

## LEGISLATION UPDATE

### PROPOSED AMENDMENTS TO DEFINITION OF "CARRYING ON INSURANCE BUSINESS" IN INSURANCE ACT

The Monetary Authority of Singapore (the "**MAS**") has issued a consultation paper (the "**Consultation Paper**") on its proposal to amend the definition of "*carrying on insurance business*" in the Insurance Act. The consultation is open for public feedback until **12 June 2009**.

#### Definition of "*carrying on insurance business*"

Section 2(5) of the Insurance Act currently provides that an entity carries on insurance business in Singapore if it engages in any one of the following activities:

- (a) receives proposals for insurance policies;
- (b) issues insurance policies; or
- (c) collects or receives premiums on insurance policies.

The insurance industry has, however, evolved with the times. In particular, there has been a trend towards division of roles in the insurance value chain, with service providers serving only specific segments of the chain without assuming insurance risk. For example, an insurance company may engage a third party to collect premia on its behalf. The third party would be deemed to be carrying on the business of insurance although it does not assume any insurance risk. Conversely, some entities may not directly engage in any of the three activities listed above and still assume insurance liability.

The MAS therefore proposes to revise the existing definition by making reference to common law principles of insurance. At common law, the carrying on of insurance business is generally linked either to the assumption of risk or the undertaking of insurance liability. The following must be present in order for an activity to be considered "*carrying on insurance business*" at common law:

- (a) the insured becomes entitled to something upon the occurrence of an event that the insurer is liable for;
- (b) the event must be one that involves some element of uncertainty;
- (c) the insured must have an insurable interest in the subject matter of the contract; and

- (d) the risk must be a pure risk, i.e. either the insured suffers a loss or at most, he receives no gain.

The MAS has also stated that certain activities will be excluded from the new definition. It currently proposes to carve out the following activities:

- (a) non-commercial arrangements which are not-for-profit. Examples of these include: (i) employee benefit plans where the employer funds the future retirement of its employees *via* payments into company-administered annuity schemes; and (ii) the work of friendly societies and mutual benefit organisations; and
- (b) incidental activities arising from other core businesses (e.g. product warranties issued by manufacturers or retailers, but not including: (i) warranties issued by third parties for a fee; or (ii) indemnities against events, such as theft, which are not of the same nature as the supply of goods or services of a stipulated quality).

The above are relatively unambiguous examples of activities which should be carved out. There may be other activities in respect of which the position may not be as clear-cut.

#### Related definitions

The definitions of *"insurance agent"*, *"insurance broker"* and *"insurance intermediary"* in the Insurance Act – which are currently dependent on the definition of *"carrying on insurance business"* – will be reviewed in a future public consultation.

#### Definition of *"soliciting insurance business"*

The MAS also proposes to define the term *"solicitation"* in respect of insurance business. *"Solicitation"* will be deemed to be the *"act of offering, inviting or issuing any advertisement containing any offer or invitation to the public or any section of the public in Singapore with regard to entering into an agreement which constitutes as (sic) carrying on insurance business"*. Businesses which publish or arrange for the publication of advertisements will be specifically carved out of the scope of this definition.

This proposed amendment is intended to align the Insurance Act with the Banking Act and the Securities and Futures Act, which already contain provisions and licensing conditions on the solicitation of business.

The Insurance Act will also be amended to clarify that: (i) only the entity licensed to carry on insurance business in Singapore is allowed to solicit for insurance business in Singapore; and (ii) a registered insurer will not be allowed to co-brand its insurance products and services with those of an unregistered insurer. These two provisions are intended to limit the entities which can solicit insurance business to those licensed to carry on insurance business in Singapore, and which are therefore supervised by the MAS.

## References

To view the Consultation Paper, please click [here](#).

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or any of the following lawyers:

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