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Financial Institutions Division - Financial Sector Branch
Department of Finance Canada
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Thank you for giving us the opportunity to submit Assuris' view on the Department of Finance Canada's consultation paper on *Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future*.

Assuris is the not for profit compensation association designated by the federal Minister of Finance under the Insurance Companies Act of Canada. Assuris is funded by the life insurance industry and protects Canadian policyholders against loss of benefits if a member company fails. We protect policyholders by minimizing the loss of benefits and ensuring a quick transfer of their policies to a solvent company, where their benefits will continue to be honoured.

Assuris is closely following the development of international standards including the recommendations of the Financial Stability Board (FSB) and the anticipated recommendations of the International Association of Insurance Supervisors (IAIS). As an interested stakeholder, we have recently responded to the IAIS Resolution Working Group request for feedback on the draft *IAIS ICP 12 Exit from the Market and Resolution and ComFrame Module 3, Element 3, Recovery and Resolution*.

Assuris is also a founding member of the International Forum of Insurance Guarantee Schemes (IFIGS)¹. The FIGS' Resolution Working Group, headed up by Assuris, is currently working with its members to compile a report outlining the views on resolution plans and strategies, cooperation with supervisors and resolution powers as well as developing resolution principles. This work will be a part of a formal submission to the IAIS Resolution Working Group. The IFIGS Resolution Working Group has also submitted a response to the IAIS Resolution Working Group draft materials.

¹ IFIGS facilitates and promotes international cooperation between insurance guarantee schemes and other stakeholders with an interest in policyholder protection. There are currently 22 members and 2 associate members with representation in Europe, North America, Asia and Africa.



Assuris is pleased to comment on:

What actions could be taken to strengthen the financial sector framework and promote economic growth, including with respect to the identified themes? How should those actions be prioritized?

Strengthening the resolution system for life insurance companies in Canada

Consideration should be given to strengthening the resolution system for life insurance companies operating in Canada.

Currently, we have an effective resolution system for life insurance companies in Canada. There are clear, documented, effective roles for the Office of the Superintendent of Financial Institutions (OSFI), Assuris and the Courts. Our experience with the four previous failures of life insurance companies in Canada has demonstrated that our current system is effective and scalable. We are confident that it provides the tools and flexibility to resolve the failure of any life insurance company – small, medium or large.

However, consideration should be given to strengthening the resolution system by giving OSFI the power to ensure the resolvability of all life insurance companies and facilitate their solvent resolution. The system would also be strengthened by clarifying the resolution provisions of the Winding-up and Restructuring Act (WURA).

Strengthening and clarifying the resolution powers will ensure that Canada continues to have a robust resolution system for life insurance companies that meets the recommendations of the Financial Stability Board (FSB) and the anticipated recommendations of the International Association of Insurance Supervisors (IAIS).

Having the power to ensure the resolvability of all life insurance companies

There is no authority in Canada that is responsible for ensuring that life insurance companies are resolvable. To ensure the resolvability of all life insurance companies, the Department of Finance may wish to consider that:

All life insurance Internationally Active Insurance Groups (IAIGs) should prepare recovery plans. Most of the information required to assess resolvability is contained in a recovery plan.

All life insurance companies should provide the key resolution information that is required to assess resolvability. This includes the current market value of assets and liabilities, the jurisdictional location of assets, the alignment of business units with legal entities and material intercompany agreements.



Assuris should be consulted when assessing the resolvability of IAIGs. Assuris is the life insurance resolution expert in Canada and can provide an assessment of resolvability based on a review of the recovery plan and key resolution information. Formal meetings between the solvency supervisor and Assuris should be held at least once a year to discuss resolution planning and resolvability assessments.

Companies should be required to improve their resolvability where necessary. The solvency supervisor will need to find a balance between the requirements to improve resolvability and the requirements of their solvency supervision mandate.

Companies should be required to prepare resolution plans if there is doubt about their resolvability or total loss-absorbent capacity. Resolution plans should not be routinely required as they could prove expensive, add a layer of regulation that may not provide significant value and distract companies from their core business.

We believe that all the above powers and the responsibility, to ensure the resolvability of all life insurance companies, should be given to the solvency supervisor, OSFI.

Having powers to facilitate the solvent resolution of life insurance companies

Solvent resolution can sometimes provide a better outcome for stakeholders than a traditional resolution under court protection. However, in Canada there is no clear process for ensuring that this type of resolution is professionally managed. To facilitate the solvent resolution of life insurance companies, the Department of Finance may wish to consider that:

The company be required to appoint a restructuring professional to monitor the progress of the implementation of a recovery plan. A restructuring professional can provide the company's Board of Directors, OSFI and Assuris with an objective view of the likely success of the recovery.

The company can be instructed to engage the restructuring professional to coordinate a solvent resolution if the recovery plan fails. A restructuring professional has the objectivity and experience to balance the needs of all stakeholders and to manage the complex issues involved in executing a successful solvent resolution.

The Attorney General should seek the appointment of the restructuring professional as the liquidator under WURA if solvent resolution is not possible. Appointing the restructuring professional that has been involved with the attempted recovery and solvent resolution as liquidator will speed up the process of resolution under WURA and provide a more certain outcome.

We believe that all the above powers and the responsibility, to facilitate the solvent resolution of life insurance companies, should be given to the solvency supervisor, OSFI.



Clarifying the resolution provisions of WURA

To clarify the resolution provisions in WURA, the Department of Finance may wish to consider:

Amending WURA to add greater certainty to the process of resolution under court supervision.

This would include:

- codifying best practices for the transfer of policyholders
- the approval of resolution plans
- better protection for employees
- a statutory role for the compensation association
- a temporary stay on eligible financial contracts
- clarifying the foreign branch provision

Amending WURA would help ensure a successful and rapid court resolution that is in the interest of consumers and would contribute to maintaining confidence and stability in the system. Assuris would be happy to submit more details on proposed changes to WURA.

We would be pleased to meet with you to discuss how to strengthen the resolution system for life insurance companies in Canada. We thank you for your attention to these matters.

Sincerely,

Gordon M. Dunning
President & CEO

cc: Stephanie Greer, Assuris
Josée Rheault, Assuris



Appendix: Background

The Current System Works Well

The current system for the resolution of Canadian life insurance companies works well and has proved to be effective over the last twenty-five years and four insolvencies.

Assuris, Experts in Resolution

Assuris, is the designated compensation association for the life insurance industry in Canada under the Insurance Companies Act (ICA). It is also the expert in life insurance resolution and has, through the courts, the core powers of a resolution authority.

Through the court, we protect policyholders of failed life insurance companies by transferring the policyholder obligations to a solvent company.

We also protect the reputation of the industry and the consumer confidence in the system by transferring the policyholders with the minimum amount of disruption and publicity. Although there have been four insolvencies in Canada and Assuris has stepped in to protect almost three million policyholders, there has never been a measurable decrease in consumer confidence in the life insurance industry.

Resolution Powers

The powers required to effectively resolve life insurance companies are divided between the solvency supervisor, OSFI, and Assuris through the court.

OSFI has the power to trigger resolution to close a failing company. These powers are clearly laid out in the Insurance Companies Act (ICA). They allow OSFI to close a failing company when it is no longer viable and before it is balance sheet insolvent. Once OSFI has taken control of a company, it can place it under court supervision using the WURA.

Once a company is under court supervision, Assuris provides financial support to ensure policyholders continue to receive their benefits with the minimum amount of disruption. Assuris works with the liquidator to ensure a smooth transfer of policies to another company. Through the court system, Assuris has all the necessary powers to protect policyholders and maintain the confidence in the system. These include the power to stay contracts, enforce policyholder priority and conduct a sale process of the policyholder business.

The combination of the public policy principles embedded in WURA and the flexibility given to the court to find unique solutions to unique problems is the ideal resolution system for life



insurers. Resolution systems that rely on static administrative powers given to a resolution authority sometimes lack the necessary flexibility. This is especially true with the evolving complexity of a life insurance companies and their resolution.

Gaps in the System

The current system works well and can resolve any life insurance company or group of companies in Canada. However, there are improvements that could be made.

There is no authority in Canada that is charged with assessing the most effective way in which companies can be resolved and supervising any necessary improvements in resolvability.

There is also no system for performing solvent resolution. Assuris has the power to participate and fund a solvent resolution. However, there is no process to supervise a solvent resolution and ensure that it is professionally managed.

We believe that making these improvements to the resolution system will ensure that Canada will be aligned with the recommendations of Financial Stability Board and the anticipated recommendations of the IAIS for Internationally Active Insurance Groups.

Assessing and Improving Resolvability

A simple life insurance company operating in a single market is easy to resolve. Complex insurance groups in multiple business lines and jurisdictions are more difficult. However, even these complex groups can be more easily resolved if an authority is charged with obtaining relevant information, assessing their resolvability and requiring the changes needed to improve the company's resolvability.

Currently, OSFI routinely collects information that enables them to fulfill their mandate in supervising solvent companies. However, no authority in Canada has the mandate to routinely collect the necessary key information and assess resolvability. Key information to assess resolvability includes the exit value of assets and liabilities, the jurisdictional location of assets and the alignment of business units with legal entities.

Resolvability assessments are performed while a company is still solvent and are best undertaken by the solvency supervisor. In Canada, that is OSFI. Resolution expertise is essential in assessing resolvability and OSFI should be required to seek the formal advice from Assuris in determining the key information required and when performing the resolvability assessment. The decisions on requiring companies to improve resolvability should remain with OSFI as they would need to balance the requirements of this expanded mandate with their current solvency supervisory mandate.



OSFI should also have the power to require companies to prepare resolution plans. However, these should not be routinely required as resolutions plans could prove expensive, add a layer of regulation that may not provide significant value and distract companies from their core business. Obtaining key resolution information is more effective as it focuses the supervisor, the company and Assuris on the key resolution issues.

Clearly defined roles in resolution, with the appropriate oversight bodies well-positioned to support the life insurance industry in the future, is the best way to ensure the safety and soundness of the sector.

Solvent Resolution

There is a well-documented system for placing a non-viable life insurance company into insolvent resolution under WURA. The Guide to Intervention for Federally Regulated Life Insurance Companies outlines the actions of OSFI and Assuris when a company is staged. The ICA provides OSFI with the triggers to take control and WURA guides the resolution.

In complex cases, solvent resolution may be a better solution for policyholders' protection and maintaining confidence in the system. Assuris has the power to participate and fund a solvent resolution. However, there is no clear process for this type of resolution. In each of the previous Canadian life insurance failures, serious consideration was given to solvent resolution. However, none of these considerations resulted in a viable solution. The lack of a restructuring professional with the mandate to coordinate the process and balance all the stakeholders' needs was a key inhibitor.

OSFI should have the power to require a company to appoint a restructuring professional. If a company is in recovery, a restructuring professional should be engaged to monitor the recovery process and give advice to the company's Board of Directors, OSFI and Assuris. If the recovery process fails, then the restructuring professional can coordinate efforts for a solvent resolution. If the company needs court protection under WURA to enact the resolution, the restructuring professional would be well prepared to become the liquidator.

Strengthening the Court Process

Part III of WURA lays out the key parameters that the court must follow in restructuring an insurance company. It also gives the court the discretion to approve actions that are in the best interests of the stakeholders. This power is essential for the resolution of complex life insurance companies. It is impossible to codify solutions to the future resolution issues that will arise. However, the legislation would be strengthened if some of the past court precedents were codified into the Act. This codification and other clarifications would provide a more certain and rapid resolution process that is in the interest of consumers and would contribute to maintaining confidence and stability in the system.



There is strong court precedent for the process of transferring policyholders to another company. The certainty of this process would be enhanced by putting specific powers into the Act.

Assuris' role in the court resolution process should be codified by stating that a compensation association, designated by the Minister under the Insurance Companies Act has standing in the court. Assuris is the expert in life insurance resolution in Canada. We have the experience and knowledge to resolve a failed company. This expertise has been sought by the court in all four of the past insolvencies in Canada.

If comprehensive resolution plans have been developed prior to insolvency the court should be given the explicit power to approve the implementation of the plan.

Employees of an insurance company in resolution under WURA should have the same protection as employees of a company under Companies' Creditors Arrangement Act (CCAA) or the Bankruptcy and Insolvency Act (BIA).

Eligible financial contracts are an essential tool for managing the risks in a complex life insurance company. It is important that the court be able to temporarily stay the contracts until alternative risk management processes can be put in place.

Certain other wording in the Act could also be clarified including the provisions related to the assets held in foreign branches of a Canadian company.