

Notice No. : MAS 105
Issue Date : 30 May 2019

NOTICE ON INSURERS' APPOINTMENT OF CUSTODIANS

Introduction

- 1 This Notice is issued pursuant to section 64(2) of the Insurance Act (Cap. 142) (“the Act”) and comprises mandatory requirements and guidelines.
- 2 This Notice applies to all licensed insurers.

Definition

- 3 The expressions used in this Notice, except where the context otherwise requires, have the same respective meanings as in the Act.

Appointment and on-going monitoring of custodians and sub-custodians

Mandatory requirement

- 4 A licensed insurer must ensure that every custodian and, where applicable, sub-custodian, which holds any asset of its insurance fund established and maintained under section 17 of the Act (“insurance fund asset”), is licensed, approved, registered or otherwise regulated for its business or activity of providing custodial services by the relevant authority in the jurisdiction where the respective custody account or sub-custody account is maintained.

Guidelines

- 5 The Authority expects a licensed insurer to exercise due care and diligence when appointing any custodian to hold its insurance fund assets. In particular, the insurer should—
 - (a) satisfy itself that the insurance fund assets held by the custodian are secure and available to meet the liabilities of the respective insurance fund; and
 - (b) have in place systems and controls to monitor the appropriateness of maintaining the insurance fund assets with such custodians or sub-custodians appointed by the custodians.
- 6 A licensed insurer should do the following:
 - (a) for the purpose of appointing a custodian or sub-custodian—
 - (i) consider the candidate’s practices, procedures, internal controls, financial strength, general reputation and standing. A candidate should have financial strength rating of at least investment grade by a reputable credit rating agency. Where the candidate does not meet the financial strength benchmark, the insurer should exercise added care and prudence in

- assessing the quality of the candidate to ensure safe custody of the insurance fund assets; and
- (ii) consider the applicable aspects of the candidate's business continuity plans to ascertain how the insurance fund assets can be recovered in the event of disruption or cessation of business by the candidate;
- (b) assess the custodian or sub-custodian, as the case may be, on an annual basis or when the licensed insurer is aware of any material change that adversely affect or is likely to adversely affect, the custodian's or sub-custodian's, as the case may be, ability to provide safe custody of the insurance fund assets, so as to ensure that the internal controls for safeguarding the assets are adequate and effective;
- (c) where a custodian has appointed any sub-custodian to safeguard the insurance fund assets, ensure that the custodian's process of selecting, monitoring and reviewing the sub-custodians remains effective throughout the duration of appointment; and
- (d) maintain a list of all custodians or sub-custodians, as the case may be, appointed to safeguard the insurance fund assets. The list should—
 - (i) be updated to reflect any subsequent appointment or removal of custodian or sub-custodian;
 - (ii) include a breakdown of the amount of insurance fund assets held by each custodian or sub-custodian; and
 - (iii) be updated when there is a material change relative to what it had reported to the Authority under MAS Notice 122 on Asset & Liability Exposures for Insurers.

Custody arrangements

Mandatory requirement

- 7 A licensed insurer (other than a captive insurer or marine mutual insurer) must ensure that insurance fund assets held by a custodian are maintained—
 - (a) in the case of a licensed insurer which is a branch in Singapore, and where the assets are held in the head office's custody account, in a sub-account that is clearly identified as being held for the branch and belonging to the respective insurance funds of the branch; or
 - (b) in any other case, in a custody account in the name of the insurer or, if the insurer is a branch in Singapore, in the name of the branch, with sub-accounts that clearly identify the assets as belonging to the respective insurance funds of the insurer.
- 8 A licensed insurer must ensure—
 - (a) that insurance fund assets held by a custodian or sub-custodian, as the case may be, are kept separate from the assets of the custodian or the sub-custodian, respectively;
 - (b) that the extent of the custodian's liability in the event of any loss caused by fraud, wilful default or negligence on the part of the custodian, its sub-custodians or its agents is agreed upon in writing with the insurer;
 - (c) that any material or systemic breach of the custody agreement between the custodian and the insurer must be brought to the insurer's attention as soon as possible; and

- (d) that, except as agreed in writing with the insurer, a custodian or a sub-custodian, with whom the insurance fund assets are held in a custody account or sub-account, does not –
 - (i) withdraw any of the insurance fund assets; or
 - (ii) take any charge, mortgage, lien or other encumbrance over, or in relation to any of the insurance fund assets.

Guidelines

- 9 The Authority expects a licensed insurer to put in place proper custody arrangements to safeguard its interest and ensure the safe custody of its insurance fund assets. The insurer should assess the legal risks associated with custody arrangements and exercise due care in drafting and reviewing the contractual provisions of the custody agreement. In particular, the insurer should pay attention to any provision in the custody agreement that excludes the custodian's or sub-custodian's liability.
- 10 A licensed insurer should ensure the following:
 - (a) where the insurer suffers a loss due to acts or omissions for which the custodian is liable for, or for which the custodian accepts liability, the right of the insurer to recover from the custodian is not dependent upon the right of the custodian to recover against any of its sub-custodians or its agents; and
 - (b) the custodian provides the insurer with prompt written notice of the identity of the sub-custodian(s) to be appointed to safeguard the insurance fund assets.

Effective date, transitional provisions and cancellation

- 11 This Notice shall take effect on 1 January 2020. MAS Notice 105 dated 26 January 2004 is cancelled with effect from 31 December 2019.

*Notes on History of Amendments:

- 1 MAS Notice 105 dated 26 January 2004 with effect from 26 January 2004.
 - (a) MAS Notice 105 (Amendment) 2010 with effect from 30 June 2010.
- 2 MAS Notice 105 dated 26 January 2004 cancelled with effect from 31 December 2019.
- 3 MAS Notice 105 dated 30 May 2019 with effect from 1 January 2020.