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Response To Feedback On Draft Insurance (Amendment) Bill 2003

MAS

Monetary Authority of Singapore

TABLE OF CONTENTS

Table of Contents	i
1 Background	1
2 Authorisation framework for the cross-border supply of reinsurance	2
3 Risk-based capital framework	3
3.1 Powers of the Authority to direct what constitutes receipts, income, expenses, and liabilities	3
3.2 Participating fund – “Surplus Account” and bonus allocation	3
3.3 Withdrawal of surplus from insurance funds	4
3.4 Powers of the Authority to adjust capital requirements	5
4 Accident & Health insurance regulatory framework.....	6
5 Other feedback received	8
5.1 Issues related to insurance intermediaries.....	8
5.1.1 Insurance agent to operate under written agreement	8
5.1.2 Disclosure by insurance intermediaries	8
5.2 Transfer of reinsurance business	9

Annex A: List of Respondents to the Consultation Paper

1 BACKGROUND

In May 2003, MAS published a consultation paper on the draft Insurance (Amendment) Bill 2003 (“the draft Bill”), which, as part of MAS’ ongoing efforts to improve the regulatory framework for the insurance sector, will establish a risk-based capital (“RBC”) framework for life insurance and general insurance companies, and a regulatory framework to govern accident & health insurance business. To strengthen MAS’ supervision of reinsurance services delivered in Singapore, an authorisation framework to govern the cross-border supply of reinsurance will also be established. In addition, miscellaneous amendments are made for the administration of the Insurance Act (“the Act”).

The consultation period closed on 27 June 2003. **Appendix A** provides the list of respondents during this consultation period. Relevant feedback has been incorporated into the Insurance (Amendment) Bill 2003 (“the Bill”).

This paper summarizes the comments received and sets out MAS’ responses to these comments. These responses are grouped into the following four sections:

- Authorisation framework for the cross-border supply of reinsurance;
- Risk –based capital framework;
- Accident & health insurance regulatory framework;
- Other feedback received.

Feedback received commenting on operational details on the authorisation framework for the cross-border supply of reinsurance, the RBC framework, and the health insurance regulatory framework will be addressed in their respective consultation papers when the relevant regulations are exposed for public consultation.

2 AUTHORISATION FRAMEWORK FOR THE CROSS-BORDER SUPPLY OF REINSURANCE

More than half of the feedback received was in respect of the authorisation framework for the cross-border supply of reinsurance. Most of the respondents sought clarification on what would constitute cross-border supply and what is the intent of the framework.

To better explain the policy intent behind the authorisation framework, and to provide details on how this framework is expected to operate, MAS is issuing a consultation paper on the “Regulations for Authorised Reinsurers and Approved Insurers and Insurance Brokers” in conjunction with the issuance of this document on MAS’ response to feedback received on the draft Bill. The following questions that the public has raised are addressed in this new consultation paper:

- What is “Cross-border Supply”?
- What is the scope of the authorisation framework?
- What is the difference between a reinsurer registered by MAS and one that is authorised?
- What is the process and what are the criteria for an insurer to be authorised under the framework?
- How will existing and future reinsurance arrangements be affected?
- What are the accounting and capital treatments for reinsurance ceded to authorised reinsurers under the Risk-based Capital (RBC) framework?

Please refer to this new consultation paper, which can also be found in the MAS Website (www.mas.gov.sg), for a more in-depth discussion on the abovementioned issues.

3 RISK-BASED CAPITAL FRAMEWORK

To establish the RBC framework, the Bill amends section 17 of the Act (Establishment of insurance funds and allocation of surplus) by clarifying how insurance funds are to be set up and maintained. In addition, the existing margin of solvency requirements will be replaced by the fund solvency requirements and capital adequacy requirements, which govern the adequacy of capital at the insurance fund and company-wide level respectively, through amendments to section 18 of the Act. The Authority will circulate the full details of the RBC framework for consultation at a later date.

3.1 Powers of the Authority to direct what constitutes receipts, income, expenses, and liabilities

The draft Bill amends section 17(5) of the Act to clarify that the Authority has power to set rules on what constitute receipts, income, expenses, and liabilities that are properly attributable to insurance funds, and the ways to derive each item. Respondents have asked for further explanations of this provision, especially on the circumstances under which the Authority will exercise this power.

MAS' Response: The purpose of this provision is to safeguard policyholders' interests from being compromised by unfair practices by insurers in the treatment of receipts, income, expenses and liabilities of insurance funds. Some examples of such unfair treatments include charging expenses and liabilities incurred as a result of mis-selling to insurance funds.

3.2 Participating fund – “Surplus Account” and bonus allocation

Respondents sought clarification of the amended section 17(6) that, in addition to describing bonus distribution rules, introduces a new feature, the “surplus account”, to the participating fund of direct life insurers. Concerns were raised on the shift in the responsibility of approving bonus distribution from the appointed actuary to the directors in the draft Bill.

MAS' Response: The surplus account aims to add greater clarity to the treatment of capital support and allocations to shareholders in relation to participating funds. Any allocation of participating fund monies made to shareholders will be credited into this account, which is separately maintained. Shareholders' may withdraw the balances in the surplus account if they are not required to meet capital requirements. This account will also keep track of any future capital support that shareholders may provide to satisfy the fund's capital needs. Shareholders will be allowed to recover these monies when such need for capital support no longer exists. Full details on how the surplus account operates will be circulated with the rest of the RBC framework at a later date.

The shift in the responsibility of approving bonus distribution from the appointed actuary to the directors reflects the current market practice and is in line with the emphasis to strengthen the corporate governance of insurers in Singapore. Directors will need to take into consideration the written recommendation by the appointed actuary before approving any bonus distribution.

In relation to the "1/9th rule" on bonus allocation, the Authority would like to clarify that where, in a single accounting period, the amount allocated to shareholders is less than the entitlement of 1/9th of the amount allocated to policyholders by way of bonus, the difference may not be accrued to subsequent accounting periods. This intent has been incorporated in the Bill.

3.3 Withdrawal of surplus from insurance funds

The proposed amendment to section 17(8) of the Insurance Act described in the draft Bill states that, subject to satisfying the RBC requirement, insurers may withdraw surplus from insurance funds as long as they can ascertain from "any statement of accounts lodged with the Authority" or "by a revaluation of the assets and liabilities of that fund" that there are in fact surpluses in the funds at the time of the withdrawal. Respondents have highlighted that this provision implies that current year surpluses in insurance funds may be withdrawn based on accounts that have not been audited or frivolous re-valuations.

MAS' Response: The Authority agrees that the security of insurance funds may be compromised by such a provision. The Bill has therefore been amended to state that the annual statutory returns or any subsequent audited financial statement shall be used in determining the amount of surplus that can be withdrawn.

3.4 Powers of the Authority to adjust capital requirements

The new section 18(4) introduced in this Bill gives the MAS the power to direct registered insurers to satisfy fund solvency requirements or capital adequacy requirements other than those required under Section 18 having regard to “risks arising from the activities of the insurer and such other factors as the Authority considers relevant”. Insurers have sought clarification on what such “risks” and “other factors” might be so that they can plan their affairs accordingly to prevent triggering this sub-section.

MAS' Response: The RBC requirements aim to align capital needs to the assets and liabilities risks undertaken by insurers. However, the prescribed requirements are not all encompassing and may not capture certain risks that are specific to particular insurers. Examples of such risks include operational risk, quality of governance and internal control, and accessibility to capital. The Authority will assess the need for and the quantum of additional capital for specific insurers via its risk-based supervisory process.

4 ACCIDENT & HEALTH INSURANCE REGULATORY FRAMEWORK

MAS issued a consultation paper in August 2002 on a proposed regulatory framework for health insurance business. The draft Bill served to set out the provisions enabling the establishment of the framework described in that consultation paper, after considering the feedback received.

A dedicated work group involving industry practitioners and MAS officials was subsequently formed in November 2002 to consider the feedback collected during the consultation phase and develop the operational details of the framework. These proposed detailed requirements could be found in a follow-up consultation paper issued in conjunction with this document on MAS' response to feedback received on the draft Bill. This new consultation paper is available on the MAS Website (www.mas.gov.sg).

The consultation of the draft Bill saw the following issues in relation to accident and health insurance being raised:

- Definition of "accident and health benefits": This definition may be overly narrow. Furthermore, if new medical conditions develop which are not covered by this definition occurs in future, adopting an inclusive definition could give rise to difficulties.
- Definition of long-term versus short-term accident and health policies: Respondents suggested making the adjustments to the definition of long-term A&H policies to take into account premium rate guarantees, pre-funding feature, and fraudulent act or material non-disclosure on the part of the insured.
- The impact of reclassification of insurance business on the insurance market: The general insurance industry raised concerns that the reclassification may hinder fair competition between life and general insurers, create a level of competition that may be unhelpful for the longer-term prospects of insurers and consumers, and adversely affect general insurers as the change will mean "Life Insurers will now compete with General Insurers in the more profitable Personal Accident business (including Travel Personal Accident)."

MAS attempts to address these issues raised in the follow-up consultation paper on accident and health insurance. Please refer to that consultation paper for more detail.

5 OTHER FEEDBACK RECEIVED

5.1 *Issues related to insurance intermediaries*

5.1.1 Insurance agent to operate under written agreement

Several respondents have sought clarification on the proposed amendment to section 35M of the Act which mandates that any insurance intermediary operating as an insurance agent for a registered insurer must first obtain authorisation from the insurer through a written agreement before doing so.

MAS' Response: Under the Financial Advisers Act ("FAA") which came into force in October 2002, when any financial adviser or its representative arranges any life insurance contract (whether acting on behalf of the insurer underwriting the risk or on behalf of the insured), it is not required to have any written agreement with the insurer underwriting the risk. The intent of the amendment to section 35M of the Act proposed in the draft Bill is to ensure consistency between the Act and the FAA. After considering the feedback received, the Authority has made modifications to wordings of the Bill to better reflect the intent of this amendment. However, it should be note that when an individual insurance agent of a life insurer is distributing life policies of that life insurer, the requirement for a written agreement still applies.

The Authority would also like to clarify that the definition of a "financial adviser" in the FAA relates only to the activities carried out by a person (including arranging of life insurance policies). For the purpose of an intermediary who arranges life insurance policies (i.e. performing one of the functions of a financial adviser), the FAA does not seek to differentiate between an intermediary who is acting on behalf of the insurer (i.e. an "insurance agent" by definition) or one who is acting on behalf of the insured (i.e. commonly known as a broker).

5.1.2 Disclosure by insurance intermediaries

In relation to the proposed amendment to section 35P of the Act, respondents would like clarification on what additional information that the Authority may ask insurance intermediaries to disclose before concluding insurance contracts. In addition, one respondent commented that the prospect of attracting a jail sentence for insufficient pre-sales disclosure may be too harsh.

MAS' Response: The Authority will be invoking the power of the amended section 35P to prescribe disclosure requirements in relation to distribution of health insurance products. The Authority may also utilise this provision for other product types in future where necessary.

On the penalty relating to non-disclosure by insurance intermediaries, with an increasing emphasis being placed on a “disclosure-based”, “caveat emptor” regime of market conduct regulation, the Authority views the failure of insurance intermediaries to provide consumers with sufficient information to make informed decisions as a very serious matter. This treatment is also aligned with the treatment in the FAA. The Authority is also making further alignments to the FAA in the Bill for penalty provisions relating to misrepresentations made by insurance intermediaries and breaches of orders to stop using unauthorised marketing materials.

5.2 *Transfer of reinsurance business*

Some respondents opined that the introduction of section 47(2)(b) appears to provide that the reinsurance aspects of the direct insurers' business cannot be transferred using a scheme of transfer effected under section 47.

MAS' Response: To add clarity to this provision, the Authority has amended the Bill to reflect the intent that section 47(2)(b) does not affect reinsurance of liabilities in relation to the transfer of insurance business of a registered direct insurer under section 47(1).

ANNEX A: LIST OF RESPONDENTS TO THE CONSULTATION PAPER

General Insurance Association of Singapore;
Life Insurance Association of Singapore;
The Law Society of Singapore;
Allianz AG Reinsurance Branch Asia Pacific;
Great Eastern Life Assurance Co Ltd, The;
Hannover Re Malaysian Branch;
Mitsui Sumitomo Insurance (Singapore) Pte Ltd;
Muenchener Rueckversicherungs Gesellschaft;
Overseas Union Insurance Ltd;
QBE Insurance (International) Limited;
Royal & Sun Alliance Insurance PLC;
Singapore Reinsurance Corporation Limited;
Sompo Japan Insurance Company (Asia) Pte Ltd;
Tokio Marine & Fire Insurance Co (S) Pte Ltd, The;
Zurich Insurance (Singapore) Pte Ltd;

and 4 other respondents who do not wish to be named.



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