

RESPONSE TO FEEDBACK RECEIVED – CONSULTATION PAPER ON INSURANCE (AMENDMENT) BILL 2007 ON NOMINATION OF BENEFICIARIES

1 Introduction

1.1 On 26 July 2007, MAS issued a consultation paper on the Insurance (Amendment) Bill 2007 (“the Bill”) to implement the nomination of beneficiaries (“NOB”) framework.

1.2 The consultation period closed on 27 August 2007. MAS thanks all respondents for their feedback.

1.3 MAS has considered the feedback received and has made amendments to the Bill as appropriate. Comments that may be of wider interest, together with MAS’ responses, are set out below.

2 Effect of marriage and divorce on nominations

2.1 Some respondents asked if nominations would be revoked by marriage or divorce.

MAS’ Response

2.2 In the case of a trust nomination, marriage and divorce will not have any effect on the nomination. This is because such a nomination will create an irrevocable trust around the policy in question for the protection of the named beneficiaries.

2.3 Marriage and divorce will also not have any effect on a revocable nomination. This is consistent with the intent of allowing policy owners to maintain control over revocable nominations as such nominations are revoked only if the policy owner chooses to do so, or under certain circumstances prescribed in the Bill (e.g. when the policy in question is assigned by the policy owner or when all beneficiaries pre-decease the policy owner).

3 Types of policies eligible for nomination

3.1 Some respondents sought greater clarity on the types of policies that would be eligible for nomination under the proposed NOB framework. In particular, clarification was sought in respect of the following types of policies:

- Travel personal accident (“PA”) policies;
- Motor policies with PA benefits;
- Hospital & surgical policies with death benefits;
- Group policies; and
- Joint-life policies.

MAS' Response

3.2 The Bill states that all life and personal accident policies effected on the life of the policy owner will be eligible for nomination under the proposed NOB framework. In other words, to qualify for nomination under the framework, the policy must be a non-indemnity¹ one in respect of which the owner is also the life assured. This mirrors the current position under section 73 of the Conveyancing and Law of Property Act ("s73 CLPA").

3.3 As stated in our response to the first public consultation on the NOB framework (issued on 27 April 2006), both group and individual life policies, as well as PA policies will be eligible for nomination under the NOB framework. Therefore, travel PA policies, group policies and joint-life policies where the policy owner is also the life assured will come under the ambit of the new framework.

3.4 Conversely, motor policies with PA benefits and hospital & surgical policies with death benefits will not be eligible for nomination because the main policies (i.e. the motor and hospital & surgical policies respectively) are indemnity policies. In general, riders follow the main policy in respect of eligibility for nomination, not vice versa.

4 Eligibility of illegitimate children to be named as beneficiaries of trust nominations

4.1 The Bill defines "child" as a legitimate child, stepchild or adopted child. Some respondents asked if illegitimate children could be named as the beneficiaries of trust nominations.

MAS' Response

4.2 Under the NOB framework, illegitimate children will be eligible to be nominated as beneficiaries of trust nominations on the same basis as legitimate children. The Bill will be amended to reflect this position.

5 Effective date of nomination and notification of nominations to insurers

5.1 Some respondents enquired about the effective date of a nomination, and the status of nominations made in respect of back-dated policies.

5.2 Other respondents suggested that, to increase clarity and certainty for insurers to know whom to pay to, a cut-off date for notification of the nomination, whether made via nomination form or will, should be stated in the Bill.

MAS' Response

5.3 A nomination will take effect from the date stated on the latest, correctly-executed instrument by which it has been made (i.e. either a will or a nomination form). The effective date of a nomination will be independent of the commencement date of the policy in question.

¹ A non-indemnity policy is one where payout is not dependent on damage being sustained or on a loss arising out of a liability to pay compensation or damages.

5.4 MAS is of the view that it is not necessary to state a cut-off date for notification in the Bill. This is because the payout of the policy proceeds will itself form the cut-off date for notification. In other words, once a claim is made in respect of a policy, the insurer is to initiate the necessary procedures (e.g. check its register of nominations, verify the identity of the beneficiaries concerned) to effect payout to the beneficiary named in the latest, correctly-executed instrument of which it has been notified. . Once payout has been made on this basis, the insurer is discharged from all liabilities relating to the policy in question.

5.5 Conversely, at any point before payout is made, if notification of a different beneficiary named in a later, correctly-executed instrument is received, the insurer is to make payment to that beneficiary instead. Therefore, a nomination received after the date of the policy owner's death but before the insurer has made payout will still be recognised as the latest nomination.

6 Variation of nominations

6.1 Some respondents enquired whether nominations could be changed by way of variation.

MAS' Response

6.2 Any change to be made in respect of a nomination will have to be effected by way of revoking the existing nomination and re-nominating. Both nomination and revocation must be done using the prescribed statutory forms. This is to ensure that nominations are kept as simple as possible, lessening the chances of confusion and disputes arising in future.

7 Nomination forms

7.1 Some respondents asked if insurers would be required to file copies of nomination forms with MAS.

7.2 Other respondents sought clarification on whether one nomination form could be used to nominate beneficiaries for more than one policy.

MAS' Response

7.3 Insurers are responsible for maintaining proper records, including keeping track of information relating to policies issued by them and the nominations made for these policies. This is to ensure that they are able to pay out policy proceeds to the rightful beneficiary named in the latest, correctly-executed instrument of which they have been notified. There is no necessity for insurers to file copies of the nomination forms with MAS.

7.4 In order to ensure that nominations are as clear as possible, each nomination form can only be used for the nomination of one policy. Along the same lines, separate nomination forms have been prescribed for the making of revocable and irrevocable nominations (as well as for the revocation of nominations).

8 Appointment of trustees

8.1 Some respondents enquired if the appointment of trustees in respect of trust nominations would be mandatory.

8.2 Further clarification was sought on whether there would be any prohibition on appointing the following persons or entities as trustees:

- Beneficiaries;
- Witnesses; and
- Legal entities other than natural persons.

8.3 Some respondents also asked if trustees could be unilaterally appointed, changed and removed by the policy owner.

MAS' Response

8.4 For trust nominations, at least one trustee must be appointed. If no trustees are appointed, the nomination will be deemed invalid. Currently, s73 CLPA allows the policy owner to become a trustee by default. To ensure that policy owners are fully aware of the duties and implications arising from the making of a trust nomination, under the NOB framework, there will no longer be a default option, although policy owners can still appoint themselves as trustees.

8.5 Besides the policy owners, beneficiaries of trust nominations, witnesses of trust nominations and legal entities other than natural persons will be eligible for appointment as trustees of trust nominations as well.

8.6 The Bill makes provision for the policy owner to unilaterally appoint one or more trustees. Similarly, the policy owner will have the right to change and remove trustees at any time while the policy is in-force.

9 Powers of trustees

9.1 Some respondents enquired whether trustees who are also policy owners will continue to be allowed to give discharge for receipt of policy monies, as is presently the case under s73 CLPA.

MAS' Response

9.2 The Bill is currently silent on this issue. Having considered the feedback, MAS has decided that a trustee of a trust nomination who is also the policy owner will not be allowed to receive policy proceeds on behalf of the named beneficiaries. This is to preserve the protection accorded to beneficiaries under the trust and is consistent with the fact that the making of a trust causes the policy owner to lose all rights and control over the policy in question. As such, it would not be appropriate to continue to allow the policy owner access to the proceeds of the policy by virtue of his role as the trustee, which in certain circumstances could be detrimental to the interest of the beneficiaries.

9.3 This means that only beneficiaries or another trustee will be able to give discharge for receipt of policy proceeds – if there is more than one beneficiary, the discharge of all beneficiaries will be required, whereas if there is more than one trustee, the discharge of only one trustee (who is not the policy owner) will be required.

10 Beneficiaries who are minors

10.1 The Bill states that, for trust nominations where a beneficiary is a minor, a parent/legal guardian is allowed to give consent for revocation of the nomination only if he is not the policy owner. Some respondents suggested doing away with this restriction on the powers of parents/legal guardians. This would align with the current arrangement under s73 CLPA.

MAS' Response

10.2 While there are currently no explicit restrictions in s73 CLPA on the powers of a parent/legal guardian who is also the policy owner, some legal authorities have decided that, once a trust has been created, unless such parent/legal guardian has reserved at inception the power to revoke the trust, it cannot be revoked.

10.3 The Bill makes this position clear by stating that a parent/legal guardian is allowed to give consent on behalf of a minor beneficiary for revocation of a trust nomination only if he is not also the policy owner. Otherwise, a policy owner who is also the parent/legal guardian of the minor beneficiary will effectively retain control over the policy as far as the minor beneficiary is concerned, which would compromise the beneficiary's interest and defeat the purpose of creating the trust.

11 Beneficiaries who pre-decease the policy owner

11.1 Some respondents suggested allowing personal representatives² of beneficiaries who have pre-deceased the policy owner to act on behalf of such beneficiaries in respect of giving consent to revoke trust nominations. This would give the policy owner increased flexibility to make changes to such nominations, even if a beneficiary were to pre-decease him.

MAS' Response

11.2 In law, the personal representative's duty is to collect all assets belonging to the deceased for distribution according to the terms of the deceased person's will or, if there is no will, according to the Intestate Succession Act (Cap. 146). The personal representative is not authorised to alter the legal entitlement of the deceased to assets that have been bequeathed to him.

11.3 Hence, the personal representative acting for a beneficiary who has predeceased the policy owner will not be able to give consent to revoke a trust nomination. A trust nomination in which a beneficiary has predeceased the policy owner can thus never be revoked.

² The executor, in cases where the beneficiary has a will, or the administrator, in cases where the beneficiary dies intestate.

12 Discharge for insurers following payment of policy proceeds

12.1 Some respondents enquired whether, for trust nominations, insurers would receive discharge for paying living benefits in the same manner as they would pay death benefits.

12.2 Some respondents commented that, in the case where a nomination has been made via a will, allowing the insurer to make payment of policy proceeds on the basis of the policy owner's notification, without requiring the sight of the will, may present opportunities for abuse.

MAS' Response

12.3 An insurer should pay the living benefits accruing from trust policies in the same way as it pays the death benefits; that is, the benefits can only be paid to the named beneficiaries in the trust nomination. The insurer will then be discharged in respect of its liability for payment of these benefits, in the same way it would be discharge in respect of its liability for death benefits. The Bill will be amended to reflect this position.

12.4 Where a nomination has been made via a will, a policy owner will not be required to submit copies of the actual will to the insurer. This is to protect his privacy, as a will deals with a testator's entire estate, not just his insurance policies. However, the policy owner will be required to notify the insurer in writing that he has made a will to govern the distribution of the proceeds from his insurance policy. Abuse of this arrangement will be minimal because the proceeds in question will be paid to the executor of the will, as is the case currently. The executor will then be responsible to distribute both insurance and non-insurance assets in the estate to all beneficiaries named in the will.

13 Payment of policy monies without probate or letters of administration

13.1 Some respondents asked if insurers would be required to give written notice to the Estate Duty Commissioner in all cases of payout of policy proceeds without the production of probate or letters of administration.

13.2 In relation to the provision in the Bill for scaling down the payment without production of probate or letters of administration of policy proceeds amounting to more than S\$150,000, some respondents sought greater clarity on whether such scaling down would only occur if more than one claimant was involved.

13.3 Other respondents suggested that there is no need to scale down payouts made to proper claimants³. Since they may not be claiming in their own right, proper claimants should all rank equally in terms of priority of payout, as is currently the case.

³ Proper claimants are defined in the IA as people who claim to be entitled to the policy proceeds in question (whether for their own benefit or otherwise) as the deceased's executor, widower/widow, parent, child, brother, sister, nephew or niece.

MAS' Response

13.4 The Bill states that each insurer is not allowed to pay out, without the production of probate or letters of administration, more than S\$150,000 in respect of all policies relating to a single life assured. To facilitate the computation of estate duty by the Inland Revenue Authority of Singapore, insurers are required to give written notice to the Estate Duty Commissioner of such payment. This arrangement is no different from that currently provided for in section 61 of the Insurance Act (Cap. 142) ("IA").

13.5 However, the Bill also states that insurers need not notify the Estate Duty Commissioner for payments below S\$50,000. This reduces the amount of paperwork involved.

13.6 Where the S\$150,000 cap is exceeded, the payout to named beneficiaries in respect of every policy concerned will have to be scaled down in proportion to the sum assured of each policy. This scaling down is independent of the number of claimants involved.

13.7 An example of scaling down is shown below:

Illustration

A deceased policy owner has 2 policies underwritten by Insurer A.

- Policy 1 amounts to S\$200,000. The named beneficiary is X.
- Policy 2 amounts to S\$100,000. The named beneficiary is Y.

The total amount due to X and Y is S\$300,000, which exceeds the S\$150,000 cap. Therefore, the proceeds payable under the two policies will be proportionately scaled down:

- Payout to X (without the production of probate or letters of administration) =

$$\frac{200,000}{200,000 + 100,000} \times 150,000 = \text{S\$}100,000$$

- Payout to Y (without the production of probate or letters of administration) =

$$\frac{100,000}{200,000 + 100,000} \times 150,000 = \text{S\$}50,000$$

Insurer A will pay up to S\$150,000 altogether, in the proportions described above. The remaining S\$150,000 due under the policies will not be paid until probate or letters of administration have been produced.

13.8 We are agreeable to removing from the Bill the provision for scaling down payouts to proper claimants. Hence, proper claimants will all rank *pari passu*, which means payout will be on a "first-come-first-served" basis. This is the current arrangement under the IA.

MONETARY AUTHORITY OF SINGAPORE
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