

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION PAPER ON REVIEW OF FRAMEWORK FOR NOMINATION OF BENEFICIARIES

1 Introduction

1.1 On 7 December 2005, MAS issued a consultation paper outlining a proposed framework for the nomination of beneficiaries to proceeds from insurance policies.

1.2 The consultation period closed on 18 January 2006. MAS thanks all respondents for their feedback.

1.3 MAS has carefully considered the feedback received. Comments that are of wider interest, together with MAS' responses, are set out below.

2 Merits of Revocable Nomination

2.1 Some respondents questioned the usefulness of the revocable nomination, given that it neither protects the policy proceeds from the policyholder's creditors, nor allows for a dis-aggregation of the proceeds from the policyholder's estate.

MAS' Response

2.2 Revocable nominations may help to expedite payout in the event of the policyholder's death as the intended beneficiaries will be clearly identified in the nomination form. Promptness of payout will be helpful, particularly in times of emotional distress and potential financial hardship after the death of a loved one.

2.3 In addition, revocable nominations provide greater choice and flexibility to policyholders who wish to retain their rights and control over the policy. This option is presently not available under section 73 of the Conveyancing and Law of Property Act ("CLPA").

3 Enjoying the Benefits of Irrevocable Nominations and Revocable Nominations in Tandem

3.1 Some respondents asked why policyholders cannot enjoy the advantages of irrevocable nominations and concurrently retain the flexibility to deal with the policies as they wish to without having to obtain the consent of the beneficiaries.

MAS' Response

3.2 Irrevocable nominations offer the dual benefits of family financial protection (the proceeds are generally protected from the policyholder's creditors) and estate planning

(the proceeds may be dis-aggregated from the policyholder's estate). These advantages arise because under an irrevocable nomination, the policyholder is deemed to have gifted the policy proceeds to his beneficiaries via a trust.

3.3 Under the concept of a trust, the policyholder's rights over the policy are curtailed – he is not allowed to deal with the policy unless the consent of all the beneficiaries is obtained.

3.4 Hence, while the trust created by an irrevocable nomination confers family financial protection and tax planning benefits to the policyholder and his beneficiaries, these benefits come at the cost of a reduction in flexibility compared with a revocable nomination.

4 Types of Policies Eligible for Nomination

4.1 Some respondents sought greater clarity on the types of policies eligible for nomination, in particular, whether group policies will come under the ambit of the proposed framework.

MAS' Response

4.2 The following types of policies will be eligible for nomination under the new framework:

- Life policies, both group and individual
- Personal accident policies, both group and individual

5 Class Nominations

5.1 Some respondents enquired whether class nominations are allowed. Class nominations in this instance refer to nominations which do not specify the names of the beneficiaries but rather spell out the classes of person(s) to be nominated, such as "wife" or "children."

MAS' Response

5.2 Class nominations will not be allowed under the new framework. This is because the policyholder's family circumstances may change with time and potential conflict may arise in respect of who qualifies as a beneficiary under a class nomination. As such, the new framework will require policyholders to specify the names of their beneficiaries so as to provide greater clarity and certainty on who the rightful beneficiaries are.

6 Minimum Age to Nominate

6.1 Some respondents asked what the minimum age to nominate is.

MAS' Response

6.2 Policyholders aged 16 and above will be able to make revocable nominations. For irrevocable nominations, policyholders are also the default trustee of the policy. As such, only policyholders aged 21 and above will be allowed to make irrevocable nominations.

7 Rights of Beneficiaries

7.1 Some respondents enquired whether beneficiaries can unilaterally make changes to an insurance policy.

MAS' Response

7.2 Beneficiaries will not be able to unilaterally make changes to the insurance policy as they are regarded as third parties to the insurance contract. Only policyholders will be able to make changes to the insurance policy. In the case of irrevocably nominated policies, policyholders will require the consent of all beneficiaries before changes can be effected.

8 Beneficiaries of Irrevocable Nominations

8.1 Some respondents suggested that a policyholder's parents and siblings be included as eligible beneficiaries for irrevocable nominations. This is because such persons may be the policyholder's dependants, particularly if he is not married.

MAS' Response

8.2 Whilst parents and siblings may be the main dependants in some cases, this may also be the case for other classes of persons under different circumstances. On the other hand, a person's spouse and children are generally recognised as his primary dependants who may have greatest need for financial protection in the event of his demise. This is the same position adopted in section 73 of the CLPA currently.

8.3 As such, we are of that view that persons eligible as irrevocably nominated beneficiaries should remain as the policyholder's spouse and/or children. If the policyholder wishes to accord financial protection to other persons, he can consider other alternatives, such as creating a private trust in their favour.

9 Beneficiaries who predecease the Policyholder

9.1 Some respondents asked how policy proceeds will be paid out in situations where a beneficiary predeceases the policyholder.

MAS' Response

9.2 For irrevocable nominations, in accordance with the trust concept, the share of the proceeds belonging to any beneficiary who predeceases the policyholder will go to that beneficiary's estate.

9.3 Conversely, because revocable nominations will not form trusts around the policies in question, the share of any beneficiary who predeceases the policyholder will be automatically revoked. The default practice will be for the proceeds to be distributed to the surviving beneficiaries according to the relative proportions of their original shares.

9.4 To illustrate, suppose a policyholder nominates beneficiary A to receive 50% of his policy proceeds, and beneficiaries B and C to receive 25% of the proceeds each. If beneficiary B predeceases the policyholder, his share of the proceeds will be distributed to beneficiaries A and C in the proportions 66.7% and 33.3% respectively.

9.5 If all beneficiaries predecease the policyholder, the entire sum of the proceeds will be returned to the policyholder.

9.6 In line with his rights under a revocable nomination, the policyholder will be able to alter or revoke the nomination at any time, whether before or after a beneficiary's demise. He can choose to redistribute the deceased beneficiary's share among the surviving beneficiaries in a different proportion than before, or nominate new beneficiaries to receive that share. However, he must ensure that 100% of his policy proceeds are nominated at any point in time – partial nominations, in which the policyholder retains a portion of the proceeds, will not be allowed, as stated in the consultation paper.

10 Beneficiaries who are Minors

10.1 Under irrevocable nominations, the consent of all beneficiaries is required before changes can be made to the insurance policy. Some respondents enquired whether beneficiaries who are minors are able to give or deny consent in this regard.

MAS' Response

10.2 Beneficiaries who are minors will be able to execute their rights, including giving or denying consent to proposed changes to the policy, through their appointed guardians. Alternatively, their guardians may obtain court endorsement for third parties to act on behalf of the minors.

11 Muslim Policyholders

11.1 Some respondents asked how the new nominations framework will impact Muslim policyholders, given that the proposed provisions differ from the laws of inheritance under *Syariah*.

MAS' Response

11.2 Like all policyholders, Muslim policyholders will be given the choice of nominating beneficiaries to the proceeds of their insurance policies under the new framework. They can make either an irrevocable nomination or a revocable nomination.

11.3 Should they make an irrevocable nomination, the proceeds from the insurance policy will go to the beneficiaries, and will not be subject to *faraid*, or the Islamic law of inheritance.

11.4 However, under *Shariah* law, if Muslim policyholders were to make a revocable nomination, the proceeds will be subject to *faraid*. The nominees are viewed as trustees who should disburse the proceeds to the rightful beneficiaries in accordance with *faraid*.

12 Payment of Premiums

12.1 Some respondents sought clarification on what will happen if the policyholder stops paying premium and consequently causes the policy to lapse.

MAS' Response

12.2 For a revocably nominated policy, the policyholder preserves the right to deal with the policies according to his wishes. As such, when a policyholder allows his policy to lapse by not paying the premiums, the revocable nomination associated with that policy correspondingly lapses.

12.3 For an irrevocably nominated policy, if the policyholder is also trustee of the statutory trust created, then he is under a fiduciary duty to act in the best interests of the beneficiaries. Ceasing to pay premium, and thus causing the policy to lapse, may be tantamount to a breach of this fiduciary duty if it can be construed that such an act compromises the interests of the beneficiaries.

12.4 If the policyholder is truly unable to continue paying premiums, he may have a duty to elect for the policy to be converted into a paid-up policy payable upon his death to preserve the trust property.

13 Payment of Proceeds from Revocably Nominated Policies

13.1 Some respondents commented that proceeds from a revocably nominated policy which are paid whilst the policyholder is still alive should be paid to the beneficiaries instead of the policyholder himself.

13.2 This is because payouts during the policyholder's lifetime usually arise during periods in which the policyholder is severely ill or incapacitated. Under such circumstances, the policyholder may not be physically or mentally capable of managing his finances. If the policy proceeds were paid to the beneficiaries, they can use the money more speedily for the policyholder's treatment and care.

MAS' Response

13.3 While the proposed solution may address the problems in certain situations, it also has its drawbacks. Firstly, there is a possibility that beneficiaries may not use the policy proceeds for the policyholder's care should illness or disability befall the latter. Secondly, it is not consistent with the intent of a revocable nomination – that the policyholder preserves his rights and ownership over the policy and gets to reserve the policy proceeds paid out during his lifetime for his own use.

13.4 In addition, this situation may not be applicable in all cases concerning payment of proceeds during a policyholder's lifetime. For example, a policyholder may not be severely ill or incapacitated if proceeds are paid out from an endowment policy upon maturity.

13.5 As such, we intend to maintain the original proposal that lifetime proceeds from revocably nominated policies be paid to the policyholder. Should he wish to pass on the proceeds to his beneficiaries to administer, he is free to do so.

14 Notification to Insurers

14.1 The consultation paper proposed that in the event of conflict between a revocable nomination form and a will, the policy proceeds be paid to the beneficiaries named in the latest, validly executed instrument. Some respondents pointed out practical difficulties in ascertaining whether a nomination form or will is the latest instrument governing the policy in question, and whether such uncertainty will delay payout.

MAS' Response

14.2 Policyholders will be required to notify their insurers in writing whenever they make changes to their nominations. This applies to both irrevocable and revocable nominations.

14.3 The likelihood of conflict with wills arises only in respect of revocable nominations, because proceeds from irrevocably nominated policies do not form part of the assets governed by a will. Therefore, for revocable nominations, policyholders will also be required to notify their insurers in writing if they subsequently write a will to cover the

proceeds from an insurance policy for which a revocable nomination has been made previously.

14.4 In cases where a policyholder is unable or omits to notify his insurer, other parties may notify the insurer on his behalf, provided the instrument in question has been validly executed.

14.5 On their part, insurers will need to maintain complete records of the status of their policyholders' nominations, including any subsequent changes made and communicated to them. Insurers will be deemed to have paid out in good faith if they pay the proceeds to the beneficiaries named in the latest, validly executed instrument of which they have written notice at the time of the policyholder's death. Ensuring clarity and speed of payout is hence a shared responsibility between policyholders and insurers.

14.6 Insurers will be given full legal discharge in respect of policy proceeds which are paid out in good faith. This means an insurer cannot be asked to make a further payout should another beneficiary subsequently produce a later, validly executed instrument of which the insurer was not notified. It does not, however, invalidate the legal rights of the second beneficiary, and he may seek legal redress to recover the proceeds from the first beneficiary if he wishes to.

15 Information to be included in Will

15.1 Some respondents recommended reducing the amount of policy-specific information to be included in the will for it to be considered a validly executed instrument which encompasses the insurance policy in question. This was because wills may be written in emergency situations when details such as the insurance policy number may not be readily available.

MAS' Response

15.2 The requirement for inclusion of relevant insurance policy details is to provide certainty that the policyholder genuinely intended for the insurance policy proceeds to be disbursed in accordance with the will. Such certainty is particularly important in cases where the beneficiaries named in the nomination form and will are different.

15.3 The requirement will hence help to provide clarity in payout and encourage people to undertake will-writing with discipline and awareness. As such, we intend to maintain the original proposal, i.e. that wills must contain explicit insurance policy details, in particular, the name of the insurer and policy number, in order to be considered validly executed in respect of policy proceeds.

16 Policies Purchased with Central Provident Fund ("CPF") Monies

16.1 Some respondents asked how the proposed nominations framework will treat insurance policies, apart from CPFIS policies, which are purchased with CPF monies,

namely Dependents Protection Scheme (“DPS”) policies and Minimum Sum Scheme (“MSS”) annuities.

MAS’ Response

16.2 Policyholders will only be able to make revocable nominations for policies purchased with CPF monies, be it policies under the CPFIS, DPS or MSS schemes. This is because the primary purpose of such schemes is to protect the policyholder, whether by way of funding his retirement or providing payout in the event of him incurring a total and permanent disability.

16.3 An irrevocable nomination will lock the monies in a statutory trust created primarily to protect the beneficiaries, and is hence not consistent with the purpose for which the above schemes are intended. As such, irrevocable nominations will not be allowed for policies bought with CPF monies.

16.4 In terms of payout, lifetime benefits under DPS policies and MSS annuities will be paid to the policyholder. For CPFIS policies, lifetime benefits will only be paid to the policyholder if he has reached 55 years of age; otherwise, the monies will be returned to his CPF account. Death benefits will be paid to the intended beneficiaries; this applies to all three types of policies.

17 Existing Policies with Encumbrances

17.1 Some respondents questioned why the proposed framework does not apply to existing policies with encumbrances. Particularly, there are policyholders whose policies fall under the ambit of s73 of the CLPA and who were not duly aware of the consequences of creating a statutory trust at the time their nominations were made. The respondents recommended that such policyholders be allowed to re-nominate under the new framework as they did not intend to create a statutory trust over their policies in the first place.

MAS’ Response

17.2 When a policyholder nominates his spouse and/or children as beneficiaries to the proceeds of his insurance policy, a statutory trust is automatically created in favour of the beneficiaries. The statutory trust cannot be unwound without the consent of all the beneficiaries. This is the current position under section 73 of the CLPA.

17.3 As a fundamental principle in public policy making, new legislation should not retrospectively unravel former legislation. In the case of nomination of beneficiaries, the new framework similarly cannot retrospectively revoke the statutory trust to void a legal protection that has already been accorded to the beneficiaries under section 73 of the CLPA.

17.4 Where policyholders wish to make changes to their existing nominations and are unsure whether they are able to do so, they should seek legal advice to ascertain whether changes are allowed.

MONETARY AUTHORITY OF SINGAPORE
27 April 2006