CONSULTATION PAPER

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Proposed Amendments to the Definition of Carrying on Insurance Business

MAS

Monetary Authority of Singapore

PREFACE

1.1 Section 2(5) of the Insurance Act (Cap. 142) defines the "carrying on of insurance business" in Singapore as "the receipt of proposals for, or issuing of, policies in Singapore or the collection or receipt in Singapore of premiums on insurance policies." Over the years, changes in insurance business models and increased fragmentation in the insurance value chain has led to some ambiguities in the scope of coverage of the current definition of "carrying on insurance business". In some cases, the current definition appears inadequate to capture activities that should, by basic principles, be deemed as carrying on insurance business. In others, the current definition would capture the activities of certain auxiliary service providers, though there is no assumption of insurance risk by these entities.

1.2 To better reflect its policy intent, MAS is proposing to update and align the definition of "carrying on insurance business" with the common law principle of the assumption of insurance risk or the undertaking of insurance liability. It is, however, recognised that the proposed definition may capture activities that pose no or little regulatory risk and therefore would not be necessary for MAS to regulate. MAS proposes that these activities be carved-out from the coverage of the Insurance Act.

1.3 Arising from the proposed amendment to the definition of "carrying on insurance business", there would be a need to make consequential amendments to the definitions of "insurance agent", "insurance broker" and "insurance intermediary" in the Insurance Act. MAS will conduct a separate public consultation on this at a later date.

1.4 MAS is further proposing to amend the Insurance Act to clarify our policy intent in respect of the definition of "solicitation" of insurance business and the extent of solicitation allowed.

1.5 MAS invites interested parties to submit their views and comments on the proposed definitions of "Carrying on Insurance Business" and "Soliciting Insurance Business" as set forth in this consultation paper. Submissions in electronic form are strongly encouraged and should be sent via e-mail to the following address: BizDef_ins09@mas.gov.sg. Written comments should be submitted to:

Insurance Supervision Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Fax: (65) 6229 9694

All comments and feedback should be received by 12 June 2009.

1.6 Please note that all submissions received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

1 DEFINITION OF CARRYING ON INSURANCE BUSINESS

1.1 Currently, the definition of carrying on insurance business as stated in section 2(5) of the Insurance Act (Cap. 142) deems an entity to be carrying on insurance business in Singapore if it engages in any one of the following activities:

a) Receives proposals for insurance policies;
b) Issues insurance policies; or
c) Collects or receives premiums on insurance policies.

1.2 Over the years, changes to the modus operandi of insurance business has led to an increased fragmentation in the insurance value chain, with auxiliary service providers coming in to serve only specific segments of the value chain without the assumption of insurance risk. For example, an insurer may engage the services of a third-party to collect premiums on its behalf. Under the existing definition, the third party would be deemed as "carrying on insurance business" even though there is no assumption of insurance risk by the latter. This may deter some insurance auxiliary service providers, which could provide value added services to the insurance industry, from setting up operations in Singapore. Conversely, an entity may not directly engage in any of the three activities listed above (because they are all outsourced, for example), yet still be assuming the insurance liability. In substance, this entity is carrying on insurance business and thus should be regulated as an insurer.

1.3 MAS therefore proposes to revise the existing definition by adopting the common law principle of the assumption of insurance risk or the undertaking of insurance liability in defining "carrying on insurance business". The following must be present in order for an activity to be considered "carrying on insurance business" under common law:

a) The insured becomes entitled to something upon the occurrence of an event that the insurer is liable for;
b) The event must be one that involves some element of uncertainty;
c) The insured must have an insurable interest[1] in the subject matter of the contract; and

[1] Person/entity effecting the insurance has some legally recognized relationship to the subject matter of the insurance. A separate review with be undertaken on the requirement for insurable interest in relation to life insurance policies.

d) The risk must be a pure risk[2].

1.4 This proposed definition would be aligned with other jurisdictions, such as Australia and the United Kingdom, which also adopt the common law principle of the assumption of insurance risk or the undertaking of insurance liability in defining "carrying on insurance business".

1.5 MAS does, however, recognise that the proposed definition may capture activities that do not pose regulatory concern to MAS and therefore not necessary for MAS to regulate. Thus, while the following activities would be deemed as "carrying on insurance business", MAS proposes that they be carved-out from the coverage of the Insurance Act:

a) Non-commercial arrangements which are not for profit; and
b) Incidental activities arising from some other core business.

1.6 Examples of (a) would be employee benefit plans whereby the employer funds the future retirement of the employees via payments into company administered annuity schemes. Such arrangements are private agreements between employers and their employees in order to provide benefits for the latter. Currently, they are already exempted from the coverage of the Insurance Act under section 2(6).

1.7 In accordance with (a), friendly societies and mutual benefit organisations would also be exempted from the coverage of the Insurance Act. At present, these groups are already exempted under section 2(7) of the Insurance Act.

1.8 Examples of (b) include product warranties issued by manufacturers and retailers. Warranties provided by manufacturers and retailers impose obligations on manufacturers and retailers that are of the same nature as their usual obligations to supply goods or services of a stipulated quality. As such, there are no regulatory concerns as consumers would have the expectation that the manufacturer or retailer would fulfil its obligations under the warranty issued as part of the company's normal course of activities. The same rationale would also apply to extended warranties, where an extended warranty is a warranty offered to the customer by the manufacturer or retailer for a longer period, often for an extra fee. Such arrangements are currently already exempted from the coverage of the Insurance Act under section 2(1)(b).

[2] A risk involving the possibility of loss only or at best a "no gain" situation.

1.9 However, warranties issued by third parties for a fee would still be considered as "carrying on insurance business". For example, an entity other than the manufacturer or retailer of a product may undertake the obligation to indemnify an individual, in return for a fee, for any costs relating to the repair of a product. In such an agreement, the provider of the warranty is not associated with the supply of the product in the normal course of its business. Similarly, manufacturers or retailers who wish to indemnify customers against events, such as theft, which are not of the same nature as the supply of goods or services of a stipulated quality would constitute as carrying on insurance business. Such entities are providing an insurance coverage and should not be exempted from the Insurance Act.

2 DEFINITION OF INSURANCE AGENT, INSURANCE BROKER AND INSURANCE INTERMEDIARY

2.1 Given that the existing definitions of "insurance agent", "insurance broker" and "insurance intermediary" in the Insurance Act are dependent on the definition of "carrying on insurance business", these definitions would thus be affected by the amendments proposed in this consultation paper. As insurance intermediation activities do not involve the assumption of insurance risk or the undertaking of insurance liability, it would not be possible to extend the proposed definition of "carrying on insurance business" to define an "insurance agent", "insurance broker" or "insurance intermediary". MAS will be reviewing these definitions after the proposed amendments to the definition of "carrying on insurance business" is finalised and will conduct a public consultation on this at a later date.

3 DEFINITION OF SOLICITING INSURANCE BUSINESS

3.1 At present, section 6(1) of the Insurance Act prohibits a person from soliciting insurance business for any insurer, other than an insurer who is entitled to carry on that business in Singapore or an authorised reinsurer. The Insurance Act is, however, silent on what exactly constitutes soliciting insurance business as well as the extent of solicitation allowed under the Act.

3.2 As such, MAS proposes to define "solicitation" in the Insurance Act for clarity. "Solicitation" will be deemed as the act of offering, inviting or issuing any advertisement containing any offer or invitation to the public or any section of the public in Singapore with regard to entering into an agreement which constitutes as carrying on insurance

business. A person whose business is to publish or arrange for the publication of advertisements will be specifically carved out from the Insurance Act.

3.3 The Insurance Act will also be amended to clarify that only the entity licensed to carry on insurance business in Singapore (i.e. the branch or locally-incorporated subsidiary) is allowed to solicit for insurance business in Singapore. MAS' regulatory and supervisory reach extends only to registered insurance entities and it would not be possible for MAS to protect the interests of policyholders in Singapore who have purchased policies issued by the overseas head offices or sister branches of foreign-incorporated insurers.

3.4 The Insurance Act will further be amended to clarify that a registered insurer will not be allowed to co-brand its insurance products and services with an unregistered insurer. Co-branding involves combining the brand names of other providers together to promote the services or insurance products offered by the registered insurer. Co-branding with unregistered insurers could mislead consumers into thinking that the unregistered insurer is one of the entities offering the product and that the unregistered insurer has been authorised by MAS to offer its product or services in Singapore. In addition, such an arrangement tantamount to an unregistered insurer soliciting business in Singapore by promoting its brand name in Singapore.

3.5 Currently, specific provisions or licensing conditions are imposed under the Banking Act (Cap. 19)[3] and Securities and Futures Act (Cap. 289)[3] with respect to solicitation of business. The proposed amendments aim to align the Insurance Act with these Acts by making explicit the scope of solicitation that is allowed with respect to insurance business.

[3] Solicitation is restricted to the locally-incorporated or foreign-incorporated entity located within Singapore.

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