

RESPONSE TO FEEDBACK RECEIVED - CONSULTATION PAPER ON DRAFT REGULATIONS, NOTICES AND GUIDELINES PURSUANT TO TRUST COMPANIES ACT 2005

On 26 August 2005, MAS issued a Consultation Paper inviting comments on draft Regulations, Notices and Guidelines under the Trust Companies Act 2005 (the "Act").

The consultation closed on 26 September 2005. The Annex sets out a list of respondents to the consultation paper. We have carefully considered all comments received and where we have agreed with the comments, incorporated them into the Regulations, Notices and Guidelines pursuant to the Act.

We thank all respondents for their feedback. Comments of wider interest and MAS' responses are highlighted below.

1. Guidelines on Scope of Regulation

The draft Guidelines on Scope of Regulation are designed to give detail and description to what is meant by creation of trusts ("creating"), arranging for persons to act as trustees ("arranging") and administration of trusts ("administration"), including what is "procedural and non-discretionary" administration. These Guidelines will give persons who are exempt under the Act more clarity on the scope of their exemptions, including banks and merchant banks, overseas persons, lawyers, accountants, and persons creating and arranging under an arrangement with a licensed trust company.

The draft Guidelines were crafted to set out the activities according to the typical sequence of events for establishing a trust. The activities were defined on a timeline basis such that creating and arranging were activities carried out before a trust comes into being, and administration included activities carried out after a trust came into being.

Respondents' comments on this draft Guideline focused primarily on the exemption for banks and merchant banks. Respondents stated that the Guideline should not divide activities on a timeline basis. This basis made the exemption for banks and merchant banks too narrow, as banks and merchant banks do carry out structuring and advising on trusts both before and after a trust comes into existence.

MAS' Response

MAS agrees and has recrafted the Guidelines so that the division between creating and arranging activities, and administration activity, will focus on functions that the trust company or exempt person undertakes rather than on a timeline basis. This will allow exempt persons whose exemption extends to creation and arranging to engage in structuring and advising activities even after the trust has come into being.

2. Exemption for Lawyers

The draft Regulations proposed an exemption for lawyers covering creating and arranging, as well as procedural and non-discretionary administration of trusts. The draft exemption also covered the giving of advice or drafting of documents by lawyers. In addition, a second exemption was proposed for lawyers that would allow lawyers to carry out all types of trust business, including acting as trustee, for clients, subject to certain limits.

Most respondents agreed with MAS' proposal. One respondent commented that revocation, variation, and termination of trusts should also be listed as activities for which lawyers may provide services. One respondent suggested that the exemption allowing lawyers to arrange for persons to act as trustees did not make clear whether a lawyer could be exempt when acting as a donee of a power to remove or appoint trustees.

One respondent stated that the exemption should be tightened so that only those advocates and solicitors actively practicing law would satisfy this exemption.

MAS' Response

MAS is of the view that providing legal services in relation to the revocation, variation and termination of trusts is already included in the scope of the exemption, as these activities form part of giving of legal advice and preparing legal documentation. MAS also views that if a lawyer were a donee of a power, that lawyer would have exemption for that activity under the second

exemption allowing full trust business.

MAS will amend the exemption so that only those lawyers with a practising certificate or who are in a law alliance or joint law venture can enjoy the exemption.

3. Exemption for Private Trust Companies

The draft Regulations proposed that the exemption for private trust companies (PTCs) be limited so that a PTC must serve trusts where the settlors and beneficiaries are connected to one another. Under that proposal, a charity could be a beneficiary only if it was the beneficiary of last resort, in other words, if all other beneficiaries failed. We also proposed that a PTC must hire a licensed trust company to perform anti-money laundering ("AML") due diligence.

Respondents stated that the descendants of a settlor beyond the third generation would fall outside the definition of "connected persons".

Respondents stated that in some instances a settlor may wish the PTC to serve philanthropic purposes, and name a charity as a regular beneficiary, rather than a beneficiary of last resort.

Some respondents stated that the requirement for a private trust company to engage a licensed trust company to perform AML due diligence should be removed. Others stated that a licensed trust company would not be able to perform this function in isolation from other administrative functions.

MAS' Response

MAS agrees to change the definition of "connected persons" to include the descendants of the settlor.

MAS agrees that a charity need not be only a beneficiary of last resort, and has changed the possible beneficiaries to include charities.

MAS is of the view that we cannot remove the requirement for a licensed trust company to perform AML due diligence. A PTC is a possible vehicle for money laundering if due diligence is not performed. Moreover, since MAS has done away with the requirement for a PTC to give notice to MAS of the nature and scope of its business, it is important that MAS has comfort that a responsible entity with relevant expertise can perform AML due diligence.

MAS understands the concerns that licensed trust companies may not be able to perform AML due diligence unless they are more fully engaged in the administration of a PTC than merely performing AML due diligence, since the administration gives the licensed trust company the familiarity with the PTC that is necessary for proper due diligence. In this regard, the PTC is responsible to provide the necessary information and assistance for the licensed trust company to implement the necessary administrative activities that will enable it to effectively perform AML due diligence. It is not appropriate for MAS to mandate that all administration of a PTC be carried out by a licensed trust company, since many PTCs will have significant in-house administrative capabilities.

4. Professional Indemnity Insurance

In 2004, MAS had proposed that the level of professional indemnity insurance ("PII") be set at 1% to 3% of assets under trusteeship. Respondents reverted that it was not feasible to set a pre-determined amount since the risk of liability could vary greatly from one trust to another for reasons not related to the amount of assets. MAS subsequently proposed in the draft Regulations to allow the management of each licensed trust company to determine the appropriate level of PII to cover liabilities for negligence, so long as the more senior resident manager and one director certified that the PII cover was sufficient.

Respondents disagreed with the need for certification and highlighted the significant personal liability associated with such certification. Respondents noted that since the requirement was not set according to a numerical calculation, it would be difficult to determine what amount constitutes sufficient coverage. Some respondents re-proposed that MAS set a numerical calculation for PII coverage.

MAS' Response

MAS understands the respondents' concerns with a resident manager and director being personally liable for a breach of the

certification. MAS will remove the requirement for certification. However, licensed trust companies are still required to maintain adequate PII coverage. MAS has set out in Guidelines what it would consider to be adequate coverage in typical situations.

5. Prevention of Certain Trades

The draft Regulations proposed to prohibit trades between the licensed trust company, as trustee, and (a) the licensed trust company, (b) a resident manager of the licensed trust company and (c) a director of the licensed trust company.

One respondent noted that this Regulation may be difficult in practice because there are often transactions between trusts and the same licensed trust company is trustee for all the trusts. These transactions would violate the Regulation since the licensed trust company, as trustee, would be entering into a transaction with itself.

MAS' Response

This Regulation is not intended to prohibit transactions between trusts where the licensed trust company, as trustee for the trusts involved, acts on behalf of the trusts. It is intended to capture situations where the licensed trust company, as trustee of a trust, enters into a transaction with the trust on the licensed trust company's own account.

6. Books of Licensed Trust Company

The draft Regulations proposed that licensed trust companies must keep certain records, and set out details of these records.

One respondent asked whether the records need to be immediately available or only furnishable within a reasonable time frame when requested by MAS. Some respondents asked whether keeping records of companies underlying a trust would be required, if the licensed trust company did not administer that underlying company.

Some respondents noted the difficulties involved in keeping records relating to specific transactions on behalf of the trust.

One respondent noted that, due to the international nature of trust business, it may be difficult to maintain all records in the English language, and translation costs could be high.

MAS' Response

Unless otherwise indicated, records must be kept so that they are immediately available to MAS.

MAS will require that records be kept on the assets settled into the trust whether directly or indirectly. Indirectly settled assets would be those that are settled into an underlying company.

MAS understands the concerns over the proposed requirement of keeping detailed records as specified in the proposed Regulations on each transaction on behalf of a trust. As this requirement would potentially cause administrative difficulties, it has been removed from the Regulations. A licensed trust company will still be expected to keep appropriate records on transactions on behalf of each trust, as part of its proper risk management, and to comply with the forthcoming Notice that MAS will issue to licensed trust companies on the prevention of money laundering.

MAS agrees that records need not be kept in English where the original version of the book is not in the English language. MAS has amended the Regulation to state that where production of the books are required, a true and accurate English translation shall be produced by the licensed trust company in a reasonable time.

7. Omnibus Statement of Trust Accounts

The draft Regulations proposed that each licensed trust company and each lawyer seeking an exemption from licensing for the full scope of trust business, through his law firm, submit a form to MAS containing certain aggregate data on their business.

One respondent asked whether corporate secretarial services should be included as "other business" in the form, or as trust business.

One respondent asked whether the assets of companies underlying trusts should be categorised as trust assets.

One respondent asked where market value is not available, should the value of trust assets be determined based on book cost or at a value determined by the trustee at its discretion.

One respondent noted that the time for filing this form, set at 30 days, is too short.

MAS' Response

MAS views that corporate secretarial services would be considered "other business" for purposes of this form.

MAS views that the assets of companies underlying trusts should be considered trust assets.

MAS views that where market value is not available, the licensed trust company may report using book cost.

MAS agrees to extend the time for the filing of this form to 60 days.

8. Notice on Qualifying Assets

The draft Notice on Qualifying Assets and Reduction Percentages sets out a framework of assets that would be considered qualifying assets, the valuation method of those assets, and the reduction percentage of those assets, for purposes of complying with Regulations 11 and 12 of the Trust Companies Regulations. The first asset category is "notes and coins in all currencies that are physically kept in Singapore."

One respondent commented that this should be expanded to include cash in bank accounts in Singapore.

MAS' Response

MAS is of the view that this asset category cannot be expanded to include cash in bank accounts in Singapore, as such cash can be easily transferred out of Singapore. Qualifying assets need to be more solidly based in Singapore.

LIST OF RESPONDENTS TO PUBLIC CONSULTATION ON CREATING A NEW REGULATORY FRAMEWORK FOR TRUST COMPANIES

Barclays Private Bank
The Central Depository (Pte) Limited
Citigroup Private Bank
Credit Suisse Trust Limited
DBS Bank Limited
Dexia Trust Services
Equity Trust (HK) Limited
JP Morgan Chase Bank, N.A.
The Mitsubishi Trust and Banking Corporation, Singapore Branch
OCBC Trustees
Singapore Academy of Law
Singapore Trustees Association
UBS AG, Singapore Branch
UBS Trustees (Singapore) Ltd
United Overseas Bank Group

A number of respondents requested anonymity.

Last modified on 30/3/2007