



## Public Consultation on the Development of a National Resolution Framework for (re)Insurers

November 2021

### OVERVIEW

---

On 1 September 2021, the Department of Finance (**Department**), in collaboration with the Central Bank of Ireland (**Central Bank**), published a “Public Consultation on the Development of a National Resolution Framework for (re)Insurers” (**Consultation Paper**). This paper proposes that “an effective insurance resolution framework could further contribute to achieving policyholder protection, as well as at the macro level maintaining financial stability and minimising the State’s financial exposure.”

The Consultation Paper acknowledges that proposals for a harmonised EU-wide recovery and resolution framework were anticipated at the time of publication (and indeed, just three weeks after the Consultation Paper was published, the European Commission published its draft proposal for a Directive covering these areas) and stated the Department’s intention to align its approach with proposals emerging at European level.

The Consultation Paper also assumes that the Central Bank would be the designated resolution authority under any proposed resolution framework. It is clear that the existing resolution framework for credit institutions has been a key model for the proposals being put forward for the (re)insurance industry.

It is noteworthy that the Department chose to frame its proposals in the light of statistics showing the amount of cross-border business being written by Irish (re)insurance undertakings into other EU member states. The statistics included highlight how that cross-border business (measured by premium) greatly exceeds the amount of business written into Ireland by firms authorised in other EU member states. Furthermore, outwards cross-border business significantly exceeds the amount of domestic business written by Irish firms. While this demonstrates the success Ireland has achieved as a significant (re)insurance centre, it also indicates the concern the authorities have about the possible scale of the impact that the failure of significant (re)insurers might have on the public finances. This concern perhaps also extends to Ireland’s reputation, to the extent that the potential policyholder impact of Irish (re)insurance failures might largely or wholly arise in other EU member states.

The Consultation Paper poses nineteen specific questions on which it requests feedback. These address the following areas:

---

## OBJECTIVES OF A RESOLUTION FRAMEWORK

These are proposed in the Consultation Paper as:

- To protect policyholders, beneficiaries and claimants;
- To maintain financial stability, in particular, by preventing contagion and by maintaining market discipline;
- To ensure the continuity of functions of insurers whose disruption could harm the financial stability and/or real economy;
- To protect public funds;
- To avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and/or
- To consider the potential impact of resolution actions on financial stability in other jurisdictions.

---

## SCOPE OF APPLICATION

This section of the Consultation Paper refers primarily to requirements for before-the-event resolution planning, as opposed to the actual deployment of resolution tools. The principle of proportionality is well acknowledged in the Consultation Paper, and it contrasts resolution planning, which it states “may only be applicable to a subset of insurers”, with the recent regulations requiring virtually all insurers to prepare pre-emptive recovery plans. The Central Bank’s PRISM impact ratings are mooted as a possible basis for defining the subset of insurers in respect of whom resolution plans will need to be prepared. The Consultation Paper also raises the suggestion of subjecting Irish branches of third country insurers to the proposed resolution framework (especially, it is implied, where the head office is located in a jurisdiction without its own resolution framework); however, the paper does not explicitly address the specific issues of subjecting a branch to the resolution framework, apart from referring in passing to similar measures within the banking resolution framework.

---

## PUBLIC INTEREST ASSESSMENT IN THE DEPLOYMENT OF RESOLUTION TOOLS

This short section focuses on the concept that the proposed new resolution tools would only be deployed when it is in the public interest to do so. It proposes that a public interest assessment (**PIA**) would need to be carried out before making use of such resolution tools, but the paper does not propose or discuss the criteria that might be used in such a PIA. Equally, the Consultation Paper does not propose to relate the point at which resolution tools might be deployed to the existing “ladder of supervisory intervention” set out in regulations under Solvency II (i.e. the various supervisory actions that may be considered when compliance with Solvency Capital Requirements / Minimum Capital Requirements is threatened, during the process of a winding-up, etc.).

---

## RESOLUTION TOOLS & POWERS

This central section describes the main resolution tools under consideration by the Department, and also certain ancillary resolution powers and obligations that might be made available. The main resolution tools (described explicitly as similar to those available in the banking resolution framework) proposed are:

- Sale of business – in full or in part, where market conditions allow, facilitating continuity of cover and service.
- Bridge insurer – i.e. the creation of a temporary Central Bank-licensed entity into which assets and liabilities from the failing insurer could be transferred, to allow more time to find long-term purchaser(s) of the business;
- Asset or liability transfer – this would involve the use of an asset separation tool, facilitating the transfer of selected non-strategic assets, rights and liabilities into an asset management vehicle (**AMV**), to be controlled by the resolution authority. The AMV would manage the elements transferred into it towards an eventual sale or orderly wind-down, leaving the insurer to continue core services. The Consultation Paper specifies that this tool is envisaged only to be used in conjunction with other resolution tools.
- Write-down of capital instruments and conversion of eligible liabilities – applying specifically to equity or other non-debt financing, thereby ensuring that the resolution burden is borne first by shareholders and creditors, in order to reduce costs and risks to policyholders, other insurers and the public purse.

---

Additionally, the possible ancillary powers and obligations proposed in the Consultation Paper are:

- The power to suspend certain payment and delivery obligations of the insurer for a specific and limited period of time;
- The power to appoint a special manager to the insurer to assist in the execution of the resolution action; and
- The power to direct the insurer to take certain action(s) to remove identified impediments to resolvability.

---

## RESOLUTION PLANNING

---

This section repeats the intention that before-the-event resolution planning will only be required for a relatively small subset of insurers, e.g. those that are systemically important. It also proposes that the responsibility for developing resolution plans and conducting resolvability assessments would fall to the resolution authorities, with insurers' role being the provision of relevant information and the addressing of impediments to resolvability. The Consultation Paper describes a four-stage resolution planning cycle, being:

- Information gathering;
- Setting the Preferred Resolution Strategy (**PRS**) and developing a plan that operationalises that PRS;
- Assessing the insurer's resolvability;
- Addressing impediments to resolution.

This section also puts forward a proposal that a requirement for a "minimum loss absorption capacity" could be placed on insurers that are in scope of the resolution framework. While the Consultation Paper says that this should be aligned to Solvency II capital requirements, the specific public consultation questions framed in conclusion of this section refer explicitly to the "holding of additional capital (or eligible debt) buffers", which will no doubt be of some concern to the insurance industry.

---

## ADMINISTRATION AND WINDING-UP

The Consultation Paper sets out a brief description of the three existing corporate insolvency mechanisms that may be applied to a failing insurer: liquidation, administration and examinership. It then goes on to propose possible enhancements to the governing insolvency legislation to address what it describes as limitations in these existing mechanisms. The specific limitations mentioned are: (i) the accountability of the administrator; (ii) the ability to establish a liquidation committee; and (iii) the grounds available to seek the appointment of a liquidator. To address these perceived limitations, the Consultation Paper proposes providing additional powers to the Central Bank, including:

- Requiring an administrator to report to the Central Bank, with the Central Bank having powers of approval over, inter alia, the administrator's remuneration and the expenses of administration;
- The ability to establish and participate in a liquidation committee;
- Expanding the grounds on which the Central Bank can petition for liquidation of an insurer and introducing explicit grounds on which it can petition for the liquidation of a reinsurer (the latter does not currently exist).

---

## RESOLUTION FUNDING

This section describes the existing Insurance Compensation Fund (**ICF**) and talks about its limitations (it does not apply to life or health insurance, it applies only to Irish non-life policyholders and even then it does not meet the totality of claims due from a liquidated non-life company except in very limited circumstances). The Consultation Paper poses the question whether the existing ICF should have its scope widened to encompass the funding of activities arising from the proposed resolution framework, or whether an entirely separate fund should be established for that purpose. It also asks whether the funding from industry of the costs arising from resolution actions should be done on a before- or after-the-event basis, and further asks whether such funding should somehow not be imposed on policyholders.

---

## NEXT STEPS

The Consultation Paper may be accessed [here](#) and is open for submissions (which should be e-mailed to [insurance@finance.gov.ie](mailto:insurance@finance.gov.ie)) until the deadline of 30 November 2021.

## CONTACT US

For more information, please contact a member of the Insurance and Reinsurance team, or your usual William Fry contact.



**Eoin Caulfield**  
**PARTNER**  
+353 1 639 5192  
[eoin.caulfield@williamfry.com](mailto:eoin.caulfield@williamfry.com)



**Ian Murray**  
**PARTNER**  
+353 1 639 5129  
[ian.murray@williamfry.com](mailto:ian.murray@williamfry.com)



**Mike Frazer**  
**CONSULTANT**  
+353 1 639 5079  
[mike.frazer@williamfry.com](mailto:mike.frazer@williamfry.com)

# WILLIAM FRY

---

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: [info@williamfry.com](mailto:info@williamfry.com)

[williamfry.com](http://williamfry.com)

This briefing is provided for information only and does not constitute legal advice