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MAS Seeks Comments on Changes to Insurance Act and Regulations Governing Insurance Intermediaries

Introduction

On 4 November 2022, the Monetary Authority of Singapore ("**MAS**") issued the "*Consultation Paper on Amendments to the Insurance Act and the Insurance (Intermediaries) Regulations*" containing its proposals to amend:

- (a) the Insurance Act 1966 ("**IA**") to achieve four main objectives: (1) enhance MAS' supervisory powers; (2) clarify MAS' existing policy intent; (3) align with other IA provisions or MAS-administered Acts; and (4) reflect changes in policy intent; and
- (b) the Insurance (Intermediaries) Regulations ("**IIR**") to align the regulations governing insurance brokers with other MAS-administered regulations.

The consultation ends on **13 January 2023**.

This Update outlines certain key proposed changes to the IA and IRR.

Key Proposed Amendments to IA

Below we highlight some of the key changes MAS is proposing to achieve its four main objectives.

Objective 1: Enhance MAS' supervisory powers

Anti-commingling policy for licensed insurers and registered insurance brokers

- MAS proposes to introduce an anti-commingling policy for licensed insurers which is primarily intended to:
 - Prohibit insurers from directly undertaking businesses other than insurance business and "permissible businesses". MAS proposes to introduce new provisions that spell out what constitute "permissible businesses". "Permissible businesses" refer to:
 - (a) insurance business (similarly defined as "insurance business" under the IA);
 - (b) any businesses incidental to insurance business. Business is "incidental" to the conduct of insurance business if such business is necessary to ensure that the insurance business can be conducted satisfactorily. Whether or not a business is "incidental" will also in part depend on the business model of the insurer, and insurers should assess each business on a case-by-case basis to determine whether it is incidental to its insurance business. If in doubt, insurers should consult MAS;
 - (c) any business that may be prescribed or specified by MAS, subject to conditions. MAS states that such list will be business that is related or complementary to the insurance business, and will separately consult on the prescribed/specified list; and

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(d) any businesses approved by MAS, subject to conditions. If an insurer intends to carry on business arrangements/activities that is not insurance business or incidental thereto or prescribed/specified business, then the insurer has to first seek MAS' approval. Factors that MAS will consider in deciding whether to grant its approval include whether the business is related or complementary to the insurer's insurance business, the strategic value of the business and associated risks.

A flowchart is provided at Annex C to the consultation paper to illustrate how this works.

- Prohibit a locally-owned insurer¹ from using or sharing its names, logos or trademarks with a person other than the locally-owned insurer,² unless it has obtained MAS prior approval or an exception applies. This prohibition does not apply to captive insurers and special purpose reinsurance vehicles (SPRVs) as their business is confined principally to the risks of their related corporations and sponsors respectively. For foreign-owned insurers,³ the prohibition will *generally* not apply as MAS recognises that foreign-owned insurers have limited control over the sharing of name, logo or trademarks as this is generally determined by the head office or related entities. However, if the foreign-owned insurer enters into a partnership or arrangement with any person or acquires a major stake to undertake unregulated financial business or non-financial business, then it must obtain MAS' prior approval before the insurer can share its name.
- Prohibit an insurer from acquiring or holding a major stake in any corporation without the prior approval of MAS.

MAS also proposes to introduce anti-commingling requirements for registered insurance brokers, and will issue a further consultation paper on the specific requirements for registered insurance brokers.

- Introduce powers to strengthen MAS' oversight of insurers' outsourcing arrangements. This includes imposing requirements on insurers to conduct due diligence on the service provider before entering into an outsourcing arrangement with the service provider and, on an ongoing basis, include specified provisions in its policies and procedures (for arrangements with its branch or head office), and include specified provisions in contracts (for arrangements with any other persons or corporations). MAS will set out the specific outsourcing requirements in a Notice on Outsourcing by Insurers, and issue a separate consultation on this.
- Set out explicit powers allowing MAS to require insurers to reconstitute their insurance funds for Participating ("Par") and Investment-Linked ("IL") policies.

Objective 2: Clarify MAS' existing policy intent

- Impose on captive insurers licensed to carry on life business the requirements to establish insurance funds for IL/non-IL Policies and Par/non-Par Policies, and to allocate Par Fund's surplus to a surplus

¹ Insurers incorporated and headquartered in Singapore.

² This includes using or sharing of the name, logo or trademark on or with (i) a physical infrastructure that is not owned by the insurer; or (ii) any other entities.

³ Insurers incorporated in Singapore but headquartered outside of Singapore and insurers incorporated outside of Singapore.

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account. These requirements currently only apply to direct insurers licensed to carry on life business.

- Impose on reinsurers the requirement to establish and maintain separate insurance funds for IL policies, Par policies, and non-Par policies. This requirement currently only applies to direct insurers licensed to carry on life business.
- Impose on a captive insurer licensed to carry on life business the requirement to appoint an actuary that must be approved by MAS. Currently, this requirement only applies to a direct insurer licensed to carry on life business.
- Amend the definition of "marine mutual insurance business" to: (a) clarify that marine mutual insurers ("**MMIs**") are able to write non-mutual business as long as the majority of the gross premiums written by MMIs pertains to mutual business; (b) clarify that MMIs must be able to make supplementary premium calls in order for a business to be considered mutual business; and (c) remove the reference to section 85 of the Marine Insurance Act 1906 which defines "mutual insurance", as the definition of "mutual insurance" will be included in the IA.

Objective 3: Align with other IA provisions or other MAS-administered Acts (such as the Banking Act 1970 ("BA"), etc.)

To align with relevant provisions under the BA, proposed changes include:

- Removing the provision which gives members of the public the right to come to MAS' office during office hours to inspect returns lodged by the insurers.
- Increasing the penalty for contravening requirements relating to the submission of returns under the IA from S\$100,000 to S\$250,000.
- Expanding the scope of the penalty provision under section 142(1) of IA (which provides, *inter alia*, that it is an offence if a person fails to exercise due care to secure any signed documents lodged with MAS under the relevant IA provisions is not false in any material particular) to include unsigned documents lodged with MAS under the relevant IA provisions.
- Introducing a penalty provision in the IA to take action against insurers and insurance brokers that fail to take reasonable care to ensure the accuracy of returns lodged with MAS.
- Introducing a provision to protect auditors of insurers and insurance brokers from liability arising from disclosure of any information to MAS in good faith, including in the course of their duties.
- Making explicit the requirement that an auditor must comply with MAS' imposition of duties under section 94(10) of the IA.
- Amending the definition of "director" in relation to the provision under section 37 of the IA on restrictions on granting loans to directors, to align with the definition of "director" under the BA.
- Proposed changes in relation to appointments and removal of persons, such as:
 - Requiring insurers to notify MAS if a director or key executive person is no longer fit and proper to hold that office or appointment, in accordance with the Guidelines on Fit and Proper Criteria.
 - Requiring registered insurance brokers to notify MAS of material adverse developments which includes when the director is no longer fit and proper. The proposed notification for registered insurance brokers will be set out in the IRR. This amendment aligns with the Trust Companies Act 2005, Financial Advisers Act 2001 ("**FAA**") and Securities and Futures Act 2001.
 - Empowering MAS to prescribe the maximum term for a key executive person's appointment by amending section 35(9) of the IA (which currently empowers MAS to prescribe the maximum term for the appointment of a chairperson of director).

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- Allowing MAS to direct licensed insurers, administrators of foreign insurer scheme, agents for foreign insurer scheme and insurance brokers to remove an executive officer who is no longer a fit and proper person to hold the appointment. MAS also proposes including additional considerations for directing licensed insurers to remove their chairperson, director, key executive person and executive officer. These additional considerations include where a chairperson, director, key executive person or executive officer has, without reasonable excuse, failed to secure the compliance of the licensed insurer with the IA or other prescribed Act.

Other proposed changes include:

- Expanding the scope of circumstances under which statements made by insurance intermediaries would be deemed as "false or misleading" under the IA. Such circumstances include where the insurance intermediaries make statements in connection with the arrangement of contracts of insurance where they have not taken care to ascertain if the statements are true or false.
- Widening the grounds on which MAS may refuse an application or cancel the registration of a registered insurance broker to align with section 8(1) of the FAA (which sets out grounds for refusal to grant a financial adviser's licence).
- Empowering MAS to object to existing persons having effective control of a registered insurance broker under the same grounds as set out in the IA for licensed insurers and the FAA, for example where the effective controller of the registered insurance broker has ceased to be a fit and proper person.

Objective 4: Update provisions to reflect changes in policy intent

Key proposed changes include:

- Removing fixed deposits as a form of reinsurance deposit (i.e. only a bank covenant would be accepted as reinsurance deposit). This reduces the administrative burden of the authorised reinsurer in managing the fixed deposit.
- Updating the Nomination of Beneficiaries ("**NOB**") framework to allow policy owners of joint life insurance policies to effect trust or revocable nominations subject to certain prescribed conditions. MAS also proposes to exclude short-term accident and health (A&H) policies from the NOB framework.

Key Proposed Amendments to IIR

Notification of Material Adverse Developments

- Require registered insurance brokers to notify MAS of:
 - any adverse development that materially affects or is likely to materially affect (i) the registered insurance broker; (ii) any entity in the group of the registered insurance broker to the extent that the developments materially and adversely affect the registered insurance broker; and
 - matters affecting the fitness and propriety of the registered insurance broker's (i) substantial shareholders or controllers; and (ii) key officers.

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Compliance, Risk Management and Internal Controls

- Require registered insurance brokers to put in place compliance arrangements, risk management policies and internal controls that are commensurate with the nature, scale and complexity of their business. This is in line with MAS' expectations of other regulated financial institutions.

Concluding Words

If you have any queries on the above development or would like to submit any feedback to the consultation paper, please feel free to contact our team members below who will be happy to assist.

For more information, please click [here](#) for the "*Consultation Paper on Amendments to the Insurance Act and the Insurance (Intermediaries) Regulations*" that is available on the MAS website (www.mas.gov.sg).

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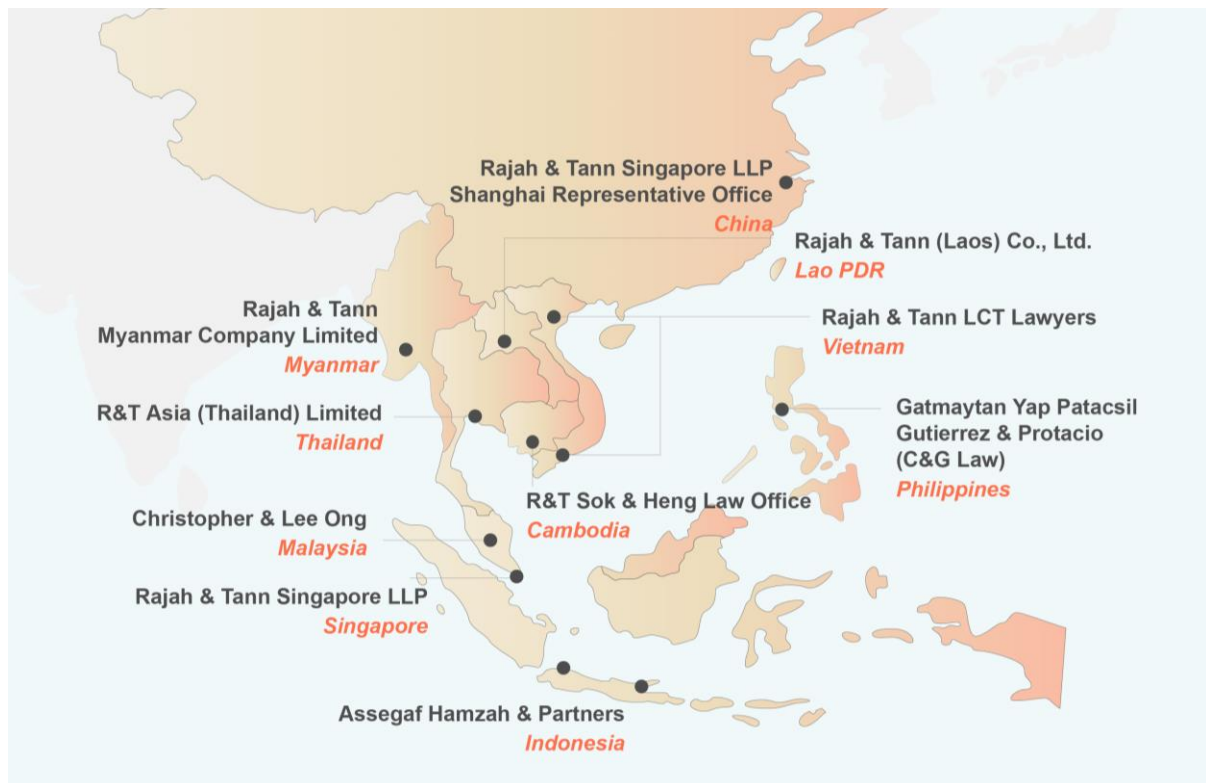
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