

CONSULTATION PAPER

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Insurance Resolution

MAS

Monetary Authority of Singapore

PREFACE

To strengthen the insurance regulatory framework and allow the Monetary Authority of Singapore (“MAS”) to act speedily in dealing with a failed insurer, MAS intends to enhance its powers relating to the resolution of insurers in Singapore.

2 MAS invites interested parties to forward their views and comments on the proposals made in this consultation paper. Electronic submission is encouraged. Please submit your written comments by 29 January 2010 to:

Insurance Supervision Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

Fax: 6229 9694
Email: resolution_ins09@mas.gov.sg

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

1 INTRODUCTION

1.1 While MAS seeks to promote a sound and progressive financial system and strives to maintain a high standard of financial supervision, it does not and cannot aim to prevent all failures of financial institutions. Just as MAS has reviewed the Policy Owners' Protection Fund scheme to provide a safety net to policy owners in the event of an insurer failure, we have also reviewed our options for resolving an insurer failure.

1.2 In this review, MAS looked at the powers under the Banking Act ("BA") with respect to bank resolutions, and the resolution powers in other jurisdictions. Unlike bank resolution, insurance resolution is unique in that the key priority is to secure continuity in insurance coverage, particularly for life insurance policies, as far as reasonably practicable. This is because policies written by life insurers tend to be long-term in nature, and early termination of the policies could cause a substantial loss due to low surrender value or inability to take up new insurance cover if the life insured is in poor health or already advanced in age.

1.3 As such, specific powers may be needed and are proposed in this consultation paper. In addition, many of the powers which are already established in the BA for bank resolutions are found to be equally relevant and necessary in the case for insurance resolutions. The insurance resolution framework will be aligned with the bank resolution framework in respect of these powers.

1.4 This consultation paper sets out the powers that MAS proposes to introduce in the Insurance Act ("IA") that apply before an insurer has gone into liquidation (i.e. insurer is in financial difficulties), where an insurer has gone into liquidation (i.e. insurer has failed), and where an insurer enters into a scheme of arrangement under the Companies Act ("CA"). As the proposed powers have some impact on the application of the CA, MAS will be concurrently seeking the views of the Ministry of Law, the Attorney General's Chambers, and the Accounting and Corporate Regulatory Authority on these proposed powers.

2 POWERS FOR INSURANCE RESOLUTION – PRE-LIQUIDATION

2.1 In the resolution of a life insurer, it is important to facilitate the transfer of policies to another insurer, as far as reasonably practicable to secure the continuity of insurance coverage for policy owners¹. This is because an early termination of a policy owner's life insurance policies may cause a substantial loss in policy value due to existing surrender penalties. In addition, some policy owners may no longer be able to secure alternative cover if they are in poor health or advanced in age when their insurer fails.

2.2 In order to facilitate the transfer of policies from the distressed insurer, MAS proposes to have the power to direct a transfer and to apply to the High Court to impose a moratorium on any applications to wind up the insurer or commence legal proceedings (including an action for execution, distress, enforcement of security, repossession, or to sell, transfer, assign or otherwise dispose of any property) against the insurer when such powers are used.

2.3 In the case of banks in Singapore, MAS currently has powers in the BA to:

- (a) take control of a bank;
- (b) make a determination for the sale or transfer of the assets and liabilities of a failing bank without the prior consent of the bank's depositors and creditors, subject to the Minister's approval;
- (c) make a determination for the transfer of ownership of the bank either via a compulsory restructure of share capital for Singapore-incorporated banks or the forced sale of shares of a failed bank, subject to the Minister's approval; and
- (d) apply to the High Court to impose a moratorium such that no resolution shall be passed and no order shall be made for the winding up of the bank, and no legal proceedings shall be commenced against the bank, when the powers in (a) to (c) are used.

2.4 MAS proposes to institute similar powers in the IA in the case of insurers [as set out in paragraph 2.3(a) to (d) above], subject to the same grounds and pre-conditions as those in the BA, where relevant. Please refer to Annex A for more details on these grounds and pre-conditions.

2.5 In the case where the distressed insurer is voluntarily transferring its assets and liabilities, in order to ensure that due diligence is exercised when determining the appropriate amount of assets to be transferred, MAS

¹ On the other hand, general insurance contracts are usually short-term in nature, with most contracts renewable annually. The insurer also has the right to cancel the policy by giving prior notice to the insured.

proposes that voluntary schemes of transfer for life insurance portfolios are to be approved by MAS before they proceed to the High Court for confirmation².

2.6 Assets that are transferred to another insurer prior to liquidation may be subject to claw-back mechanisms under the CA. To facilitate the smooth transfer of assets and prevent the transfers from being subsequently unwound, MAS proposes to insert a provision in the IA to exclude the application of any claw-back mechanism available in the CA to transfers of assets to another insurer that have been directed or approved by MAS.

Proposal 1: Subject to the same grounds and pre-conditions as those set out in the BA where relevant, MAS is to be given the powers to:

- (a) take control of an insurer;
- (b) make a determination for the sale or transfer of the assets and liabilities of a failing insurer without the prior consent of the insurer's policy owners and creditors, subject to the Minister's approval;
- (c) make a determination for the transfer of ownership of the insurer either via a compulsory restructure of share capital for Singapore-incorporated insurers or the forced sale of shares of a failed insurer, subject to the Minister's approval; and
- (d) apply to the High Court to impose a moratorium such that no resolution shall be passed and no order shall be made for the winding up of the insurer, and no legal proceedings shall be commenced against the insurer, when the powers in (a) to (c) are used.

Proposal 2: Voluntary schemes of transfer for life insurance portfolios are to be approved by MAS before submission to the High Court for confirmation.

Proposal 3: There will be a provision in the IA to exclude the application of any claw-back mechanism in the CA to transfers of assets to another insurer that have been directed or approved by MAS, to prevent the unwinding of any prior transfers undertaken.

² Under Section 47 of the IA, schemes of transfer are confirmed by the High Court.

3 POWERS FOR INSURANCE RESOLUTION – INSURER IN LIQUIDATION

3.1 A liquidator's main purpose is to wind up an entity, and the CA currently does not require liquidators to transfer assets and liabilities or provide liquidators with the powers to do so. This may compromise MAS' intent to secure the continuity of insurance coverage as far as reasonably practicable, especially in the case of a life insurer which has gone into liquidation.

3.2 Under the bank resolution framework, MAS' approval is required for the appointment of a liquidator (whether local or foreign), and MAS has the power to add, revoke or vary conditions on the liquidator. MAS proposes to incorporate similar provisions in the IA for insurers. In addition, to safeguard the interests of policy owners, MAS proposes to amend the IA to:

- (i) require the liquidator to seek to sell/transfer portfolios of the failed insurer to other insurers (including a run-off entity) as far as reasonably practicable;
- (ii) continue the business of the insurer until the portfolios are transferred, unless otherwise decided by the Court; and
- (iii) grant powers to the liquidator to carry out its duties in (i) and (ii).

3.3 In order to avoid the situation where the amount of assets transferred by the failed insurer to another insurer is disproportionately larger than the amount of liabilities transferred, thereby putting the remaining policy owners and other creditors at a disadvantage, it is important that MAS have the power to appoint an independent actuary and raise any concerns in the court where necessary. Thus, MAS proposes to have the power to appoint an independent actuary to assess the value of the liabilities to be transferred.

Proposal 4: MAS is to be given the powers to approve the appointment of a liquidator (whether local or foreign), and to add, revoke or vary conditions on the liquidator.

Proposal 5: There will be provisions in the IA to:

- (i) require the liquidator to seek to sell/transfer portfolios of the failed insurer to other insurers (including a run-off entity) as far as reasonably practicable;
- (ii) continue with the business of the insurer until the portfolios are transferred, unless otherwise decided by the Court; and
- (iii) grant powers to the liquidator to carry out its duties in (i) and (ii).

Proposal 6: MAS is to be given the power to appoint an independent actuary to assess the value of the liabilities to be transferred.

4 OTHER RESOLUTION OPTION – SCHEME OF ARRANGEMENT

4.1 In lieu of liquidation, distressed insurers may also enter into a scheme of arrangement with its creditors under Section 210 of the CA. However, there is no provision in the IA to allow MAS to be a party to a scheme of arrangement where an insurer is involved, unlike the case in the BA. MAS proposes to align the IA with the BA to allow MAS to be a party to a scheme of arrangement in the case of insurers.

Proposal 7: MAS is to be made a party to a scheme of arrangement where an insurer is involved.

ANNEX A

GROUND AND PRE-CONDITIONS FOR TAKING ACTIONS

1 Section 49(1) of the BA lists the grounds upon which MAS can take actions such as assuming control of a bank, appointing a statutory manager or adviser, or undertaking any compulsory transfers or restructuring of share capital. Section 55E of the BA, Section 55I and Section 55L list the pre-conditions before MAS can direct a compulsory transfer of banking business, compulsory transfer of shares or compulsory restructure of share capital, respectively.

2 MAS is of the view that the grounds and pre-conditions for directing the transfer of banking business are equally applicable to the insurance business. MAS therefore proposes to adopt similar provisions as the grounds and pre-conditions before any compulsory transfers of business/shares or compulsory restructure of capital can be undertaken for insurers.

3 Based on Section 49(1) of the BA, we propose that the grounds for MAS undertaking any compulsory transfers of business/shares or compulsory restructure of capital for insurers should include where³:

- (a) an insurer informs MAS that it is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments;
- (b) an insurer becomes unable to meet its obligations, or is insolvent, or suspends payments;
- (c) MAS is of the opinion that the insurer —
 - (i) is carrying on its business in a manner likely to be detrimental to the interests of its policy owners or its creditors;
 - (ii) is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments;
 - (iii) has contravened any of the provisions of the IA; or
 - (iv) has failed to comply with any condition attached to its licence; or
- (d) MAS considers it in the public interest to do so.

³ In the case of the compulsory restructuring of share capital, one additional ground is when MAS is of the opinion that (i) the liability on any of the shares of the insurer in respect of share capital not paid up ought to be extinguished or reduced, or (ii) any paid-up share capital of the insurer is lost or unrepresented by the available assets of the insurer.

4 Based on Section 55E, Section 55I and Section 55L of the BA, we propose that the pre-conditions for MAS undertaking any compulsory transfers of business/shares or compulsory restructure of capital for insurers should include if:

- (a) any ground exists where MAS may exercise its power as referred to in paragraph 3, whether or not MAS has exercised this power;
- (b) the transferee/subscriber (if it is an individual) or the board of directors of the transferee/subscriber (if it is a corporation) has consented to the transfer/subscription for the shares, as the case may be;
- (c) MAS is satisfied that the transfer/issue of shares is appropriate, having regard to the interests of the policy owner of the transferor given priority and the order of priority of the policy owner under Section 45 of the IA, the interests of the policy owner of the transferee given priority and the order of priority of the policy owner under Section 45 of the IA, the stability of the financial system in Singapore and any other matter that MAS considers relevant; and
- (d) the transfer involves the whole or part of the insurance business of the transferor. (This is only applicable for the directed transfer of insurance business.)



Monetary Authority of Singapore