GLOBAL FEDERATION OF INSURANCE ASSOCIATIONS

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Response to the FSB consultation on effective resolution strategies for Global Systemically Important Insurers (G-SIIs)

GFIA welcomes the opportunity to respond to this consultation. In general, GFIA believes that the proposed guidance is appropriate for the resolution of G-SIIs. Identifying institution-specific objectives for resolution is a sensible approach, as long as these objectives are clear to the institutions in question. The proposed guidance also seems flexible enough to take account of the different types of business undertaken by G-SIIs. In particular, GFIA appreciates the flexibility regarding the point of entry into resolution, as it reflects the wide range of organisational structures in the insurance industry, as well as the diversity of insurance regulatory regimes and jurisdictional legal frameworks. In addition, GFIA welcomes the suggestion that an “opco” approach to resolution is the most suitable for resolving subsidiary-based insurance groups, as set out in Section II.1.b.

GFIA also welcomes the significant improvements made to the approach to identifying critical functions. Particularly positive is the revised definition of critical functions as those that would be likely to have a material impact on the financial system and the real economy if they failed. GFIA fully agrees that services which do not have a significant impact on economic and financial stability, or that can be easily substituted, should not be considered critical. GFIA also approves a firm-specific analysis that should be limited and focused on factors such as substitutability, taking into account the fact that critical functions vary by firm and jurisdiction.

In what follows, GFIA would like to highlight a number of remaining concerns and comments:

- **Scope:** The FSB guidance “focuses primarily on resolution strategies and plans for G-SIIs, but many aspects may also be relevant for insurers identified by any national authority as systemically important (if any)”. The paper also discusses critical functions within insurance firms. GFIA would highlight that the designation of systemically important insurers and the identification of critical functions are different processes and that policymakers should therefore not mix up these two approaches.
- **Transparency:** GFIA believes that the resolution strategy and plan, as well as the process of identification of critical functions, should be entirely transparent to the insurance firm. The FSB guidance should recognise this.
- **Flexibility:** GFIA believes it is important to ensure that regulators have sufficient flexibility in the application of resolution strategies and plans. This will allow them to take into account the specific circumstances in a resolution scenario. Insurance resolution does not have the same urgency as bank resolution and tools such as portfolio transfer and run-off facilitate this longer term process. Authorities should therefore be in a position to adapt their approach and plans as the situation evolves.

- **Proportionality in the choice of resolution tools:** GFIA would like to reiterate that those insurers that fail do so over an extended period of time and that therefore sufficient time is available to manage their failure through resolution in a way that is proportional. Rapid intervention will not prove a good reason for choice of resolution tools, especially because fire-sales of assets (which are atypical to insurance) or the crystallisation of their value could result in unnecessary value destruction. In GFIA's view, run-off and portfolio transfers are generally sufficient to deal with the large majority of insurance failures. Therefore, these should be the most preferred tools and authorities should clearly explain when using more intrusive tools why run-off or portfolio transfers are not sufficient to meet the objectives of resolution. For the same reason, liquidation and winding-up should only be used in exceptional cases of insurance failure and as a last resort, as they destroy value in a portfolio designed for buy to hold. (To illustrate the point on proportionality, GFIA questions whether requiring firms to make changes to legal and business structures to improve their resolvability, as suggested in Section II.1, would prove to be a proportionate response in any circumstance).
- **Substitutability:** GFIA would emphasise that a lack of substitutability is rarely an issue for insurers. In the insurance industry, portfolio transfers are common and capital and expertise (the two key elements of insurance capacity) have in practice proved easy to replace. That a "lack of substitutability does not appear to be an issue in the insurance industry" has already been recognised by the International Association of Insurance Supervisors (IAIS).
- **Cross-border supervisory cooperation:** GFIA believes that cooperation among resolution authorities would allow for a more consistent approach to developing sound resolution strategies and plans for cross-border financial institutions. Therefore, it would be helpful if the FSB could provide more information as to how the examples of forms of cooperation set out in Section III. (i) – (iv) might assist in this respect.
- **Legal process:** GFIA points out that, especially for resolution tools that go beyond run-off and portfolio transfers, court approval is needed in many jurisdictions (as alluded to in Section IV.1). In view of the extended timeline of insurance resolutions, there is also ample time for the approval of the courts to be sought in these situations. GFIA believes that resolution strategies must take account of and respect such legal requirements.
- **Pari passu:** As pointed out in footnote 11, The *Key Attributes* (KA 5.1) specify that resolution powers should be exercised in a way that respects the hierarchy of claims in liquidation, but that resolution authorities should also have the flexibility to depart from the general principle of equal treatment of creditors of the same class. In GFIA's view, any deviation from the principle of *pari passu* should only be considered in circumstances where adhering to it would produce obviously inequitable results. This is to minimise uncertainty for bondholders, who might otherwise be discouraged from investing in insurers.
- **Definition of critical functions:** GFIA recognises that the definition of "critical functions" is vastly improved and fully agrees that services which do not have a significant impact on economic and financial stability, or that can be easily substituted, should not be considered critical. GFIA would however suggest that, for the sake of clarity, it would be more appropriate to exclude from consideration functions that can be substituted "within a reasonable period of time and at a reasonable cost", rather than "with a minimum of time and cost".

- **Assessing criticality and substitutability of functions:** In Box 1, under the "firm-specific analysis" heading, GFIA suggests adding the following question: *How substitutable is the specific function in the specific market segments?*
- **Financial market activities and investment products**: GFIA believes that there are certain inaccuracies within the last paragraph on page 17 and the accompanying footnote number 17 and that the sole focus of that paragraph and footnote should be the power of a supervisor to impose a temporary stay. Accordingly, GFIA hereby suggests that the last paragraph on page 17 and footnote 17 be modified as follows:

Other business activities include the writing of ~~annuities and other investment~~ insurance products or policies that may have short-term liquidity risk ~~comprise either a legal promise or a strong expectation that the policy will produce the kind of return that would be received from long-term investment and a simultaneous short-term liquidity guarantee.~~[17] A temporary stay on 'cashing-out' such contracts may support the restructuring of those ~~annuity~~ products~~, for example~~, and preserve liquidity in the short term.

[17] ~~For example variable annuities, where the policyholder is given the better of the performance of a basket of designated assets or a pre-set promise (monetary amount) that does not depend on the future performance of that basket of assets. A variable annuity tends to invest in risky assets in good times, and exit such assets in bad times. This could produce a pro-cyclical environment, and potentially have a systemic impact.~~ Typically, such product designs include a surrender charge to mitigate the short-term liquidity risk.

About GFIA

Through its 40 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 60 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.