

IAIS Consultation

Print view of your comments on "Draft Application Paper on Resolution Powers and Planning" -
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Jurisdiction	International
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Treat my comments as confidential	No

Question	
Answer	Q1 General Comment on the draft Application Paper <p>The IAA welcomes this Application paper and in general supports the establishment of regimes for planning ex-ante for the resolution of insurers and reinsurers. The IAA believes that it is helpful to consider the impact of a company's failure to make it more likely that any run-off is orderly and for supervisors and resolution authorities to consider the framework within which resolution powers might be activated so that insurers are clearer on what might happen.</p>
Answer	Q2 Comment on section 1 Introduction <input type="text"/>
Answer	Q3 Comment on section 1.1 Objectives and background <input type="text"/>
Answer	Q4 Comment on paragraph 1 <input type="text"/>
Answer	Q5 Comment on paragraph 2 <input type="text"/>
Answer	Q6 Comment on paragraph 3 <input type="text"/>
Answer	Q7 Comment on paragraph 4 <input type="text"/>
Answer	Q8 Comment on section 1.2 Scope of application <input type="text"/>
	Q9 Comment on paragraph 5 <input type="text"/>

Answer

The IAA supports the development of an international framework so that there is a more consistent approach for IAIGs to adopt across the different countries within which they operate.

Q10 Comment on paragraph 6

Answer

Q11 Comment on paragraph 7

Answer

Q12 Comment on section 1.3 Proportionality

Answer

Q13 Comment on paragraph 8

Answer

Q14 Comment on paragraph 9

Answer

Q15 Comment on section 1.4 Terminology

Answer

Q16 Comment on paragraph 10

Answer

Q17 Comment on paragraph 11

Answer

In respect of Table 2:

NCWOL - whilst some guidance is given in paragraph 100 on applying NCWOL, we would comment that the liquidation of insurance companies does not happen very frequently –and in some jurisdictions may never have happened. Hence it is not easy to determine NCWOL in practice and will require much expert judgement. Consequently, it will be important to balance the cost of determining NCWOL against the benefit it will bring. Further it is not clear who will cover the costs of the determination, or the cost of any compensation that may be needed. The IAA believe a more proportionate approach for determining a floor to policyholder payments should be considered.

The IAA also note that the Term 'No creditor worse off than in liquidation (NCWOL)' is defined as a "Principle that requires that, in a resolution action other than a liquidation, creditors should be entitled to compensation if they receive less than they would have received if the insurer was liquidated." However, the IAA's understanding of the no creditor worse off (NCWO) principle is that no creditor (or shareholder) shall incur greater losses than they would have incurred if the insurer had been liquidated. This is as set out in Article 75 of Directive 2014/59/EU (BRRD). The distinction between 'not receiving less' and 'not losing more' is of great practical importance as well as having financial implications.

For example, the successful resolution of an insurer may result in annuities continuing to be paid as in the contract; if an annuitant were to die in an accident shortly after the resolution and his annuity payments cease as a result, his estate could then apply the definition of NCWOL currently in Table 2 to claim a lump sum as compensation equivalent to the value of the commuted annuity that would have been paid in a liquidation. Under the definition of NCWO, the annuitant would have been treated fairly in accordance with their contract and would have no further claim.

The definition also has big practical implications, as in for example how to determine a fair value in a liquidation for individual annuities in payment. This could be very challenging at the individual policy level, but, provided the 'not losing more' definition of NCWO is used, it

is much less of an issue where a resolution enables annuities to continue to be paid.

The IAA also note that the NCWOL issue crops up in a number of places in the paper and, although paragraph 63 of the paper quotes the 'not losing more' version, paragraph 85 quotes the 'not receiving less' version. The distinction needs to be recognized and the wording needs to be corrected accordingly.

Resolution – the IAA notes that “viability” is not defined neither in this AP or ICP 12. Because this can mean different things to different bodies in different jurisdictions, we believe it would be helpful to expand on this.

Run-off - we note that it is not clear here what the definition of “solvent” is – in other words, what degree of certainty is expected over the ability to meet debts as they fall due, and hence what level capital resources are needed to give a level of certainty?. Solvency can be viewed in the prudential sense of failing to meet PCR or could be the wider corporate sense of value of assets being less than the value of the liabilities.

This wording defines “insolvent run-off” as applicable to an insurer “who is no longer able to pay debts to its creditors when the debts fall due”. This should be changed to “no longer able to pay all debts ...” An insurer may be insolvent due to longer tail liabilities, whilst able to meet cash demands for the next several years. It can be more cost-effective to allow the insurer to run off its debts for a number of years, until the remaining debts become problematic.

Given the difficulties often faced in insurance companies in determining the absolute value of the liabilities given the assumptions that need to be made, particularly for companies that are needing resolution, it is not easy to assess when a company “is [or isn't] still able to pay debts to its creditors when the debts fall due” as in the Run-off definition. The IAA believe that “viability” needs to be defined and may benefit from a similar test. For example, it may be appropriate to consider a principle that a company is viable or assessed to be able to go into solvent run-off if there are sufficient assets to meet liabilities at a 1:20 level. Clearly the 1:20 test could be set at a different level depending on the risk appetite in a particular jurisdiction to insurer failure and the resources of the relevant PPF.

Q18 Comment on section 1.5 Inputs

Answer

Q19 Comment on paragraph 12

Answer

Q20 Comment on paragraph 13

Answer

Q21 Comment on paragraph 14

Answer

Q22 Comment on section 1.6 Structure

Answer

Q23 Comment on paragraph 15

Answer

Q24 Comment on section 2 Objectives and concepts of resolution of insurers

Answer

Q25 Comment on section 2.1 Concepts

Answer

Q26 Comment on paragraph 16

Answer

Q27 Comment on paragraph 17

Answer

Q28 Comment on paragraph 18

Answer

Q29 Comment on section 2.2 Objectives of a resolution framework

Answer

Q30 Comment on paragraph 19

Answer

Q31 Comment on paragraph 20

Answer

See our comments in relation to NCWOL in our answer to Q17

Q32 Comment on paragraph 21

Answer

Q33 Comment on paragraph 22

Answer

The IAA agrees that recouping public funding from the insurance sector is a sensible approach in principle but notes that it may not be possible, or practical, to recoup the resolution funding for a major insurer without precipitating the weakening, or prompting the failure of, other insurers. Also, the moral hazard is essentially the same if the senior management of an insurer believes the sector will be taxed to cover the costs of failure.

Q34 Comment on paragraph 23

Answer

Q35 Comment on section 3 Entry into resolution

Answer

Q36 Comment on paragraph 24

Answer

It would be worth bringing forward the definition of "balance-sheet insolvent" from Box 1 i.e., assets less than liabilities – as it differentiates from breach of PCR or regulatory insolvent

Q37 Comment on paragraph 25

Answer

Q38 Comment on paragraph 26

Answer	Following from our answer to Q17, the IAA believes that it may be helpful in some jurisdictions for non-viability assessments to be linked to a 1:X year probability of the value of assets becoming less than the value of liabilities as that approach can take into account the extent of any uncertainty or volatility in the value of the insurer's assets and liabilities.
	Q39 Comment on paragraph 27
Answer	Box 1 – although the IAA appreciates that this box includes illustrative examples, bullet 4 could be amended to say "... insurer is, or is likely to be, not able to..."
	Q40 Comment on paragraph 28
Answer	
	Q41 Comment on paragraph 29
Answer	
	Q42 Comment on section 4 Resolution powers
Answer	
	Q43 Comment on paragraph 30
Answer	
	Q44 Comment on paragraph 31
Answer	
	Q45 Comment on paragraph 32
Answer	An additional power may be the restructuring of assets, as well as liabilities. This may specifically apply to subordinated debt that can be converted into equity in the event of supervisory action(s), or may rely on more general powers (see para 61).
	Q46 Comment on section 4.1 Taking control
Answer	
	Q47 Comment on paragraph 33
Answer	
	Q48 Comment on paragraph 34
Answer	
	Q49 Comment on paragraph 35
Answer	
	Q50 Comment on paragraph 36
Answer	
	Q51 Comment on paragraph 37

Answer

Q52 Comment on paragraph 38

Answer

Q53 Comment on paragraph 39

Answer

Q54 Comment on section 4.2 Prohibition of certain payments and transfers

Answer

Q55 Comment on paragraph 40

Answer

Q56 Comment on paragraph 41

Answer

Q57 Comment on paragraph 42

Answer

Q58 Comment on paragraph 43

Answer

Q59 Comment on paragraph 44

Answer

Q60 Comment on paragraph 45

Answer

Q61 Comment on paragraph 46

Answer

Q62 Comment on paragraph 47

Answer

Q63 Comment on paragraph 48

Answer

Q64 Comment on paragraph 49

Answer

Q65 Comment on paragraph 50

Answer

Q66 Comment on paragraph 51

Answer	The IAA agrees with the need to control asset transfers within a group as otherwise some parts of the group could be strengthened to the detriment of other parts.
	Q67 Comment on section 4.3 Withdrawal of licence to write new business and run-off
Answer	
	Q68 Comment on paragraph 52
Answer	
	Q69 Comment on paragraph 53
Answer	
	Q70 Comment on paragraph 54
Answer	
	Q71 Comment on paragraph 55
Answer	
	Q72 Comment on paragraph 56
Answer	
	Q73 Comment on paragraph 57
Answer	
	Q74 Comment on paragraph 58
Answer	As noted above in relation to Q17, the IAA believes it is important that any assessment of the ability of an insurer to meet all its liabilities as they fall due takes into account the potential uncertainty in the valuation of both the assets and the liabilities. The degree of uncertainty could be illustrated by considering 1:X year assessment of the likelihood that the value of assets becomes less than the value of the liabilities. In addition liquidity should also be taken into account through analysis of the likely timing of claims payments. Where there is significant reliance on reinsurance, there also need to be consideration of whether reinsurers will be willing (and able) to pay their share of any potential claims – bearing in mind that a reinsurance failure may be one cause of the non-viability.
	Q75 Comment on paragraph 59
Answer	
	Q76 Comment on section 4.4 Restructuring mechanisms
Answer	
	Q77 Comment on paragraph 60
Answer	
	Q78 Comment on paragraph 61
Answer	An additional power may be the restructuring of assets, as well as liabilities

Q79 Comment on paragraph 62

Answer

The IAA notes there is no explicit mention of the position of participating or with-profit policies in the AP. Typically, discretionary benefits are used as a loss-absorbency mechanism by insurers in adverse conditions but are often constrained by the need to consider policyholders' "reasonable expectations". Clearly any write-down of such liabilities would need to consider the respective position of both "par and "non-par" policyholders – and in particular, if the par policyholders benefits reflect the performance of a ring-fenced fund , whether and under what condition that ring-fenced fund may cease to exist and assets become co-mingled with the other assets of the insurer.

Q80 Comment on paragraph 63

Answer

Q81 Comment on paragraph 64

Answer

Q82 Comment on paragraph 65

Answer

Q83 Comment on paragraph 66

Answer

Q84 Comment on paragraph 67

Answer

Q85 Comment on paragraph 68

Answer

Q86 Comment on paragraph 69

Answer

The IAA notes that the value of certain blocks of business (e.g. auto insurance or group life and health) may decay very quickly so it may be that the sale of these blocks is prioritized over other parts of the portfolio.

Q87 Comment on paragraph 70

Answer

Q88 Comment on paragraph 71

Answer

Q89 Comment on paragraph 72

Answer

The IAA notes that some companies may have specialized and/or complex products, which may have led to the company's problems. These should be considered as part of the ex-ante planning as to how they will be administered in the event of resolution.

Q90 Comment on paragraph 73

Answer

Q91 Comment on paragraph 74

Answer

Q92 Comment on section 4.5 Suspension of rights

Answer

Q93 Comment on paragraph 75

Answer

Q94 Comment on paragraph 76

Answer

Q95 Comment on paragraph 77

Answer

Q96 Comment on paragraph 78

Answer

Q97 Comment on paragraph 79

Answer

Q98 Comment on paragraph 80

Answer

Q99 Comment on paragraph 81

Answer

Q100 Comment on paragraph 82

Answer

Q101 Comment on section 4.6 Liquidation

Answer

Q102 Comment on paragraph 83

Answer

Q103 Comment on paragraph 84

Answer

Q104 Comment on paragraph 85

Answer

Q105 Comment on paragraph 86

Answer

Q106 Comment on section 4.7 Resolution powers in ComFrame

Answer

Q107 Comment on paragraph 87

Answer

Q108 Comment on paragraph 88

Answer

Q109 Comment on paragraph 89

Answer

Q110 Comment on paragraph 90

Answer

Q111 Comment on paragraph 91

Answer

Q112 Comment on paragraph 92

Answer

Q113 Comment on paragraph 93

Answer

The IAA suggests changing "can require" to "could be implemented to require" in the first two sentences as "can" implies it already exists. Also, it is not obvious in the second instance that contract law in a particular jurisdiction would permit this unilateral override (except perhaps intra-group).

The IAA notes that many groups have data and IT centers which service multiple jurisdictions and it is important that no one jurisdiction or group entity is serviced with greater priority than the other jurisdictions or entities which rely on that facility.

Q114 Comment on paragraph 94

Answer

Q115 Comment on paragraph 95

Answer

Q116 Comment on paragraph 96

Answer

Q117 Comment on paragraph 97

Answer

Q118 Comment on paragraph 98

Answer

Q119 Comment on paragraph 99

Answer	The IAA suggests rewriting this quite long and complicated paragraph.
	Q120 Comment on section 4.8 Safeguards
Answer	
	Q121 Comment on paragraph 100
Answer	
	Q122 Comment on paragraph 101
Answer	
	Q123 Comment on section 5 Resolution plans
Answer	The IAA suggests that insurers' ORSA could be used by supervisors as a useful source of information.
	Q124 Comment on section 5.1 Objective
Answer	
	Q125 Comment on paragraph 102
Answer	
	Q126 Comment on section 5.2 Scope of application and proportionality
Answer	We strongly support the principle of proportionality in this context. The development of recovery plans can be an intensive and costly exercise, so we believe that focusing on insurers whose failure would have a large, and potentially systemic, impact should be the priority with proportionate approaches adopted for other insurers. In particular, given the low probability of resolution being required for well-capitalised firms or groups, the requirement to fully implement contingency arrangements ex-ante should be subject to cost/benefit analysis.
	Q127 Comment on paragraph 103
Answer	
	Q128 Comment on paragraph 104
Answer	
	Q129 Comment on paragraph 105
Answer	
	Q130 Comment on paragraph 106
Answer	
	Q131 Comment on paragraph 107
Answer	
	Q132 Comment on paragraph 108

Answer	<input type="text"/>
	Q133 Comment on paragraph 109
Answer	<input type="text"/>
	Q134 Comment on section 5.3 Information needs
Answer	<input type="text"/>
	Q135 Comment on paragraph 110
Answer	<input type="text"/>
	Q136 Comment on paragraph 111
Answer	<input type="text"/>
	Q137 Comment on paragraph 112
Answer	<input type="text"/>
	Q138 Comment on paragraph 113
Answer	<input type="text"/>
Answer	Q139 Comment on section 5.4 Key elements of a resolution plan In relation to the impact on the PPS, it is essential that all resolution plans should be compatible, and supportive of, the aims and obligations of the relevant PPS. A PPS may be obliged to play an active role in protecting the insurance cover of policyholders, rather than simply providing funding for compensation or a shortfall in benefits. The practical implications of maintaining cover at any minimum level protected by the PPS need to be considered as well as the funding implications.
	Q140 Comment on paragraph 114
Answer	<input type="text"/>
	Q141 Comment on paragraph 115
Answer	<input type="text"/>
	Q142 Comment on paragraph 116
Answer	<input type="text"/>
	Q143 Comment on section 5.4.1 Executive Summary
Answer	<input type="text"/>
	Q144 Comment on paragraph 117
Answer	<input type="text"/>
	Q145 Comment on paragraph 118
Answer	<input type="text"/>

Q146 Comment on paragraph 119

Answer

Q147 Comment on section 5.4.2 Description of the insurer

Answer

Q148 Comment on paragraph 120

Answer

Q149 Comment on section 5.4.3 Entry into resolution

Answer

Q150 Comment on paragraph 121

Answer

Q151 Comment on section 5.4.4 Analysis of potential financial stability impacts of failure

Answer

Q152 Comment on paragraph 122

Answer

Q153 Comment on paragraph 123

Answer

Q154 Comment on paragraph 124

Answer

Q155 Comment on paragraph 125

Answer

Q156 Comment on section 5.4.5 Resolution strategy

Answer

Q157 Comment on paragraph 126

Answer

Q158 Comment on paragraph 127

Answer

Q159 Comment on paragraph 128

Answer

Q160 Comment on paragraph 129

Answer

Q161 Comment on paragraph 130

Answer	<input type="text"/>
	Q162 Comment on paragraph 131
Answer	<input type="text"/>
	Q163 Comment on paragraph 132
Answer	The IAA agrees that resolution strategies need to be adaptable to different scenarios, particularly as the range of scenarios is unlikely to include all future crises in sufficient detail, so flexibility in resolution planning and implementation will be needed.
	Q164 Comment on section 5.4.6 Operational aspects
Answer	<input type="text"/>
	Q165 Comment on paragraph 133
Answer	The IAA suggests changing "would be implemented" to "might be implemented", as failures are more common during crises, and each crisis has its own unique aspects. It is likely to be impossible to anticipate all the considerations that arise during a future crisis.
	Q166 Comment on paragraph 134
Answer	<input type="text"/>
	Q167 Comment on paragraph 135
Answer	<input type="text"/>
	Q168 Comment on paragraph 136
Answer	<input type="text"/>
	Q169 Comment on paragraph 137
Answer	<input type="text"/>
	Q170 Comment on section 5.4.7 Resolution planning governance
Answer	<input type="text"/>
	Q171 Comment on paragraph 138
Answer	<input type="text"/>
	Q172 Comment on paragraph 139
Answer	<input type="text"/>
	Q173 Comment on paragraph 140
Answer	<input type="text"/>
	Q174 Comment on paragraph 141
Answer	<input type="text"/>

Q175 Comment on paragraph 142

Answer

Q176 Comment on paragraph 143

Answer

Q177 Comment on paragraph 144

Answer

As stated in the IAA's Q165 comment, it is critical that resolution plans be flexible enough to adjust to changing or unanticipated circumstances. This point is discussed in paragraph 145.

Q178 Comment on paragraph 145

Answer

Q179 Comment on paragraph 146

Answer

Q180 Comment on section 5.4.8 Communication strategy

Answer

This section does not deal explicitly with the importance of employee communications, and the potential for good communications to increase the effectiveness of resolution processes. Aspects such as employee retention and motivation may need to be covered. In many jurisdictions, employees may have rights (e.g. in a wind-up) giving them preference over other creditors.

Q181 Comment on paragraph 147

Answer

Q182 Comment on paragraph 148

Answer

Q183 Comment on paragraph 149

Answer

Q184 Comment on paragraph 150

Answer

Q185 Comment on paragraph 151

Answer

Q186 Comment on paragraph 152

Answer

Q187 Comment on paragraph 153

Answer

Q188 Comment on paragraph 154

Answer	<input type="text"/>
	Q189 Comment on section 5.4.9 Impact on the PPS
Answer	<input type="text"/>
	Q190 Comment on paragraph 155
Answer	<input type="text"/>
	Q191 Comment on paragraph 156
Answer	The IAA agrees that PPS's do differ between countries and these specifics of these need to be considered, and it be that, due to different PPS scopes, some contracts could fall into two PPS's and others none despite similar contracts falling within a PPS e.g. due to host vs home country definitions.
	Q192 Comment on paragraph 157
Answer	<input type="text"/>
	Q193 Comment on paragraph 158
Answer	<input type="text"/>
	Q194 Comment on section 6 Resolvability Assessments
Answer	<input type="text"/>
	Q195 Comment on paragraph 159
Answer	<input type="text"/>
	Q196 Comment on paragraph 160
Answer	<input type="text"/>
	Q197 Comment on paragraph 161
Answer	<input type="text"/>
	Q198 Comment on paragraph 162
Answer	<input type="text"/>
	Q199 Comment on paragraph 163
Answer	<input type="text"/>
	Q200 Comment on section 6.1 Resolving impediments
Answer	<input type="text"/>
	Q201 Comment on paragraph 164
Answer	<input type="text"/>
	Q202 Comment on paragraph 165

Answer

Q203 Comment on paragraph 166

Answer

Q204 Comment on paragraph 167

Answer

Q205 Comment on section 7 Cooperation and Coordination

Answer

Q206 Comment on paragraph 168

Answer

Q207 Comment on paragraph 169

Answer

Q208 Comment on paragraph 170

Answer

Q209 Comment on paragraph 171

Answer

Q210 Comment on section 7.1 Cooperation and coordination in normal times

Answer

Q211 Comment on paragraph 172

Answer

Q212 Comment on paragraph 173

Answer

Q213 Comment on paragraph 174

Answer

Q214 Comment on paragraph 175

Answer

Q215 Comment on paragraph 176

Answer

Q216 Comment on section 7.2 Cooperation and coordination in times of crisis

Answer

Q217 Comment on paragraph 177

Answer

Q218 Comment on paragraph 178

Answer

Q219 Comment on paragraph 179

Answer

Q220 Comment on paragraph 180

Answer

The IAA suggests changing the words "all relevant information in times of crisis" to "all information expected to be relevant in times of crisis". As this refers to information identified in normal times, it will generally not be possible to identify all information relevant to a future crisis. (If this were possible, then it is likely that a future crisis would have been averted before it happened.)

Q221 Comment on paragraph 181

Answer

Q222 Comment on paragraph 182

Answer

Q223 Comment on section 7.3 Coordination agreements

Answer

Q224 Comment on paragraph 183

Answer

Q225 Comment on paragraph 184

Answer

Q226 Comment on paragraph 185

Answer

Q227 Comment on the Annex: Examples of relevant legislation on resolution powers

Answer