Asia Pacific Insurance - Singapore

Investing in Insurtech Start-ups

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# Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

Investment activities by insurers are regulated under the Insurance Act and by the Monetary Authority of Singapore (MAS).

A licensed insurer intending to obtain a major stake in a corporation must obtain the prior approval of MAS. A "major stake" means: (i) beneficial interest exceeding 10% of the total number of issued shares in the start-up; (ii) control of more than 10% of the voting power in the start-up; or (iii) any interest where the directors of the start-up are accustomed or required to act in accordance with the instructions of the licensed insurer.

Licensed insurers seeking to invest in or develop insurtech activities must ensure that any new activities comply with the foregoing and do not breach any existing license conditions imposed by MAS.

# What are the available options in terms of investments that an insurer can make in an insurtech start-up?

An insurer can invest in an insurtech start-up via equity, debt or hybrid financing. However, the insurer must comply with the financial and valuation requirements prescribed under the Insurance (Valuation and Capital) Regulations. If the insurer is intending to experiment with insurtech solutions, it can also consider applying to enter into a regulatory sandbox and if approved, MAS may relax certain legal and regulatory requirements for a period of time.

# What are the restrictions on investing in an onshore insurtech start-up?

A licensed insurer established or incorporated in Singapore must obtain the prior approval of MAS before obtaining a major stake in a corporation, which includes an onshore insurtech start-up (as well as other offshore corporations).

A "major stake" means: (i) beneficial interest exceeding 10% of the total number of issued shares in the start-up; (ii) control of more than 10% of the voting power in the start-up; or (iii) any interest where the directors of the start-up are accustomed or required to act in accordance with the instructions of the licensed insurer.

The insurer will also be required to comply with any existing license conditions imposed by MAS when seeking to invest in an insurtech start-up, and ensure that any investment will not breach the license conditions.

# What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

A licensed insurer established or incorporated in Singapore must obtain the prior approval of MAS before obtaining a major stake in a corporation, which includes a foreign company. Accordingly, prior approval from the MAS must be obtained before a licensed insurer obtains a major stake in an offshore insurtech start-up.

The insurer will also be required to comply with any existing license conditions imposed by MAS when seeking to invest in an offshore insurtech start-up, and must ensure that any investment will not breach the license conditions.

# Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

If an insurer is carrying on or holding itself out in any way as carrying on the business of moneylending in Singapore, it will be required to hold a license, unless it is an excluded moneylender. For example, if an insurer lends money solely to corporations or limited liability vehicles (e.g., the insurtech start-up), it may be considered an excluded moneylender.

A licensed insurer must not directly or indirectly grant any unsecured loans or advances to any of the following:

A director of the insurer (including the wife, husband, father, mother, son or daughter of the director), exceeding the amount of SGD 5,000 at any one time

An employee of the insurer, exceeding one year's emolument of that employee

The insurer should also consider the requirement under the Insurance (Valuation and Capital) Regulations and any existing license conditions imposed by MAS when considering the grant of the loan.

# What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

If an insurer intends to invest in an insurtech start-up, it must seek approval from the board of directors to establish an investment committee and formulate an investment policy. The insurer must also ensure that its investments are carried out in accordance with the approved investment policy as well as supervised or directed by the investment committee.

General corporate law requirements should also be considered to determine whether other corporate approvals are required from the directors or shareholders, including requirements prescribed under the constitution of the insurer.

The insurtech start-up may also be required to obtain the necessary corporate approvals in order for the insurer to invest. If the insurtech start-up is a Singapore incorporated company, it will also need to comply with general corporate law requirements under Singapore law, such as obtaining shareholders' approval in a general meeting if there is any issue of shares by the company.

# Are there any general minority shareholder protection mechanisms in your jurisdiction?

Yes. Minority shareholders holding 25% or more of the shares in the company are able to veto certain decisions that require special resolution (i.e., 75% approval).

Minority shareholders may call for meetings. Two or more members holding not less than 10% of the total number of issued shares of a company (excluding treasury shares) may call a meeting of the company. In addition, members holding not less than 10% of the paid-up capital (excluding paid-up capital held as treasury shares), which carries voting rights at a general meeting, may requisition the directors of the company to convene an extraordinary general meeting within two months of the requisition.

Minority shareholders have a right to be treated fairly and are entitled to personal remedies in cases of oppression or injustice by the majority shareholders. Minority shareholders also have a right to initiate statutory derivative action on behalf of the company for breach of director's duties.

Minority shareholders may also seek the just and equitable winding up of the company.

# Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

No, there are no regulatory prohibitions on appointing the insurer’s own staff or management to join the insurtech start-up’s board of directors or management team. This is subject to two considerations. First, issues relating to conflict of interests should be considered. The insurer's own staff or management acting as the insurtech start-up's director or management would owe fiduciary duties to the insurtech start-up (e.g., to act in the best interest of the company), and cannot place the interest of the principal (i.e., the insurer) before that of the insurtech start-up. Second, such persons must continue to meet any fit and proper requirements that may apply to them. The fit and proper criteria include: (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness.

Where the insurtech start-up carries out any activities regulated by the MAS, further considerations may apply on the insurtech's appointment of its board of directors or management team.

# Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

There is none, assuming that the insurer and the insurtech start-up are not listed companies.

The investment committee of the insurer must ensure that all its investments are carried out in accordance with an investment policy that has been approved by the board of directors, and must exercise added oversight to ensure that the interests and rights of policy owners are not compromised. General corporate law requirements should also be considered to detemine whether the other corporate approvals are required from the directors or shareholders, including requirements prescribed under the constitution of the insurer.

The insurer must also make sure it complies with the MAS Guidelines on Outsourcing in entering into a service contract with the insurtech start-up, and can demonstrate observance with the guidelines. For example, the insurer must ensure that the oversight and governance of outsourcing arrangements, managing outsourcing risks, and implementing an adequate outsourcing risk management framework, continue to rest with the insurer and its board or senior management. If MAS is not satisfied that the insurer has complied with the guidelines, it may require the insurer to take additional measures to address the deficiencies.

# Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

There are none, assuming that the insurer and the insurtech are not listed companies.

# To what extent can the insurer provide operational support to the insurtech start-up?

The insurer can provide back-office services to the insurtech start-up, but in doing so, it must ensure that it continues to have effective control of its risk management framework and internal controls. For instance, the provision of such operational support should not prejudice the insurer's support for its own core functions.

# What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

The insurer and insurtech start-up may enter into a service contract in consideration for a reasonable service fee to be paid by the insurer at arm’s length.

Profit sharing is not expressly prohibited under the Insurance Act. However, it would be necessary to consider whether the remuneration structure could give rise to any inference that the insurtech start-up is receiving remuneration in breach of the restriction as to receipt and payment of remuneration under section 35ZH of the Insurance Act.

# How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights may be transferred from the insurtech start-up to the insurance company through an assignment agreement or licensing agreement.

Generally, licensed have to be in writing to be effective. If the license involves trademarks, it has to be in writing and signed by or on behalf of the grantor. If the license involves patents, the license need not be entered in any particular form. If the license involves copyrights, the license must be in writing and signed by or on behalf of the owner or prospective owner of the copyright. Licenses for trademarks, registered designs and patents also need to be registered. For registered designs and patents, unregistered licenses will mean that the license is not effective against a person acquiring a conflicting interest.

If the assignment involves patents or applications for patents, the assignment has to be signed by or on behalf of the parties to the transaction. On the other hand, if the assignment involves trademarks, designs and copyright, the assignment may be signed by or on behalf of the assignor. As a matter of practice, most assignments are also signed by the assignee even if it is not strictly required.

# Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

The Personal Data Protection Act (PDPA) and the Personal Data Protection Regulations cover the collection, use, storage, disclosure and transfer of personal data in Singapore. Generally, an insurance company should ensure that the individual has given, or is deemed to have given, their consent for the disclosure of their personal data, and that any disclosure of their personal data, and that any disclosure of personal information to the insurtech start-up falls within the purposes in which consent has been given. In this regards, an insurance company intending to transfer personal data to the insurtech start-up may also refer to the Personal Data Protection Commission's (PDPC) Guide to Data Sharing.

If the insurance company intends to transfer personal data to an offshore insurtech start-up, it must ensure that the transferred personal data will be afforded a standard of protection that is at least comparable to that provided under the PDPA in Singapore.

If the insurance company is a life insurance, it may also refer to the PDPC's industry-led guidelines, i.e., the Life Insurance Association (LIA) Singapore Code of Practice for Life Insurers and Code of Conduct for Tied Agents of Life Insurers. These industy-led guidelines clarify the duties, responsibilities and best practices of life insurers and tied agents of life insurers under the PDPA.

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