is purported that in such a scenario, it may be inappropriate for the BMA to require that the Bermuda group be subject to group supervision by the Authority. It was further proposed that such a move could lead to regulatory overlap and other regulatory inefficiencies.

The BMA's Response

The Authority maintains the view that mandatory supervision by the Authority will be triggered where:

- i. The insurance group is headed by a Bermuda specified insurer, or;
- ii. The insurance group is headed by a parent entity which is a body corporate, incorporated or formed (including by way of continuation) in Bermuda, that is not itself a subsidiary of any other entity.

Mandatory supervision by the Authority will not be triggered where the insurance group is headed by a parent company that is not a body corporate incorporated or formed in Bermuda (including by continuation). Whether or not the Authority seeks to engage in group supervision will be considered on a case-by-case basis; the Authority will have regard to whether the insurance group is directed or managed from Bermuda or whether the insurer in the insurance group with the largest balance sheet total is a Bermuda-specified insurer. In these cases, the BMA will notify the relevant entity of the Authority's intention to act as group supervisor and consider any representations made by the relevant entity.

As it relates to the concerns regarding potential regulatory overlap, it is anticipated that the risk of regulatory inefficiencies would be mitigated through engagement with the respective entities and existing supervisors. It should be emphasised that the Authority will not take any sudden actions regarding mandatory group supervision but will engage with the concerned entity and relevant supervisors when the conditions that trigger mandatory group supervision are met.

The Authority has reviewed the potential impact on current insurance groups in Bermuda and does not anticipate significant disruptions to the operations of existing colleges of supervisors for the impacted groups.

Withdrawal from the Role of Group Supervisor

A main theme of the feedback across respondents related to the inflexibility of the proposals regarding the Authority's ability to withdraw from the group supervisor role. The general view was that the proposals should include specified conditions under which the Authority may withdraw.

Respondents also maintained that there should be a prescribed condition that the Authority coordinates with all relevant supervisors. There was a call for further details regarding the withdrawal and transition process to assist in managing any disruption in operations.

Additionally, respondents called for a transparent appeals process related to group supervision decisions.

The BMA's Response:

The proposed provisions provide that, following notice to an insurance group of the Authority's intention to withdraw as group supervisor, the group will have an opportunity to make written representation to the BMA. It is anticipated that this representation would communicate any transitional factors that should be considered by the Authority.

Stakeholders are reminded that decisions regarding group supervision will not be made without coordination with the relevant college of supervisors and the relevant entity. Where the prevailing conditions and circumstances support the Authority's determination that it is appropriate to act as group supervisor, or the situation requires the Authority to withdraw as a group supervisor, sufficient time for transition arrangements will be afforded to the impacted entities.

The BMA appreciates the practical benefits to both insurance groups and the Authority in allowing withdrawal from the role of group supervisor where there is an existing regulatory relationship with other supervisors. However, as the regulator of insurance business in Bermuda, the Authority is responsible for the effective oversight of Bermuda insurance groups and must ensure that it is able to carry out its functions without impediment.

II. The Scope of the Proposed Framework for Designated Insurance Holding Companies

The proposed definition of an insurance holding company set out in the consultation was,

“an entity that is a body corporate incorporated, formed or registered (including by way of continuation) in Bermuda that holds in participations in one or more companies where at least one of the companies is an insurer.”

Respondents indicated that the proposed definition appears to capture overseas companies, which would not be appropriate or necessary to achieve the objectives of the framework.

Additionally, respondents sought clarity on the scope of supervision, including clarity on the circumstances under which sub-group supervision would be exercised.

The BMA's Response:

The Authority accepts the recommendation to amend the definition so that overseas companies with a permit to carry on business in or from Bermuda are not captured within the scope of the proposals. It is not the Authority's intention to capture such entities, and this will be clarified in the legislative amendments.

To this end, an amendment has been made to the proposed definition to remove the words “or registered” so as to exclude permit companies as follows:

“‘insurance holding company’ means an entity that is a body corporate incorporated or formed (including by way of continuation) in Bermuda that holds participations in one or more companies where at least one of the companies is an insurer.”

As it relates to determining the application of group supervision, in principle, the BMA's group supervision is carried out at the level of the ultimate parent company in Bermuda. The Authority will review group structures on a case-by-case basis to determine the scope of group supervision.

In cases where there is more than one entity that effectively ‘controls’ all the insurance legal entities in the group, the Authority will make a determination regarding the entity that exercises the greatest level of control by considering the following factors:

- i. The proportion of the insurance business relative to the other businesses it controls;
- ii. The degree of operational control; and
- iii. The degree of shareholder control.

As provided for under section 27CA of the Act, the BMA will also seek to understand the nature of non-insurance operations and determine whether it would be appropriate to supervise the insurance operations of the group and, where relevant, liaise with regulators of other operations to obtain desired supervisory outcomes.

III. Changes to the Approach to Insurance Group Supervision

Respondents queried the proposed designation process regarding removing the designated insurer and replacing it with the designated insurance holding company.

Additionally, respondents sought clarity on how this new designation process would affect current groups, including Internationally Active Insurance Groups (IAIGs). Concerns were raised regarding the need for entities to have an avenue to appeal the designation.

The BMA's Response:

In the initial proposal, the BMA sought to apply a direct approach to the supervision of insurance groups by removing the designated insurer, through which the Authority currently applies indirect supervision, and replacing the designated insurer with a designated insurance holding company. The Authority sought to remove impediments to effective group supervision, particularly as it relates to enforcement, through the designated insurance holding company.

After careful review of the feedback received regarding the merits of the Authority's current indirect approach to group supervision through the designated insurer and noting concerns with respect to the application of certain powers to insurance holding companies, the Authority has decided to maintain the designated insurer as the primary approach to group supervision. The Authority will only apply direct supervision to insurance holding companies in cases where group supervision through the designated insurer is determined to be ineffective; such cases are outlined as follows:

- i. The Authority is unable to effectively discharge any one or more of its functions under section 27E as group supervisor for the insurance group by supervising the designated insurer; or
- ii. Any one or more of the conditions set forth in section 32(1) are met and the Authority deems that intervention would not be effective by supervising the designated insurer for the insurance group.

Under this approach, the Authority will, in addition to designating an insurer for the purposes of group supervision, identify an insurance holding company within the Bermuda group, which would be the designated insurance holding company should circumstances arise for the purpose of group supervision. For avoidance of doubt, the Authority will only designate a Bermuda entity as a designated insurance holding company.

In such a case, the Authority will provide notice to the relevant entities by communicating the identification of the insurance holding company and explaining how this designation would impact the regulatory obligations of the group. The legislative amendments proposed will provide for representations to be made to the Authority regarding the designation of the insurance holding company.

For clarity, the designated insurance holding company will only assume the role of the designated insurer in those cases where the BMA deems it ineffective to apply group supervision through the designated insurer. Where such a case arises, the Authority will notify the designated insurer and, within such time as the Authority specifies in the notice, the designated insurer may make written representations to the Authority; the BMA will consider any written representations made by the designated insurer within such period.

Where the decision is made for the designated insurance holding company to replace the designated insurer, the Authority will take the necessary steps to transition supervision and enforcement oversight from the designated insurer to the designated insurance holding company.

In the case of IAIGs, group supervision will be applied through the Head of the IAIG, which may be an insurance holding company. The Authority expects to issue separate requirements for IAIGs.

IV. Direct Powers of the BMA

Responses provided mainly focused on the conditions under which the direct powers proposed would be exercised. Clarity was sought as regards to the scenarios that may warrant supervisory intervention, and the appeals process related to the exercise of such powers. Respondents sought assurance that powers would be applied in a proportionate, transparent and consistent manner.

The BMA's Response:

The Authority has taken the decision to maintain the designated insurer and only to apply supervision and enforcement directly to the designated insurance holding company in those circumstances previously outlined.

To this end, where the decision is made to apply supervisory and enforcement powers to the designated insurance holding company of a relevant Bermuda group, the same powers that are currently applied to the designated insurer will apply to the designated insurance holding company with any necessary modifications, including the power to:

- i. Apply to the courts in Bermuda to issue injunctions restraining specified actions by a designated insurance holding company;
- ii. Issue penalties against a designated insurance holding company;
- iii. Object to an appointment or removal of officers and controllers of the designated insurance holding company if they are not, or no longer fit and proper; and
- iv. Present a petition to the courts in Bermuda for the designated insurance holding company to be wound up.

It must be reiterated that these powers will be applied proportionately, relative to the nature, scale and complexity of the insurance group. Further, the BMA, where relevant, will engage with other involved supervisors prior to taking an enforcement action.

The Authority's current regulatory approach is to engage with regulated entities prior to taking enforcement action. Additionally, rights of appeal are afforded to regulated entities in accordance with the Act.

V. Ongoing Obligations of Designated Insurers or Designated Insurance Holding Companies, as Applicable

Respondents called for greater clarity as it relates to the proposed notifications of material change requirements for designated insurance holding companies. Generally, respondents focused on the following:

- i. How the changes impact the current designated insurer framework;
- ii. Material change notification thresholds; and
- iii. Risk assessments associated with material changes.

The BMA's Response:

As the Authority has made the decision to revert to the current designated insurer framework, deviating only in those circumstances where group supervision is determined to be ineffective, the current ongoing regulatory obligations within the Act will apply either to the designated insurer or to the designated insurance holding company, as the case may be.

Regarding the changes to the notification requirements for certain material changes, the Authority will only require pre-approval of material changes by the group in cases of amalgamation with or acquisition of another firm. In such cases, the designated insurer or designated insurance holding company (if any) will be expected to assess the risks associated with the material change.

The Authority will not stipulate what should be included in the risk assessment. It is expected that the assessment will include the impacts and risks of the transaction to its group business operations and financial position in accordance with its current risk management framework. Where directed by the Authority, the risk assessment shall accompany the notice to the Authority or be provided as additional information post receipt of the notice upon request by the Authority.

The Authority will engage with stakeholders regarding thresholds for material change notifications with a view to issuing guidance on the same. The intention is not to duplicate notification efforts or introduce onerous obligations, but rather to ensure that the BMA is able to appropriately supervise material changes that can affect the structure and operations of the group.

VI. Transitional Arrangements

Respondents emphasised the need to be afforded adequate time to make transition arrangements to avoid disruption to operations and to coordinate with relevant supervisors.

The BMA's Response:

The Authority agrees that adequate time should be provided to make transition arrangements. As such, the Authority proposes a transition period of twelve (12) months from the date of assent to ensure full compliance by the impacted groups. The Authority will coordinate with the impacted groups on a case-by-case basis where additional time is required to complete the transition.

Next Steps

The BMA has considered all feedback received and has, where appropriate, made amendments to the proposals in response.

Stakeholders are reminded that the Authority will be issuing regulatory requirements to be applied specifically to IAIGs as a part of the overall effort to enhance the insurance group supervision framework.

As the updates to the insurance group supervision framework are implemented, the Authority will continue to facilitate engagement with all stakeholders to ensure a coordinated process.

The BMA will also review areas that respondents noted would benefit from additional explanation with a view to issuing guidance or a statement of principles to foster understanding of regulatory expectations.

The Authority would like to thank stakeholders for their feedback and remains committed to working with relevant parties to finalise the supervisory framework enhancements. Stakeholders who require further clarification or additional information on the proposed enhancements to the insurance group supervision framework may contact the BMA at insuranceregulatoryaffairs@bma.bm

Sincerely,

Bermuda Monetary Authority

Appendix: Summary of post-consultation changes.

Proposed Amendment Consulted (December 2024 Consultation)	Description of Proposed Amendment	Post-consultation Changes
Proposal 1: Mandatory group supervision where the ultimate parent entity is in Bermuda	Introduces a mandatory requirement that the Authority be the group supervisor for insurance groups headed by a Bermuda specified insurer or by a holding company that is the ultimate parent entity in Bermuda.	No change. The Authority will make provision for group supervision transition arrangements, allowing for sufficient time for the transition, and will coordinate closely with impacted entities.
Proposal 2: Withdrawal as group supervisor	Outlines criteria for when the Authority may withdraw as group supervisor.	No change.
Proposal 3: Definition of insurance holding company	The proposed definition was: <i>“Insurance holding company” means an entity that is a body corporate incorporated, formed or registered in Bermuda (including by way of continuation) that holds participations in one or more companies where at least one of the companies is an insurer.”</i>	An amendment was made to the definition so as not to capture entities out of scope, specifically, overseas/permit companies. Amendment removes the word ‘registered’ as follows: <i>“Insurance holding company” means an entity that is a body corporate incorporated or formed (including by way of continuation) in Bermuda that holds participations in one or more companies where at least one of the companies is an insurer.”</i>
Proposal 4: Designated insurance holding company	Provides for the Authority to designate an insurance holding company of a Bermuda group that would replace the role of the designated insurer.	The Authority has taken the decision to maintain the Designated Insurer (DI) in its supervisory approach and amend the Act to provide for the Authority to review the effectiveness of group supervision through the DI and to designate an insurance holding company through which it would supervise the group, specifically in cases where the DI is determined to be ineffective. These cases will be detailed in the Act. In such a case, current obligations of the DI will be required of the designated insurance holding company. Representation may be made to the Authority regarding the designation of an insurance holding company.
Proposal 5: Registration of a designated insurance holding company	Provides for the Authority to register the designated insurance holding company to facilitate such company assuming the role of the designated insurer.	As the Authority has taken the decision to maintain the DI, the Act will provide for the registration of a designated insurance holding company in the case where it has been determined that supervision through the DI is ineffective and notice of the same has been communicated to the relevant entities.
Proposal 6: Minimum direct powers in relation to designated insurance holding companies	Provides for powers in relation to designated insurers to be applied directly to designated insurance holding companies.	Current powers under the Act will continue to apply to designated insurers or will apply to the designated insurance holding company, if any, with necessary modifications.

Proposal 7 (a): Shareholder controller changes involving designated insurance holding companies of insurance groups	Requires pre-notification to the Authority for new or increased control by shareholder controllers of designated insurance holding companies (for private companies).	The Authority will revert to the current conditions set forth in the Act.
Proposal 7 (b): Material changes involving designated insurance holding companies of insurance groups	Requires the designated insurance holding company to give written notice to the Authority and allow 30 days for the Authority's review and "no objection" as it relates to the intention to "amalgamate with or acquire another firm" or "acquisition of controlling interest in another firm".	<p>The proposal has been refined to make it Bermuda-focused and not to include BMA's pre-approval of transactions in other Jurisdictions.</p> <p>Amalgamations, mergers and acquisitions will require advance notice to the Authority prior to making the transaction.</p> <p>For overseas transactions, a designated insurer will have the obligation to notify the Authority of the transaction within 30 days of such material change transaction taking effect.</p>
Consequential amendments	-	<p>Amendments are anticipated to be made to the Third and Fifth Schedules of the Bermuda Monetary Authority Act 1969 relating to institutions that the Authority regulates and the wording for fees currently applied to the DI, respectively. Regarding the latter and to align with post-consultation amendments, fees will apply to either the DI or the designated insurance holding company, if any.</p> <p>Similar amendments will be made to the Insurance (Group Supervision) Rules.</p>
Housekeeping amendments	-	The Authority anticipates amendments to the Act in a manner such that all provisions relating to groups (including the power to make group rules) are set out under Part IVA of the Act.

Table 1 Comparison of proposed amendments and post-consultation changes