Duties And Responsibilities Of Directors In The Insurance Industries

March 2001
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OVERVIEW

The Companies Act (Cap. 50) (the ‘Companies Act’) is the key legislation that spells out various obligations that the director must comply with. Apart from the Companies Act, there are other legislation in Singapore which impose obligations upon directors of a company. These obligations are specific to the particular industry. Examples of such obligations arise under the Banking Act (Chapter 19), the Insurance Act (Chapter 142), the Futures Trading Act (Chapter 116), the Securities Industry Act (Chapter 289), the Factories Act (Chapter 104) and the Employment Act (Chapter 91). This list is not exhaustive.

This paper looks at the obligations that arise under the Insurance Act in some detail. It also briefly touches on some of the other legislation that impose obligations on directors. It must be stressed at the outset that it is not possible to provide comprehensive coverage of the duties and responsibilities of directors under the various industries in a paper such as this. The intent here is to highlight the key obligations that are owed for the sole purpose of making the director of an entity operating in that industry aware of some of the obligations that he/she undertakes when he/she assumes his/her directorship in a particular industry.

It must also be borne in mind that there are a number of duties and obligations that are indirectly imposed on a director. This indirect imposition arises as a consequence of an obligation imposed on the corporate entity which can only act through its directors and other officers. For completeness, this paper also looks at the obligations imposed on a corporate entity, where those obligations can only be performed through directors. These obligations can be generally termed as corporate governance issues. These issues are equally important, whether or not a direct penalty is imposed on the director.

INSURANCE INDUSTRY

The Insurance Sector

Singapore has a very competitive and cosmopolitan insurance market. As at 30 June 1999, there were 59 direct life and general insurers, mostly foreign-owned, serving a relatively small domestic market. In addition, there were 101 reinsurers and captive insurers, writing mainly regional offshore business. Singapore is a major insurance centre, home to a rich mix of leading insurers, reinsurers, captives and brokers. Our aim is to be the premier insurance hub in Asia by 2003.

Presently, the principal statute governing insurers in Singapore is the Insurance Act, (Chapter 142) (the ‘Insurance Act’). This statute is, amongst other matters, concerned with the registration requirements, margins of solvency to be maintained, restrictions on changes of control and
ownership of locally incorporated insurers, policy owners’ protection fund and heightened penalties for the breach of the Insurance Act. Control over insurance companies and their officers are also maintained through MAS Notices to Insurers.

There are essentially three main types of insurers in Singapore, namely, the direct insurer, the reinsurer and the captive insurer. The Insurance Act defines a ‘captive insurer’ to mean an insurer whose registration is restricted to the carrying on of business which consists principally of risks of its related companies, and includes a rent-a-captive insurer. A ‘reinsurer’ is defined as an insurer whose registration is restricted to the carrying on of reinsurance business. Finally, a ‘direct insurer’ is defined as any insurer other than a reinsurer or a captive insurer.

To carry on any class of insurance business in Singapore, the person must, as insurer, be registered by MAS under the Insurance Act in respect of that class of business. Section 3 and section 4 of the Insurance Act spell out the penalties where this rule is contravened.

An applicant seeking registration as either a direct insurer, a reinsurer or a captive insurer must be a company as defined in the Companies Act or a company incorporated outside Singapore which has an established place of business in Singapore or a society registered under the Cooperative Societies Act (section 8(1) of the Insurance Act).

This means that a natural person cannot be registered as an insurer in Singapore to carry on insurance business. An exception to this is provided by section 34 of the Insurance Act which states that a person can carry on general insurance business in Singapore if he/she carries it on as a member of an association of individual underwriters established outside Singapore and approved by MAS. MAS will approve an association only if it is organised on the system known as Lloyd’s, i.e., a system whereby every underwriting member of a syndicate of the association becomes liable for a separate part of the sum secured by every policy subscribed to by that syndicate (section 34(2) of the Insurance Act).

The Insurance Act expressly prohibits any society registered under the Societies Act (Chapter 34) or organisation registered under the Mutual Benefit Organisations Act (Chapter 191) or company engaged primarily in the business of export credit insurance from being deemed insurers.

This paper will only address the key issues facing an officer of an insurance company without going into the details of a reinsurer and a captive insurer.

Who Can Be A Director Of An Insurance Company?

There are no specific criteria laid down by legislation that must be possessed by a director of an insurance company. Generally, the director must be suitably qualified to take on the role of director of an insurance company. He/she must also satisfy the requirements as spelt out in the Companies Act. In addition, an insurer incorporated or established in Singapore must obtain MAS approval for the appointment of its directors (section 30(1)(b) of the Insurance Act and MAS Notices to General Insurers No 106). Captive insurers are, however, exempted from this.
requirement. They need only inform MAS of any appointment or changes in appointment of their directors as soon as these are known (MAS Notices to General Insurers No 106).

Apart from the appointment of directors, insurance companies are also required to appoint principal officers. Principal officers may or may not be directors of the insurance company. The appointment of principal officers of insurers whether incorporated in Singapore or otherwise for the local office is subject to the approval of MAS (section 30(1)(a) of the Insurance Act and MAS Notices to General Insurers No 106). This is in line with the importance MAS attaches to the position of the principal officer. A ‘principal officer’ is defined to mean any person, by whatever name called, who is employed by the insurer to be directly responsible for the conduct of any class of insurance business of the insurer in Singapore. In making the appointment, an insurer must ensure that the person being appointed is a fit and proper person possessing the relevant qualifications and experience to hold a top-management position in the company. The appointee, in addition to being a person of good character and integrity must have the authority and responsibility to conduct the insurer's business professionally, and must be capable of ensuring compliance with the insurance law and regulations (MAS Notices to General Insurers No 106).

Statutory Duties And Responsibilities

This section highlights the key duties and responsibilities imposed on directors of insurance companies. These duties and responsibilities are not as extensive as those for directors of banks and merchant banks.

Often, the duties imposed on an insurance company are worded in broad terms so that the obligations extend further to impose obligations on the directors as well. In this regard, reference should be had to section 55 of the Insurance Act. In particular, section 55(3) which provides that where an offence under the Insurance Act or any regulations made thereunder is committed by any company or body corporate, any person who, at the time of the commission of the offence, is a director, manager, secretary or other similar officer of that company or body corporate, or is purporting to act in that capacity, shall be guilty of the offence unless he/she proves that he/she exercised all such diligence to prevent the commission of the offence as he/she ought to have exercised, having regard to the nature of his/her functions in that capacity and to all the circumstances.

Section 55(4) of the Insurance Act adds that where an offence under the Insurance Act or any regulations made thereunder is committed by a company or body corporate, being an offence consisting in the breach of a duty imposed only on companies and bodies corporate, any individual guilty of the offence (whether by virtue of subsection (3) or otherwise) shall be liable on conviction to imprisonment for a term not exceeding 12 months in addition to or in substitution for any fine.

The implication of the preceding discussion is that a director of an insurance company will be guilty of an offence whenever the insurance company is found to have breached the provisions of the Insurance Act unless the director can show that he/she has exercised all such diligence to prevent the commission of the offence as he/she ought to have exercised, having regard to the
nature of his/her functions in that capacity and to all the circumstances. The implication is serious as the penalty is penal.

Given the seriousness of the penalties that can potentially be imposed on the director, it bears remembering that directors of insurance companies are liable for breaches that the insurance company itself may have committed. These potential breaches are discussed in the section below under the header ‘Corporate Governance Issues’.

Suffice here to discuss two key obligations imposed on directors.

Loans To Directors

Section 32 of the Insurance Act prohibits a registered insurance company in Singapore from granting, whether directly or indirectly, unsecured loans or advances to a director of the insurance company which in the aggregate and outstanding at any one time exceed the sum of $5,000, or to an employee of the insurance company which in the aggregate and outstanding at any time exceed one year’s emolument of that employee. For the purpose of this restriction, a ‘director’ includes the wife, husband, father, mother, son or daughter of a director.

A failure to comply with this section attracts criminal sanctions.

Money Laundering

As in the case of banks generally, the authorities take a very serious view of money laundering activities in Singapore. Guidelines have been introduced for insurance companies to comply with in relation to this. In addition to the guidelines, the specific offences contained in the CDT Act must also be borne in mind. Given that there has been a thorough discussion of the money laundering activities above, that discussion will not here be repeated. It merely bears stressing that non-compliance with the money laundering rules will result in possible criminal sanctions imposed on directors by virtue of section 55 of the Insurance Act.

Non-Statutory Duties

As in the case of directors of banks and merchant banks, given the fiduciary nature of the position that a director of an insurance company occupies vis-à-vis the insurance company, the directors of insurance companies are subject to the same common law duties that apply to their brethren in other industries and companies. Briefly, these are:

- A fiduciary duty to act in good faith and in the interests of the insurance company.
- A duty to exercise care and diligence in performing their functions as director.
- A duty to avoid conflicts of interests and secret profits.

This paper does not discuss these duties any further, save for the duty of good faith that is imposed on an insurance company.
Duty Of Good Faith

It is frequently forgotten that the insurer owes a duty of disclosure at common law. A contract of insurance is one of uberrimae fidei. The Oxford Dictionary of Law defines this as ‘describing a class of contracts in which one party has a preliminary duty to disclose material facts relevant to the subject matter to the other party’ (Oxford University Press, Fourth Edition, 1997). As such, it is a fundamental principle of insurance that the utmost good faith must be observed by each party (Carter v Boehm (1766) 3 Burr 1905). Thus, the parties to the contract are under a duty to exercise the utmost good faith and to make full disclosures of facts material to the contract. The basic assumption made by the law in an insurance contract is that the insured is in possession of facts which would influence the mind of an insurer in computing the risk he/she is undertaking. Such information must be disclosed by the insured in order to enable the insurer to assess the risk.

More importantly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge since the obligation of good faith applies to them equally. All representations made by them during the negotiation with a view to inducing the assured to accept a policy must be true.

The insured’s duty to make disclosure continues right up to the time the contract is concluded.

Given the director’s duty to act in good faith and in the interest of the insurance company, the director must ensure that the insurance company complies with this common law duty as well.

Corporate Governance Issues

As stated in the introduction to this paper, the duties and responsibilities imposed on a director of an insurance company can be direct or indirect – direct where it is a duty imposed on the director himself/herself, and indirect where it is a duty imposed on the insurance company, for which the director may be held liable given his/her position as agent of the insurance company, and section 55 of the Insurance Act.

To reiterate, section 55 of the Insurance Act renders a director of an insurance company liable where it is shown that he/she has failed to exercise such diligence to prevent the commission of the offence as he/she ought to have exercised, having regard to the nature of his/her functions in that capacity and to all the circumstances. This section, therefore, briefly discusses the obligations that are imposed on an insurance company, which obligations are crucial to ensure that the insurance company is operated within the legislative framework.

Over and above the statutory criminal liability, a director potentially faces civil liability under common law for any breach of his/her statutory duty. This means that the insurance company can sue a director for any loss that it may suffer if it establishes that there was a statutory duty imposed on the director to, amongst other things, take reasonable care and steps to ensure that the insurance company complied with the statutory obligations imposed on it.
Given the nature and extent of the liability (both civil and criminal) that can be imposed on a director, it warrants setting out briefly the key requirements that insurance companies are required to comply with, and indirectly directors are required to ensure compliance with.

**Maintenance Of Deposits**

Upon being registered in respect of any class of insurance business, a Singapore insurer must maintain in respect of that class of business a deposit with MAS of a value not less that $500,000 or such other amount as may be prescribed (section 13(1) of the Insurance Act).

**Ownership Requirements**

MAS grants licence for the operation of an insurance company after close scrutiny of its corporate structure, ownership and capital backing. As such MAS restricts any changes in the corporate and capital structure of the insurer. Where such changes are proposed, approval from MAS must first be obtained.

By section 26 of the Insurance Act, no person whether resident in Singapore or otherwise can, without prior application to and approval by MAS, enter into any arrangement in relation to any registered insurer that is incorporated in Singapore by virtue of which he/she would obtain control of the insurer. In the same vein, section 27 and 28 of the Insurance Act respectively spell out restrictions preventing a person from obtaining control of a registered insurer incorporated in Singapore or acquiring a substantial shareholding in a registered insurer incorporated in Singapore, without first obtaining approval from MAS.

It should be noted that insurers incorporated in foreign jurisdictions, but which carry on insurance business in Singapore without being incorporated here, are not similarly restricted.

Transfers of the whole or part of the insurance business of a registered insurer to another insurer appropriately registered is possible pursuant to section 47 and 48 of the Insurance Act.

**Provision Of Information**

As a means of ensuring that the ownership requirements are complied with, MAS is empowered by section 29 of the Insurance Act to require an insurer incorporated in Singapore to obtain from any of its shareholders, information as to the beneficial interests of that shareholder in voting shares of the insurer.

Likewise, the insurer may also be required by section 32 of the Insurance Act to furnish MAS with information about any matter related to any business carried on by the insurer in Singapore, or elsewhere. The use of the phrase ‘Singapore insurer’ as opposed to ‘insurer incorporated in Singapore’ raises the question as to whether the scope of MAS's power under this extends to all insurers operating in Singapore, whether or not incorporated here.
A provision introduced in 1993 requires a direct insurer who is registered to carry on life insurance business to appoint an actuary as approved by MAS (section 30(1A) and (1B) of the Insurance Act).

In this regard, it is worth noting that section 55 of the Insurance Act imposes liability on a person (usually the director) to ensure that any document or report furnished to MAS is not false in any material particular. Where it is shown that the director or such person furnishing the document or report did not use due care in this behalf and the document or information is false in a material particular, he/she shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $20,000 or to imprisonment for a term not exceeding two years or to both.

Compliance With MAS Inspection And Investigation Requirements

Section 42 of the Insurance Act allows MAS to inspect the books, accounts and transactions of a registered insurer and to institute an investigation into the whole or any part of the insurance business carried on in Singapore by the insurer. An insurer under inspection must, if requested by MAS, produce for MAS's inspection, its books, accounts, records or other document of the insurer, whether kept in Singapore or elsewhere, including documents evidencing the insurer's title to any assets.

Where an inspection is conducted and MAS is satisfied that the affairs of the insurer are being conducted in a manner likely to be detrimental to the public interest or the interests of the insurer, MAS can issue such directions as it considers necessary (section 43 of the Insurance Act. See also section 45 of the Insurance Act which relates to the provision for insurers directed to cease insurance business).

Apart from the aforesaid, MAS also monitors closely the financial position of insurers. This it does by necessitating the filing of reports, statements and accounts (section 38 of the Insurance Act), and retaining the right to have access to information as it may reasonably require. The scrutiny exercised by MAS over the operation of insurers also extends to the appointment of auditors. Auditors appointed by the insurer must be one approved by MAS (section 38(4) of the Insurance Act).

An insurer registered in respect of life insurance business shall once in a period of 12 months have an investigation made by an actuary into the financial condition of its life business. The actuary's report and certificate relating thereto must be lodged with MAS (section 39 of the Insurance Act).

The comments made in the preceding section in regard to the potential liability of furnishing a document or report which is false in a material particular, applies equally here.

Solvency Controls

Section 17 of the Insurance Act provides that every registered insurer shall maintain a fund margin of solvency in respect of each of the insurance funds established by the insurer and a
margin of solvency as prescribed by the regulations. In addition to maintaining a margin of
solvency for each insurance fund, an insurer shall maintain a margin of solvency in respect of the
company as a whole (MAS Notices to General Insurers No 102).

**Mandatory Reserves**

Section 17 of the Insurance Act (MAS Notices to General Insurers No 101) provides that every
registered insurer shall maintain separate funds for each class of insurance business that relates
to Singapore policies and to Offshore policies. All receipts properly attributable to the business to
which an insurance fund relates shall be paid into the fund, and the assets comprised in the fund
shall be applicable only to meet such part of the insurer's liabilities and expenses as is properly
attributable to the fund (section 17(4) of the Insurance Act).

The assets of any insurance fund shall be kept separate from all other assets of the insurer.
Insurers should ensure that their records and accounts are kept in a manner that allows assets
belonging to each insurance fund to be easily accountable and identifiable. There should be no
doubt as to the legal entitlement of assets belonging to each insurance fund.

Pursuant to section 18 of the Insurance Act, regulations have been made to allow the assets of
any insurance fund of a registered insurer to be invested in a prescribed manner at a specified
place. To this extent, regulation 18 of the Insurance Regulations and MAS Notices to General
Insurers No 104 spell out investments limits. It is stressed that while the investments limits serve
as a broad framework to enhance the quality of insurance fund assets, insurers are required to
exercise prudence in their investments.

Finally, pursuant to section 46 of the Insurance Act, a Policy Owner's Protection Fund must be
established for the purpose of indemnifying, in whole or in part or to otherwise assist or protect,
policy owners who are prejudiced in consequence of the inability of insurers to meet their
liabilities under the life policies or compulsory insurance policies issued by them.

**Monitoring Adequacy Of Loss Reserves**

The maintenance of adequate loss reserves is regarded as a basic principle of sound insurance
management.

**Internationalisation Of The Singapore Dollar**

Directors, as part of their corporate governance role, should also be familiar with the well-
established policy of MAS against the internationalisation of the Singapore Dollar. These rules
are contained in MAS Notice to Insurers 109 and are discussed in the section on the banking
industry above.
Insurance Intermediaries

Mention must be made of the regulations regulating insurance intermediaries. An insurance intermediary is a person who, for reward or as an agent for one or more insurers or as an agent for intending insureds, arranges contracts of insurance in Singapore, and includes an insurance broker. The Insurance Intermediaries Act 1999 ('Insurance Intermediaries Act') and the Insurance Intermediaries Regulations 1999 regulate insurance intermediaries in Singapore.

The Insurance Intermediaries Act requires an insurance broker to be duly registered before he/she carries on the business of an insurance broker. The failure to do so carries with it criminal penalties. The insurance broker must also comply with minimum paid up capital requirements, and maintain professional indemnity insurance. There are also filing and reporting requirements that must be complied with. Failure to comply with any of these provisions attract criminal penalties not just for the insurance intermediary, but potentially for the officer as well, although this is not expressly spelt out.

It would be beyond the scope of this paper to discuss these matters at length.

◆ This was first published on November 2000 in the Singapore Institute of Directors Members Handbook.