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~ THE LAW SOCIETY OF SINGAPORE ~

**FEEDBACK ON
MONETARY AUTHORITY OF SINGAPORE'S (MAS)
CONSULTATION PAPER ON REVIEW OF FRAMEWORK
FOR NOMINATION OF BENEFICIARIES**



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FAMILY LAW PRACTICE COMMITTEE'S COMMENTS ON
MAS CONSULTATION PAPER ON
REVIEW OF FRAMEWORK FOR NOMINATION OF BENEFICIARIES

1. The Law Society of Singapore is grateful for the opportunity to give its views on the proposed changes to the existing framework for nomination of beneficiaries to the proceeds from insurance policies.
2. Members of our Family Law Practice Committee have expressed diverse views. There is, nonetheless, general agreement amongst members that these are good initiatives proposed by the Monetary Authority of Singapore and the Law Society is confident that the proposed changes will be well received.
3. Our Committee is in support of allowing nomination of beneficiaries of all newly incepted policies to be revocable as this allows flexibility and clarity. It also gives ownership and control to the insured to deal with the benefits as he deems fit including the choice of beneficiaries.
4. Members however expressed concern as regards the proposed initiatives in respect of policies purchased using CPF monies and policies with nominations that currently fall under section 73 of the Conveyancing and Law of Property Act ("CLPA") where the spouse and/or children are named as beneficiaries.

Policies purchased using CPF monies

5. We note that under Section 5 of the Consultation Paper, it is proposed that only revocable nominations may be made in respect of policies purchased with CPF monies (the "CPFIS insurance policies").

6. Some members express concern that this may require the relevant parties to check if a policy is purchased using CPF monies in order to ascertain if the nomination of beneficiaries is revocable, thereby incurring additional time and expense. Members therefore would like to propose that MAS consider doing away with having revocable and irrevocable policies so that there is no need to create an artificial distinction between ordinary insurance policies and CPFIS policies if MAS intends to allow nomination of beneficiaries in respect of CPFIS insurance policies to be revocable.

Problems faced under the current Section 73 CLPA

7. As has been observed, the automatic creation of a statutory trust under section 73 creates a situation where the policyholder cannot deal with the policy without the consent of the beneficiaries and this includes the change of beneficiaries.
8. At the time such section 73 policies are taken out, the family circumstances are generally good and the spouse and/or children are usually nominated as beneficiaries of the policyholder's life insurance policy.
9. The problem arises when the family circumstances change, for example, in a divorce, and the spouse who is the beneficiary to the life insurance policy of the spouse is unlikely to consent to a change of beneficiary. For example, the husband takes out a life insurance policy and names his wife the beneficiary. A statutory trust is thereby created under section 73 CLPA. The couple then gets divorced. In this situation, the original purpose and circumstance for which the trust was created no longer exists, that is, the wife is no longer intended to be the beneficiary. However, the policyholder cannot change the name of the beneficiary without the consent of the ex-wife, and the reality of the situation is that it is unlikely that the ex-wife will give her consent as she stands to benefit from receiving the proceeds from the policy upon the death of the ex-husband. This means that the husband will either (1) have to continue to pay the premiums on the life insurance policy and upon his death, the ex-wife will receive the benefit of the

proceeds from the policy or (2) terminate the policy or allow the policy to lapse so that the ex-wife does not receive the proceeds upon his death but in so doing, the husband loses the benefit of the policy and may incur higher premiums when he purchases another life policy. Either of these two scenarios is undesirable. The converse situation would similarly apply where the wife is the policyholder.

10. This situation is undesirable and there is a need to address this problem.

11. However, we note that under sections 6.3, 6.5 and 6.7 of the Consultation Paper at page 9, the proposed changes will not apply to Type 2 policies, that is, policies with nominations that fall under section 73 of the CLPA where the spouse and/or children are named as beneficiaries ("Type 2 policies"). The rationale for the exclusion is the policy is subject to an encumbrance.

12. While some members accept that as rights under the policy would have already accrued to the beneficiary under such existing policies and are in support of the proposal to continue requiring Type 2 policies to be subject to Section 73 CLPA, other members would like to put forward the following suggestion for the consideration of MAS:

(a) Policyholders of Type 2 policies be permitted to make nominations under the new Insurance Act provisions **in the event of a divorce** without the need to obtain the consent of the ex-spouse and if the children are already above 21 years old then the need to obtain their consent should also be dispensed with.

(b) Such policyholders can only make nominations under the new Insurance Act provisions if the named beneficiary is the ex-spouse only or their children are already above 21 years old and for some reason, there is a fall-out between the parent policyholder and the child/children.

(c) In the event that children are the named beneficiaries under the section 73 policies, then the policyholder **cannot** make nominations under the new Insurance Act provisions if the child or children are still below 21 years old. This will ensure that the children who are under 21 years old will continue to receive the benefit of the proceeds of insurance as originally intended. The welfare and interest of the children will be protected in this way.

(d) Where both the ex-spouse and children are named as beneficiaries, the policyholder ought to be allowed to make nominations under the new Insurance Act provisions to remove **only** the ex-spouse as the beneficiary without the need to obtain her consent or any child beneficiary who is above 21 years old.

13. In addition to the reason set out above for our recommendation, that is, the original purpose of the statutory trust no longer exists in the event of a divorce or a falling out between parent and child, the policyholder ought not to be "forced" to continue with an insurance policy which will benefit the ex-spouse or a seemingly unfilial child to lose the benefit by terminating or letting the policy lapse. The policyholder may remarry and should be allowed to make a nomination under the new Insurance Act provisions to make a revocable or irrevocable nomination in favour of the new spouse and/or children from the second marriage. We have proposed safeguards to protect the children from the first marriage below 21 years old who have been named as beneficiaries under paragraph 9(c) and (d) above.

14. We hope that our views and recommendations are helpful and will be considered favourably.

The Law Society of Singapore
Family Law Practice Committee
18 January 2006