

# **RESPONSE TO FEEBACK RECEIVED – CONSULTATION PAPER ON THE PROPOSED AMENDMENTS TO THE INSURANCE ACT ON THE DEFINITION OF CARRYING ON AND SOLICITATION OF INSURANCE BUSINESS**

## **1 Introduction**

1.1 On 11 May 2009, MAS issued a consultation paper (“the CP”) inviting comments on the proposed amendments to the definition of carrying on insurance business and solicitation of insurance business.

1.2 The consultation period closed on 12 June 2009. MAS would like to thank all respondents for their contributions.

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

1.4 MAS notes that some of the feedback received relate to insurance intermediaries. As mentioned in the CP, a public consultation will be conducted, at a later date, on the proposed definitions of “insurance agent”, “insurance broker”, and “insurance intermediary”. The feedback received will be addressed accordingly in the public consultation.

## **2 Criteria for Carrying on Insurance Business**

2.1 A respondent suggested the inclusion of other conditions, such as whether the provider of the benefits has discretion over the benefits paid, to be considered when determining what constitutes carrying on insurance business.

2.2 A respondent also sought clarity as to whether the assumption of risk or undertaking of liability must be:

- i. in Singapore, or

- ii. arising out of activities undertaken in Singapore but assumed or undertaken outside Singapore, or
- iii. a combination of both.

#### MAS' Response

2.3 MAS proposes to adopt the common law principle of the assumption of risk or the undertaking of liability in the definition of carrying on insurance business. The 3 conditions outlined in the CP are the underlying criteria to be taken into account when determining whether an activity is considered carrying on insurance business. Other elements, such as whether the entity is issuing policies or collecting premiums, could be taken into account when assessing whether an entity is carrying on insurance business. However, the mere act of issuing policies or collecting premiums will not deem an entity as carrying on insurance business. As to the suggestion to include the consideration of whether the provider has discretion over the benefits paid as a criteria, if the provider has such a discretion, then it would not fulfil the proposed criteria that 'the insured becomes entitled to something upon the occurrence of an event that the insurer is liable for'. As such, the provider would not be considered as carrying on insurance business.

2.4 The definition of "carrying on insurance business" does not depend on the location where the risk is assumed or liability is undertaken. This would only be relevant in making the distinction between Singapore and offshore risks, which is separately set out in the First Schedule to the Insurance Act.

### **3 Unregistered Insurers**

3.1 A respondent sought clarification on the meaning of "unregistered insurer". Clarification was also sought as to the extent of solicitation by or on behalf of an unregistered insurer that would be allowed.

3.2 A number of respondents also enquired whether registered insurers may represent themselves as their global trading names, which would include unregistered related entities. The question was raised as to whether the use of standard marketing material, which lists the various other branches and insurance companies within the

group, would be allowed. In addition, clarity was sought on whether a registered insurer may promote or market itself by highlighting the financial rating of its head office.

#### MAS' Response

3.3 An unregistered insurer is one that is deemed as carrying on insurance business, as determined by the proposed definition, but has not been approved by MAS to do so in Singapore.

3.4 Section 6(1) of the Insurance Act currently prohibits a person from soliciting insurance business for an unregistered insurer; this prohibition would hold going forward. The proposed definition only serves to clarify what is deemed as solicitation and the extent of solicitation allowed. As such, solicitation for an unregistered insurer, even if it is a one-off transaction or targeted at a specialised segment, is not allowed.

3.5 MAS would like to reiterate that there has been no change in the policy intent with regard to solicitation. Registered insurers which use their global trading name, standard marketing material or their head office's financial ratings in promotional materials should ensure that there is no misrepresentation on their part.

## **4 Employee Benefits Group Policies**

4.1 A respondent enquired as to the types of employee benefits group policies that would constitute carrying on insurance business.

4.2 It was also highlighted that, in many multi-national companies, group policies are often purchased for employees on a global basis, with the insurer offering the coverage unlikely to be registered in Singapore. A query was thus raised as to whether the employer would be considered as soliciting business on behalf of the (unregistered) group insurer if an option of taking up a direct policy with the insurer upon termination of employment is communicated to the employee.

#### MAS' Response

4.3 Arrangements which are administered and funded by an employer for the benefit of its employees would generally be carved out from the ambit of the Insurance Act. This

would be the case regardless of the type of benefit provided, whether retirement (superannuation), disability or death, as long as it is a non-commercial arrangement that is not for profit. Arrangements which involve the assumption of risk and provision of benefits by a third-party would, however, not be excluded from the ambit of the Insurance Act.

4.4 In the case of group insurance that is provided by an unregistered insurer, the unregistered insurer would be deemed as soliciting insurance business if it offers, invites or issues any advertisement to the individual, as proposed in the CP.

## **5 Pre-paid Services**

5.1 A few respondents asked if pre-paid services which are to be rendered in response to some future event, such as that provided by automobile associations, would be deemed as carrying on insurance business.

### MAS' Response

5.2 Where the pre-paid service is incidental to the core business of the provider, as proposed in the amendments set forth in the CP, it would be carved out from the ambit of the Insurance Act.

## **6 Silent Payment Undertakings and Payment Guarantees**

6.1 One respondent has highlighted that there are certain arrangements, known as silent payment undertakings or payment guarantees, whereby a bank would, in return for a fee, agree to assume the risk of non-payment by a purchaser to a seller in a sale and purchase transaction. The payment undertaking or payment guarantee is typically not part of any receivables purchase facility availed by the bank.

### MAS' Response

6.2 It is MAS' intention not to require banks, which are already regulated under the Banking Act, to also be licensed as insurers. Banks would thus be exempted from the

need to be licensed as insurers.

## **7 Insurance Forums, Talks and Seminars**

7.1 A respondent queried whether insurance-related forums, talks and seminars would constitute as soliciting insurance business.

### MAS' Response

7.2 The conduct of insurance forums, talks and seminars would not constitute as soliciting insurance business as long as there is no marketing of specific insurers or insurance products.