12-2019

Transparency of insurance contract law in Singapore

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1 Introduction: Definition of Transparency in Insurance Contract Law

This chapter explores the transparency issues related to contracts of insurance in Singapore. In the contractual context, there are two dimensions to transparency issues. First, there are issues related to insurers, who need information to make proper assessments of the risks to be underwritten. A substantial part of the legal discussion over insurance contracts has been devoted to this issue, addressing the underlying problem of asymmetric information in these contracts. Second, there are transparency issues for customers, regardless of whether they are businesses or consumers. These issues may include the transparency and features of insurance products and/or policy terms. Naturally, this raises concerns over misselling, financial consumer protection and the conduct of the business of insurers, insurance intermediaries and financial advisers.

In addition to the concerns over moral hazards and risk assessments, for various regulatory purposes such as taxation, anti-money laundering and personal data protection, insurers and/or brokers need to know more about their customers today. Some of these issues do not directly flow from the contractual relationship but are imposed by regulations and should be implemented during the contracting stage. Nevertheless, these requirements (such as know-your-customer and client classification) undoubtedly affect customers before and after a policy is issued. In this chapter, we focus on issues that may affect insurance contracts, whereas some issues (e.g., know-your-customer for suitability or anti-money laundering purposes) are considered in this book.

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P. Marano, K. Noussia (eds.), *Transparency in Insurance Contract Law*,
AIDA Europe Research Series on Insurance Law and Regulation 2,
https://doi.org/10.1007/978-3-030-31198-8_26

In the next section, that is Sect. 1, this chapter explores some of the issues related to insurance policies before and after a contract is made under Singapore law. The discussion is grouped into two categories. The first addresses the laws and regulations pertaining to the duty owed by a customer or insured to an insurer. The second examines transparency issues related to product features and/or policy terms. In Sect. 2, further analysis of the current state of Singapore is provided from the angle of transparency, and the meaning of transparency in insurance contracts is reflected on. We suggest there is a case for Singapore to follow the reforms of the UK and revise the pre-contractual duty to disclose. Regulators can probably do more to improve product transparency across all ranges of insurance products and insurance-related services, rather than focusing only on life or investment-linked policies.

2 The Issue of Insurance Transparency Under Singapore Law

2.1 Duties Owed by the Customer

A signature feature of insurance contract law in perhaps every jurisdiction is the insured's duty of utmost good faith and the obligation to disclose certain information to the insurer before a policy is issued. A more contentious point is whether an insured also has a duty to disclose material information after a policy has been issued. In this section, we explore these issues under Singapore law.

2.1.1 A Brief Historical Background of Insurance Contract Law in Singapore

As a former British colony, Singapore's insurance contract law has largely followed English law. Under Section 5 of the Civil Law Act[1] (formerly the Civil Law Ordinance), English insurance law has been part of Singapore's mercantile law since 1878. Until the Application of English Law Act[2] (APLA) was introduced in 1993, English statutes and judicial decisions automatically formed part of the Singapore law governing contracts of insurance.

In 1993, the APLA severed the automatic link between English and Singaporean law (related to mercantile and insurance contract law); however, the substance of insurance contract law did not change much. The APLA reintroduced a number of English statutes (or parts of them) into Singapore law. One statute provides that 'a number of very important English commercial statutes will continue to apply in Singapore so that the basis of our commercial law remains very much the same as

[1]Cap 43, Revised Edition 1999.

[2]Cap 7A, Revised Edition 1999.

English commercial law'.[3] Statutes related to insurance contract law include the entirety of the Marine Insurance Act 1906[4]; the Third Parties (Rights against Insurers) Act 1930 (except for those provisions amended by the Insolvency Acts in England)[5]; and the Policies of Assurance Act 1867 (with only small modifications).[6] The Life Assurance Act 1774 was re-enacted into Section 62 of Singapore's Insurance Act with only the last section of the act being modified,[7] and Section 63 of the Insurance Act restated Section 86 of the Fire Prevention (Metropolis) Act 1774.

Consequently, Singapore's insurance contract law has been heavily influenced by English law. This has also been reflected in the number of judicial precedents that have been cited in relevant local judgments.[8] As Singapore is a small jurisdiction and may not have enough cases to cover all corners of insurance contract law, English judgments help to fill in the gap pending the establishment of local jurisdiction.

2.1.2 The Marine Insurance Act and Local Jurisprudence on the Duty of Pre-Contractual Disclosures

Under Singapore's private law, issues related to an insured's duty to disclose have largely been regulated by the Marine Insurance Act (MIA), which is a carbon copy of the Marine Insurance Act of 1906 from England.[9] Local case law and some English authorities before 1992 (which automatically formed part of Singapore law) have supplemented the statute's interpretation. In this section, we summarise the situation under the MIA and the development of local jurisprudence in Singapore.

For both consumer and business insurance, the insured's pre-contractual duty to disclose is defined by the rules of the MIA (Cap 387). This chapter will not repeat English positions under the Marine Insurance Act 1906. Instead, the focus is on the development of local jurisprudence in Singapore.

To put in short, as it was under the old English law before the law reforms in England, Section 18 of the MIA states that 'the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him . . .' Otherwise, the insurer could avoid the policy.[10] Section 19 of the MIA imposes a separate duty on an agent affecting insurance. The interpretation of the provision is similar to the English law.

[3] See 61 Singapore Parliament Debate, col. 611.

[4] Application of English Law Act Section 4(1), sch. 1, part II (5).

[5] Application of English Law Act Section 4(2) and sch 1, part II (6).

[6] Application of English Law Act Section 4(1) and schedule 1, part I (2).

[7] Application of English Law Act Section 7 and sch. 2 (amending the Insurance Act to incorporate the Life Assurance Act).

[8] Chen (2014b), pp. 483–485.

[9] Cap 387, Revised Edition 1994. (Marine Insurance Act).

[10] Marine Insurance Act s 18(1).

The test of materiality is the prudent insurer test.[11] In sum, an insured is required to disclose all material information that may affect a prudential insurer to decide whether to issue a policy or to determine premiums before the policy is issued. If there is a breach of the duty, the insurer could avoid the policy. The underlying assumption is that 'the insured is in possession of facts which may influence a prudent insurer's decision in computing the risk undertaken.'[12]

There have been very few reported cases in Singapore related to the duty to disclose. In *Tat Hong Plant Leasing Pte Ltd v Asia Insurance Co*.,[13] the materiality of information that should have been disclosed was decided by the court. Without informing the insurer, in a separate letter the insured (the lessor) changed a term in a standard agreement that had the effect of shifting responsibility for repairs and maintenance from the lessee to the lessor. The Singapore Court of Appeal held that varying the terms of a standard form lease agreement through a side letter amounted to a material fact that could affect the decision of the insurer on whether to underwrite the risk. Therefore, there was a breach of Section 18 of the MIA.

Although the decision was hardly disputable on this point given that the term in question had the effect of increasing the insured's burden (and therefore risk), the decision affirmed the so-called prudent insurer test to determine the materiality of information that should be disclosed. In a different, unreported, decision in 2011, the Singapore High Court considered the question of whether earlier loan shark activities amounted to material facts that should be disclosed in a robbery policy. Unfortunately, however, the court did not directly address the point because of evidence issues regarding the dates of the proposal form.[14]

Another question was whether Singapore should adopt the English requirement that the insurer has to prove that it is induced by the non-disclosure to issue the policy. In *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd*,[15] the British House of Lords decided that an insurer must prove it was induced by non-disclosure of the facts before avoiding a policy under Section 18 of the Marine Insurance Act 1906. However, because *Pan Atlantic* was decided after 1992, it did not automatically form part of Singapore's insurance law. The position of the Singapore court has not yet been confirmed in a reported judgment in the official Singapore Law Reports. However, there have been three unreported judgments by the Singapore High Court accepting the English position.[16] Thus, we can assume that Singapore also adopts the inducement requirement under Section 18 of the MIA.

[11] Marine Insurance Act s 18(2).

[12] Poh (2009), p. 68.

[13] *Tat Hong Plant Leasing Pte Ltd v Asia Insurance Co* [1993] SGCA 33, [1993] 1 SLR(R) 728.

[14] *Yong Sheng Goldsmith Pte Ltd v Liberty Insurance Pte Ltd* [2011] SGHC 156.

[15] *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1995] 1 AC 501 (HL).

[16] See *UMCI v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd* [2008] SGHC 188; *American Home Assurance v Hong Lam Marine Pte Ltd* [1998] SGHC 399; *Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd* [1996] SGHC 296.

Regarding remedies for non-disclosure, before the English law was reformed in 2012 and 2015, there was only one remedy for breaching the duty of utmost good faith and disclosure under the Marine Insurance Act, i.e., avoidance of the policy *ab initio*.[17] This position was affirmed by the House of Lords decision in 1991.[18] As this decision was made before the ALPA, by default it forms part of the Singapore law, though no local case have considered the matter since then. Consequently, under Singapore's insurance contract law (and the MIA), avoidance of a policy remains the sole remedy for an insured's breach of the duty to disclose. As an all-or-nothing remedy, it seems to be inflexible.[19] At the time of writing, no clear law reform is in sight for Singapore. Thus, it is unclear whether Singapore will adopt England's new legislation or find other ways to reform Singapore's insurance contract law in the future.

In addition to non-disclosure, the MIA provides separate remedies for misrepresentation as set forth in Section 20 of the Act. It is worth mentioning that we have not seen any local decisions contemplating the meaning of s 20. Technically, some recent developments occurring in England over the past two decades have not been made a part of Singapore's common law because of the ALPA, as mentioned earlier. For example, it is unclear whether Singapore law incorporates the position of the court in *Economides v Commercial Assurance Co PLC*[20] limiting the meaning of 'in the course of business' to 'business insurance', given that *Economides* was reported in 1998. Thus, there may be a vacuum in Singapore's common law, as the local courts have not seen enough cases since the break with English mercantile law to create uniquely Singaporean jurisprudence. It is also unclear how misrepresentation under the MIA and the general law (including both the common law and the Misrepresentation Act 1967, also reintroduced into Singapore in 1993[21]) would interact with each other, as there have been no clear judicial decisions addressing the point yet.

Finally, once a policy has been issued, the follow-up question is whether an insured also owes a duty to disclose material information *post* contract. The MIA does not clearly mandate such a duty after a policy is issued. The traditional position is that the insured's duty ends when a policy is issued.[22] Thus, unless a policy contains that obligation, the question is whether the duty of utmost good faith connotes a post-contractual duty to disclose. In general, Singapore law follows the English position that the insured owes no post-contractual duty of disclosure (as part of the duty of utmost good faith) except when the policy terms require it.

It worth noting that the use of the basis of contract clause is still allowed in Singapore, and it is not uncommon to find such a clause in the proposal form or

[17] See Marine Insurance Act Sections 17 and 18.

[18] *Banque Keyser Ullmann SA v Skandia (UK) Ins Co Ltd* [1991] 2 AC 249, 280-281 (UKHL).

[19] It is arguable whether a proportionate approach would be better. See Li et al. (2016).

[20] [1998] QB 587, [1997] 3 WLR 1066 (CA).

[21] Misrepresentation Act (Cap 390, Revised Edition 1994).

[22] Birds et al. (2015), para. 18-022.

policy conditions of insurance contracts in Singapore. Section 33 of the MIA makes it possible to turn such a statement into a warranty in which an insured 'affirms or negates the existence of a particular state of facts'.[23] Such a clause would 'enable insurers to deny liability on the basis of misrepresentation without proof of either materiality or inducement.'[24]

Thus, through the basis of contract clause, an insurer may turn a non-disclosure or misstatement made by a customer into a warranty, the breach of which would allow an insurer to discharge all liability from the date of the breach.[25] This provides a powerful weapon to insurers to avoid their liability even when an insured event occurs.

Such a clause is often hidden in the declaration section of a proposal form in the middle of a long text.[26] Insurers probably feel the need to protect themselves against misrepresentations or the non-disclosure of material facts. However, combining the disclosure rule with the warranty rule may put customers in a very poor situation, given that they may lose all of their protection under a policy if somehow the insured has failed to disclose something the insurer deems to be material. It has been noted that insurers in Singapore tend to rely on material non-disclosures rather than the basis of contract clause to deny liability; this approach has been endorsed by soft law.[27] Nevertheless, current Singapore law arguably overprotects insurers by giving them the right to decide the materiality of information and the power to not only avoid a policy but also disclaim all liability from the moment of a breach of the basis of contract clause. This may raise serious moral hazards on the side of insurers.

2.1.3 Regulatory Intervention and an Insured's Pre-Contractual Duty of Disclosure

There have been some regulatory intervention to regarding the pre-contractual duty of disclosure under the Marine Insurance Act. First, to address the harshness of the disclosure duty under the MIA, Singapore law requires insurers to warn customers of the duty to disclose. The Insurance Act specifies that:

> [n]o Singapore insurer shall use, in the course of carrying on insurance business in Singapore, a form of proposal which does not have prominently displayed therein a warning that if a proposer does not fully and faithfully give the facts as he knows them or ought to know them, he may receive nothing from the policy.[28]

[23] Marine Insurance Act Section 33(1).

[24] Bennett (2006), para. [44].

[25] Marine Insurance Act Section 33(3).

[26] See, e.g., the website of NTUC Income: http://www.income.com.sg/forms/application/regularpremium.aspx?ext=.pdf; Great Eastern: https://www.greateasternlife.com/content/dam/great-eastern/sg/homepage/personal-insurance/find-the-right-plan/protect-yourself-and-your-family/life-protection/direct-great-term/direct-purchase-proposal-form.pdf.

[27] Yeo (2014), p. 26.

[28] Insurance Act (Cap 142, Revised Edition 2002) s 25(5). (Insurance Act).

Otherwise, fines up to S$25,000 and S$2500 per day could be imposed for continuing offences.[29] However, the law does not define what amounts to a 'prominent display' of such a warning. Some insurers put it near the top of the proposal form before any customer information is requested.[30] Others put the warning in red or other colours,[31] or simply print the warning in black ink.

The idea behind the warning is in line with other risk warnings (where applicable) and product disclosure (discussed in Section B). A customer cannot later claim that he or she was unaware of the duty to excuse himself or herself from any of the non-disclosures made. Nevertheless, like other product disclosure issues, it is questionable whether such warnings are read by customers. Furthermore, even if a customer is aware of the warning, it is anyone's guess whether he or she really understands what a duty of disclosure is without having had any training in insurance law.

Second, a customer's disclosure requirement is also, to a certain extent, affected by regulations on the sales process of insurance products.[32] In 2015, the Monetary Authority of Singapore (MAS) imposed a new rule prohibiting a direct life insurer from issuing a life insurance policy until it had received a copy of the completed 'life insurance advisory form' (LIA form).[33] The content of the LIA form[34] is quite similar to that of the proposal form (e.g., the personal information and needs of an insured) except that a financial adviser rather than the person applying for insurance fills out the form.

What makes the LIA form different from a typical proposal form is that it specifically allows a financial adviser to make a suitability assessment of a customer through specific questions on his or her investment risk profile, priorities and objectives in addition to the customer's financial position and existing insurance portfolio. This information is needed to properly evaluate whether a particular insurance product is suitable for the customer.

Although the regulatory objective is to protect financial consumers as part of the reforms to improve the quality of financial advisory services and the distribution of insurance products, there is a potential problem that is not resolved by the regulations: whether any defect in the information disclosed in the LIA form allows an

[29]Insurance Act s 25(6).

[30]See, e.g., the website of NTUC Income: http://www.income.com.sg/forms/application/regularpremium.aspx?ext=.pdf; and the website of Axa: https://www.axa.com.sg/pdf/our_solutions/car/smart-drive/smartdrive_application_form.pdf.

[31]See, e.g., the website of Great Easter Life: https://www.greateasternlife.com/content/dam/great-eastern/sg/homepage/personal-insurance/find-the-right-plan/protect-yourself-and-your-family/life-protection/direct-great-term/direct-purchase-proposal-form.pdf.

[32]See more discussion in Sect. 2.2.

[33]MAS Notice on market conduct standards for direct life insurer as a product provider (Notice 318, 2015) para 6.

[34]The standard form is available from the website of Life Insurance Association Singapore in the website of LIA: http://www.lia.org.sg/files/document_holder/Industry_Guidelines_-_Life/MU2015a_Final.pdf.

insurer to void a policy under s 19 of the MIA, which imposes a duty on an agent to disclose material information to the insurer. Whether a financial adviser is an 'agent' under the MIA is a legal question, and to a certain extent, also a factual question. If a financial adviser is acting as an insurance broker (i.e., an agent for an insured),[35] applying for insurance on behalf of an insured, there should be less problem applying Section 19. As the general position in Singapore is that statements made in the proposal form are attributable to the insured.[36]

In contrast, if a financial adviser is an insurance agent for an insurer,[37] any false information in the LIA form should not be attributed to the insured. However, it is uncertain whether Section 19 is applicable when a financial adviser is neither an insurance broker nor an insurance agent (i.e., an independent third party financial adviser simply providing advice and making recommendations). As there is no local case on this issue yet, it may require the courts or legislators to clarify it in the future.

2.2 Transparency of Product Features and Terms

In this section, issues related to the transparency of insurance products and policy terms are examined. The insurer's duty at common law is first discussed. Thereafter, Singapore's Insurance Act (Cap 142) regulations and the Financial Advisers Act (Cap 110) are further explored. The former is the primary source of regulations for insurance companies and insurance intermediaries, and the latter governs financial advisers. The two sets of regulations may overlap to a certain extent in a complicated web of legislative definitions.

2.2.1 Insurer's Duty of Utmost Good Faith?

Does an insurer have any duty to a customer to disclose information about an insurance product and its policy terms? In general, Singapore adopts the common law position that an insurer owes no general duty in contract, tort law or equity to disclose product information other than to forbear from making misrepresentations.[38] The Unfair Contract Terms Act 1977, reintroduced into Singapore in

[35]Under Singapore law, an insurance broker is a person carrying on insurance intermediary business as an agent for insureds. Insurance Act Section 2.

[36]Poh (2009), p. 238.

[37]Under Singapore law, an insurance broker is a person operating an insurance intermediary business as an agent for one or more insurers. Insurance Act, Section 2.

[38]The law regarding misrepresentation in Singapore is generally similar to the English law, with the Misrepresentation Act 1967 also being reintroduced under the Application of English Law Act, as the Misrepresentation Act (Cap 390, Revised Edition 1994).

1993,[39] does not apply to contracts for insurance.[40] Therefore, technically, insurers can use an exclusion clause to limit their liability for misrepresentations. In short, Singapore maintains the *caveat emptor*[41] principle at common law. There are three additional issues.

The first is whether an insurer's duty of utmost good faith requires an insurer to disclose product information or policy terms to a customer. Singapore has reintroduced the Marine Insurance Act 1906 in its entirety. Under it, utmost good faith must be 'observed by either party'.[42]

There have been signs that the Singapore court may apply the duty of utmost good faith in a broader manner. For example, in 2008 Chan Sek Keong CJ made the following observation in *Tay Eng Chuan v Ace Insurance Ltd*:

Just as the insured was under a legal obligation to disclose fully to the insurer, on an *uberrima fides* basis, all material facts relating to his personal conditions and circumstances, the insurer had to also inform the insured of any unusual clause(s) in an insurance policy that might deprive the latter of his right to make a claim.[43]

This observation came after an earlier decision by Woo Bih Li J in *NTUC Co-operative Insurance Commonwealth Enterprises Ltd v Chiang Soong Chee*, who opined:

> [I]nsurers must take a proactive and responsible approach. Besides highlighting what the cover of each policy extends to, insurers should also highlight the more obvious areas which the cover does not extend to, although this may be counter-intuitive to them, and not wait for legislation to compel them to do so.[44]

These observations may shed new light on the insurer's duty of utmost good faith at the pre-contractual stage. Nevertheless, no other cases have followed up on the issue. In *Tay Eng Chuan*, the case involved three interconnected clauses: a standard arbitration clause; a 'legal action clause' providing that 'subject to the [arbitration clause], no action shall be brought to recover on the policy prior to the expiration of [60] days . . .'; and a 'condition precedent clause' requiring that 'the due observance and fulfilment of the terms provisions and conditions of [the] policy . . . shall be a condition precedent to the liability of the [insurer] . . .'. In this case, the insured did not file for arbitration before bringing a legal action. Instead of trying to stay the legal proceeding based on the arbitration clause, the insurer argued that the condition precedent clause had been breached, so the insurer owed no liability to the insured.

In this case, the Chief Justice decided that the combination of relevant provisions were so unusual the insurer should have alerted the insured first, seemingly based on

[39]Unfair Contract Terms Act (Cap 396, Revised Edition 1994).

[40]Unfair Contract Terms Act First Schedule para 1(a).

[41]Buyer beware.

[42]Marine Insurance Act Section 17.

[43]*Tay Eng Chuan v Ace Insurance Ltd* [2008] SGCA 26, [2008] 4 SLR(R) 95, [30].

[44]*NTUC Co-operative Insurance Commonwealth Enterprises Ltd v Chiang Soong Chee* [2007] SGHC 222, [2008] 2 SLR(R) 373, [50]. However, Woo Bih Li J does not clearly refer to the concept of utmost good faith in his judgment.

the duty of utmost good faith. This decision might have been due in part to the insurer's attempt to dismiss the entire claim just because the insured had failed to file for arbitration first. The judge might feel sympathetic towards the insured plaintiff that it was too much to rely on a widely drafted condition precedent clause to defeat a genuine claim (rather than simply stay the legal action).

However, whether it was appropriate for the court to use utmost good faith as the justification for its ruling is questionable. On the one hand, the decision cited no other authority to support its ruling other than the previous lower court judgment in *Chiang Soong Chee,*[45] which also did not cite any precedent for the ruling mentioned previously. The court also did not address the issue of applicable remedy for when an insurer is found to have breached its duty of utmost good faith after failing to disclose an unusual term. After all, the general position that avoidance of a policy is the sole remedy for breach under Section 17 of the MIA is still the Singapore position. Whether the Singapore court will allow other remedies in light of the recent changes to the UK law under the Consumer Insurance (Disclosure and Representations) Act 2012[46] and the Insurance Act 2015 remains to be seen. Instead, the judge seems to have used the concept of utmost good faith as an interpretative tool, though this approach is supported under the Australian[47] or current UK law.[48] Thus, whether the legal reasoning underpinning the decision is sustainable without a revision of the MIA is a question of law.

On the other hand, it is unclear what was meant by the words 'unusual clause'. It is uncertain whether the court meant to require an insurer to warn its insureds of this kind of warranty clause or an unusual combination of warranty, legal action and arbitration clauses as in the case before the court. In sum, the Singapore court has shown some willingness to apply the duty of utmost good faith in a new light. However, as there has not been much development of the issue it remains to be seen whether the court's position will be upheld in the future.

2.2.2 Transparency of Insurance Products Under Insurance Regulations

Improving transparency is an important tool to protect financial consumers.[49] Apart from the common law, insurers and insurance intermediaries are subject to regulations aimed at financial consumer protection to enhance transparency of insurance products. Under Singapore law, there are several regulations that are applicable. We will briefly introduce the relevant rules regarding insurance products in this section.

[45]See note 1575.

[46]For a general discussion on the 2012 Act, see Lowry and Rawlings (2012).

[47]Insurance Contract Act 1984 (Australia) Section 13.

[48]Insurance Act 2015 (2015 c.4) Section 14.

[49]Schwarcz (2014), p. 394.

Financial Advisers Act and Regulations

The primary regulations dealing with the disclosure of consumer financial products in Singapore fall under the Financial Advisers Act (FAA).[50] After the global financial crisis, Singapore amended the FAA to include an express provision specifying a financial adviser's obligation to disclose product information. Section 25 of the FAA generally states that a 'licensed financial adviser shall disclose, to every client and prospective client, all material information relating to any designated investment product that the licensed financial adviser recommends . . .' including its terms and conditions, benefits, premiums costs, expenses or fees, and the names of the insurer if the product is a life insurance policy.[51] A 'designated investment product' includes a unit in a collective investment scheme, life insurance policy and other products prescribed by the MAS.[52] In other words, a general insurance policy is outside the scope of Section 25 of the FAA. Contravention of the provision may lead to criminal penalties and continuing fines.[53] However, the provision is inapplicable to financial advisory services provided to accredited or expert investors.[54] This means that the provision is aimed at protecting retail customers. There is a separate provision dealing with false or misleading statements made by financial advisers.[55]

There are some points worth noting. First, Section 25 of the FAA is applicable only to 'licensed financial advisers'. Under the FAA, there is a complex web of statutory definitions. Technically, an insurer or an intermediary licensed under the Insurance Act is an 'exempt financial advisor', not required to obtain a financial adviser's license before financial advisory services have been provided.[56] However, because Section 25 clearly refers to the term 'licensed financial adviser', it seems that insurers or insurance intermediaries are not subject to the provision, although they may still have to comply with other relevant financial adviser regulations.

Second, a financial adviser is under a general obligation to meet certain standards when disclosing product information. The standards are clear and adequate and are not false or misleading.[57] A financial adviser should also disclose its business information and identity together with any fees or commissions charged to a client.[58] For life insurance products, a financial adviser should also disclose to the client the

[50]Cap 110, Revised Edition 2007. (Financial Advisers Act).

[51]Financial Advisers Act Section 25(1).

[52]Financial Advisers Act Section 25(6).

[53]Financial Advisers Act Section 25(5).

[54]Financial Advisers Regulation, Regulation 33(1).

[55]Financial Advisers Act Section 26.

[56]Financial Advisers Act Sections 2 and 23.

[57]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 11.

[58]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 12–22.

'distribution cost' in the benefits illustration.[59] However, an adviser is not required to disclose the exact amount and type of remuneration it receives.[60] Thus, a customer probably does not have a clear idea of how much an adviser is paid for recommending a certain type of life insurance policy (notably the expensive types). Any conflict of interest should also be disclosed.[61]

A financial adviser should also disclose in a clear manner the nature and objective of a product (e.g., a life policy), the details of the product's provider (e.g., details of the insurer issuing the policy), the parties' contractual rights (e.g., an adviser informing a customer that misleading information might affect the validity of a policy), the client profile, the benefits and risks of a product (specified in the benefits illustration in a life insurance policy), etc.[62] An adviser should also inform a customer of any free-look period and the terms and procedures for exercising the free-look provision.[63]

Third, as part of the know-your-client and suitability assessment procedures, a financial adviser must furnish certain documents to a customer when recommending a life insurance product. Those documents have three components: a product summary, a benefits illustration and a product highlights sheet.[64] The meanings of these documents are elaborated further in the next section. However, a financial adviser's obligation to furnish documents does not apply to all insurance products. The requirement is only applicable to life policies and investment-linked policies. Thus, in a way, customers of general insurance products receive less regulatory protection.

In addition, since 2015, Singapore has promoted direct purchase insurance (DPI) products as part of a package to increase insurance penetration and address future concerns in an ageing society. Although it is meant to be direct sales between insurers and customers, a financial adviser may still promote a DPI to a customer even though it must 'put in place procedures to ensure that [every representative or officer or the online portal] has … information relating to the DPI …'[65] The information should include a copy of the product summary, benefits illustration

[59]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 22.

[60]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 22.

[61]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 23.

[62]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 24.

[63]MAS Notice on information to clients and product information disclosure (FAA-N03, 2013) para. 24.

[64]MAS Notice on recommendations on investment products (FAA-N16, 2011) para. 37(b).

[65]MAS Notice on the distribution of direct purchase insurance products (FAA-N19, 2015) para. 10(b).

and product highlights sheet.[66] Thus, a financial adviser still has to comply relevant regulations even if the product is a DPI.

Insurance Regulations and Self-Regulation

Apart from the FAA regulations, life insurers, in general, are required to provide more product information to customers under Singapore's insurance regulations. Pursuant to Notice 318 on 'market conduct standards for direct life insurer as a product provider' issued by the MAS, some market conduct standards are now imposed on life insurers. In addition, Singapore relies on self-regulation to restrain insurers' conduct and to provide more transparency with insurance products. We elaborate on this in full detail in this section.

First, the MAS requires direct life insurers to 'ensure that documents prepared for clients comply with the applicable standards stated in the Insurance Act and its notices and the notice on product disclosure and information to clients issued under the Financial Advisers Act of 2001'.[67] In other words, the MAS expects life insurers to follow the rules pertaining to financial advisers in the case of direct sales of insurance products without a financial adviser involved. In particular, a life insurer must 'prepare a product summary and benefit illustration for each of its life insurance policies, as required by the industry standards issued by the Life Insurance Association of Singapore'.[68]

In addition, direct life insurers are required to 'ensure that any information given to a client is clear, adequate and not misleading' and follows the industry standard.[69] The regulation also forbids insurers from selling policies that are not written in plain language.[70] Clearly, the purpose of this rule is to improve the customers' understanding of insurance policies and to prevent insurers from hiding behind legal terminology. We further consider the pros and cons of this in Part III.

We must highlight the point that MAS Notice 318 is applicable to life insurers only. This position is understandable given that life insurance policies tend to be longer in duration and have potentially higher risk (especially for investment-linked policies), such as interest rate risk or default risk of insurers. However, because general insurers may still sell some short-term accident and health policies,[71] it may

[66]MAS Notice on the distribution of direct purchase insurance products (FAA-N19, 2015) para. 14, referring to MAS notice on recommendations on investment products (FAA-N16) para. 37(b).

[67]MAS notice on market conduct standards for direct life insurer as a product provider (Notice 318, 2015) para 3.

[68]MAS notice on market conduct standards for direct life insurer as a product provider (Notice 318, 2015) para. 3.

[69]MAS notice on market conduct standards for direct life insurer as a product provider (Notice 318, 2015) para. 4.

[70]MAS notice on market conduct standards for direct life insurer as a product provider (Notice 318, 2015) para. 5.

[71]Insurance Act Section 23.

worthwhile for the regulator to broaden the scope of its regulations to general insurers, where appropriate, to avoid misselling and improve the quality of distribution for all insurance products. While there could be less misselling claims, customers of more standardised motor or household insurance policies are still in need to know more about the protection and coverage.

In 2004, the LIA and General Insurance Association of Singapore (GIA) published further guidelines on information disclosure and advisory processes by jointly issuing the 'guidelines on disclosure requirements for A&H products' for accident and health insurance. The guidelines generally require insurers to provide at least two documents: 'Your Guide to Health Insurance' and 'Product Summary'.[72] The guidelines also provide direction on the details to be specified in those documents.[73] Furthermore, they instruct insurers that proposers must confirm in writing that they have been given a copy of these documents and that the contents thereof have been explained to their satisfaction.[74] This might lead to the issue of contractual estoppel briefly discussed below. In addition, the guidelines require insurers to specifically highlight in their marketing materials and application forms that benefits vest only in the event of an accident (for personal accident products).[75] Finally, the guidelines require insurers to make continual disclosures to policyholders if modification is made to their product information or key policy provisions (e.g., premium rates or exclusion clauses).[76]

The GIA's General Insurance Code of Practice[77] also requires general insurers to explain all of the main features of a product or service, including the product summary, any significant or unusual restrictions warranties or exclusions and any significant conditions or obligations.[78] A general insurer must also inform customers of the details of insurance costs, including information on premiums, any fees or charges and how to pay the premiums or fees.[79] Therefore, in addition to regulatory rules, there is some degree of self-regulation to improve transparency in Singapore.

2.2.3 Remedies for Customers

Do customers have any remedy if an insurer, an intermediary or a financial adviser breaches any regulation before a policy is issued? First, if any misrepresentation

[72]See LIA/GIA, Guidelines on disclosure requirements for A&H products, p. 1, available in http://www.lia.org.sg/files/document_holder/Industry_Guidelines_-_Health/LIA_GIAdisclosure.pdf.

[73]LIA/GIA, Guidelines on disclosure requirements for A&H products, pp. 1–3.

[74]LIA/GIA, Guidelines on disclosure requirements for A&H products, p. 4.

[75]LIA/GIA, Guidelines on disclosure requirements for A&H products, p. 5.

[76]LIA/GIA, Guidelines on disclosure requirements for A&H products, p. 5.

[77]Last revised in July 2016, available in http://www.gia.org.sg/pdfs/code_of_practice.pdf.

[78]General Insurance Code of Practice, para. 3.1.

[79]General Insurance Code of Practice, para. 3.3.

takes place, a customer may file a claim to rescind the policy. However, rescinding the policy may not be the most desirable option.

For example, in *Zhu Yong Zhen v AIA Singapore Pte Ltd,*[80] the policy was suspended after the insured failed to pay the premiums at the end of the 16th year. The insured argued that she had been shown a product benefits illustration implicitly showing that the annual premiums from the 16th year would be covered by the accumulated policy dividends. In this case, the judge found that the 'entire agreement' clause in the policy precluded the product benefits illustration from being a policy term, and in fact, the product benefits illustration did not really support the insured's claim. Consequently, the insured lost her protection after the 16th year because of her own mistake.

Assuming the insured had grounds to claim misrepresentation, it would have been impractical for her to rescind her policy after 16 years, even if the misrepresentation had been made before the policy was issued. She would have lost her protection and it might have been more expensive to replace the same policy. Furthermore, even for general insurance, it is likely that an insured would discover a misrepresentation only after the insured event had taken place. If this were true, rescission would be against the purpose of the insurance because the insured would be left without coverage after the loss. In any event, the insured may encounter challenges in recovering the premiums paid, depending on the policy terms and the party negotiations after the rescission, in addition to any legal costs incurred in rescinding the contract at common law.

Second, an insurer, an intermediary or a financial adviser should be liable to a customer for misrepresenting policy information. On the one hand, they might be liable under the Misrepresentation Act.[81] On the other hand, a financial adviser who has breached his or her statutory obligation to disclose product information to a customer would be liable for the person's loss if the adviser had made a recommendation in contravention of this obligation and the person had reasonably performed because of the contravention.[82] This statutory duty complements common law and equitable remedies. However, the provision clearly refers to a 'licensed financial adviser', so an insurer or insurance intermediary (as exempt financial advisers) would not have a statutory duty if the statute's wording were taken literally. Regardless, whether a customer suffers a loss is a separate question that must be proved by the claimant.

Although no case has clearly applied it to insurance policies, Singapore courts also seem to accept the doctrine of contractual estoppel. Once an insured accepts a policy issued to him or her, the likelihood of that person successfully arguing that he or she does not know the content of the policy or that the policy is not suitable would be quite limited if the policy and/or the proposal form contained a provision stating

[80][2013] SGHC 37, [2013] 2 SLR 478.

[81]Misrepresentation Act Section 2.

[82]Financial Advisers Act s 25(5A). There is a separate liability for providing false or misleading information to a customer. See Financial Advisers Act Section 26(1C).

that the applicant had received or seen some of the documents (e.g., the product summary or benefits illustration) or confirmed his or her own suitability (which may be required for investment-linked policies; see the following discussion).[83] However, the exact extent and application of the doctrine still depends on the decisions to be handed down in future cases.[84]

Finally, a customer who breaches self-regulatory guidelines has no cause of action because the self-regulatory rules are not technically actionable. This is perhaps a trade-off between enforcing standards through self-regulatory rules and providing remedies for consumers. If self-regulatory rules were actionable, it could be more difficult for members of trade associations to agree on guidelines. After all, insurers probably would not want to voluntarily increase their own liability. Relying only on the common law and statutory remedies may increase the chances for agreement on bottom-line standards. However, whether self-regulation would be sufficient to regulate the behaviours of insurers and to improve quality of transparency is subject to a larger debate.[85]

3 Transparency Issues Surrounding Insurance Contracts

Section 1 introduced several transparency issues surrounding insurance contracts. Singapore's position on the duty of disclosure owed by an insured at common law and under the MIA is analysed. The common law and regulatory rules dealing with an insurer's (or an intermediary's) disclosure of product information to a customer are also examined. However, is Singapore's current law sufficient? Has Singapore law contributed to a greater degree of transparency or is there a lot more that should be done? In this section we provide some general discussion to evaluate the current Singapore law from the transparency angle. Before concluding this chapter, in the following sections, more specific issues related to an insured's duty of disclosure and an insurer's obligation to provide product information are considered.

3.1 Harsh Pre-Contractual Disclosure Rules

As already discussed, Singapore's insurance contract law originated with English law, notably the Marine Insurance Act 1906, enacted before the UK law reforms in

[83]See *Deutsche Bank AG v Chang Tse Wen* [2013] SGCA 49, [2013] 4 SLR 886.

[84]In *Deutsche Bank AG v Chang Tse Wen* [2013] 4 SLR 886, a case about an alleged misselling of a complex non-insurance structured investment product, the Singapore Court of Appeal doubted the correctness of a more limited application of the contractual estoppel doctrine made by the High Court, although the Court of Appeal decided to leave it open for future cases to address the issue. At [79].

[85]Hamilton (1995).

the twenty-first century. Unlike the UK, Singapore still maintains the pre-contractual disclosure duty for both consumers and business insurance as formulated under the Marine Insurance Act. Therefore, Singapore law also suffered from the shortcomings of the old Marine Insurance Act 1906 in the UK before the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 were enacted. Consequently, the door for Singapore to reform its insurance contract law is open, at least for consumers. At the time of this writing, however, it is unclear whether any law reform will take place in Singapore in the near future.

One underlying challenge is that it is difficult to measure how serious the problems of non-disclosure and misrepresentation are among Singaporeans and to evaluate insurers' moral hazards because there are no clear data in the market to assess these issues. Therefore, it is impossible to examine whether the current Singapore law is optimal in terms of balancing the interests of customers and insurers and dealing with the asymmetry of information underlying insurance contracts.

However, we argue that Singapore needs more insurance penetration to face its rapidly ageing society and in light of technology development in the era of the Internet and Big Data.[86] How Singapore's insurance contract law should evolve (e.g., to follow the new UK legislation or Australian model) is beyond the scope of this chapter. Nevertheless, we share some general comments on the current state of Singapore law related to a customer's pre-contractual duty of disclosure.

There are three main consumer insurance issues related to the goals of improving transparency, increasing legal certainty and controlling moral hazards. First, the current pre-contractual duty of disclosure is unduly harsh for consumers because they may not know what a prudent insurer would want to know and there is no flexibility in terms of remedies. Sometimes consumers are not even aware of the duty to disclose.[87] In addition, as discussed above, many local insurers still use the basis of contract clause[88] that is prohibited under the new UK law. There is no doubt that a consumer should offer genuine information to an insurer to enable the insurer to value the risk to be insured. However, in the twenty-first century, at least for ordinary consumers it is arguable that insurers know better what they need to know and it might be unconscionable to impose a rather one-sided duty formulated over a century ago for marine insurance.

From this perspective, the current MIA could be refined to meet the reality of the local market, to create a fair market for customers and to protect insurers from moral hazards. In fact, suggestions have already been made that Singapore should consider the possibility of adapting the Consumer Insurance (Disclosure and Representations)

[86]'A sustainable populartion for a dynamic Singapore - Population White Paper' 2013.

[87]Yeo (2014), para. 11.

[88]However, it has been noted that insurers in Singapore tend to rely on material non-disclosure than the basis of contract clause to deny liability; and this approach has been endorsed by soft law. Yeo (2014), para. 26.

Act 2012.[89] Nonetheless, it is unclear where Singapore law will develop in the future at the time of writing.

Second, there is the question of whether the terms of consumer policies, and in particular terms such as the basis of contract clause, should be further regulated. A broader idea is to revise the warranty rule in the MIA[90] to offer greater legal certainty and fairness without compromising the ability of insurers to control the risk insured by the policy terms. Singapore may at least attempt to compromise the effect of the basis of contract clause if it does not prohibit this kind of term as the UK law does.[91]

A extreme position may involve further regulatory intervention with regard to the terms of consumer insurance products. Clearly, the new UK law does not go so far as to standardise the terms of consumer policies, and we argue that freedom of contract should still be the norm. Having some competition over terms should also benefit the market. However, in cases where certain terms (e.g., the basis of contract clause) are undesirable, we may consider finding new ways to deal with them, through either insurance legislation or consumer protection laws.

3.2 Has Singapore Done Enough to Improve Transparency to Protect Customers?

As discussed above, Singapore has strengthened its regulation of financial advisers to enhance the protection of financial consumers. Although the reform has been comprehensive, this chapter suggests that there are still some holes in Singapore's regulatory framework where transparency for financial consumers of insurance products can be improved.

First, there have been plenty of consumer complaints over insurance policies. Data provided by the Financial Industry Disputes Resolution Centre (FIDReC)[92] offer a good perspective on the landscape of consumer insurance complaints.[93] An analysis of insurance complaints between 2008/09 and 2012/13 produced a total of 1295 disputes, comprising 669 complaints against life insurers and 626 against general insurers. The data further show that a large proportion of the disputes with life insurers concerned advice or misselling (a total of 425 of 669, 63.53%) with another substantial proportion related to the liability of the life insurers (118 cases, 17.64%). In contrast, for general insurance, a large majority of disputes concerned the liability of the insurers (579 of 626, 91.85%). This data may shed some light on the future development of consumer insurance law.

[89]Yeo (2014), para. 16.

[90]Marine Insurance Act Section 33.

[91]Insurance Act 2015 Section 9(2).

[92]The FIDReC is an alternative dispute resolution body designed to handle financial consumer disputes.

[93]See annual reports of the FIDReC in http://www.fidrec.com.sg/website/annualreports.html.

From the data, it is obvious that most of the disputes over life and/or long-term health insurance policies are related to misselling. There could be a number of reasons why misselling is a notable problem in life insurance policies. First, life and health insurance products are often more complicated than the likes of motor vehicle policies. Moreover, to boost the customer's return, some life insurance products are embedded with an investment component, which may also increase the likelihood of misselling. Second, life insurance policies tend to have a longer term. Thus, the rules of the MIA, such as the duty of utmost good faith, duty of disclosure and warranties applicable to life insurance policies, could increase customers' legal risk, especially many years into a policy when the customer may have considerable difficulty acquiring the same coverage at the same price, as in the case of *Zhu Yong Zhen v AIA Singapore Pte Ltd*[94] discussed previously.

Misselling is not necessarily something that insurance contract law can address. As discussed in Sect. 2, the MAS has duly issued several regulations to improve financial consumer protection. What is confusing is that some regulations (e.g., the suitability assessment requirements) are applicable only to investment-linked policies (ILPs) so that the sale of conventional life, pension or health insurance policies are not subject to the same requirements as ILPs.[95] We understand that ILPs may impose a higher level of risk than other life policies, justifying a higher level of regulation. However, non-ILPs may still pose other risks that raise the possibility of misselling, such as a lack of explanation of the scope of a travel or motor policy or whether a policy offers coverage in addition to that covered by the state-supported Medishield scheme. Regulators should consider applying broader product disclosure rules to all kinds of insurance products or services rather than focusing on those policies that come with significant investment risk.

A more general question is whether providing documents to customers would be sufficient to improve transparency and protect financial consumers. This is so broad that this chapter cannot examine it in detail. However, although it is always important to make information available to customers, we should point out that there is also a danger of information overload, and it is arguable how much a customer may be able to read and digest.

In general, the author accepts the proposition that customers should be responsible for their signature on a contract and should read the product information before making a decision.[96] This approach enhances a customer's own responsibility in making financial decisions and causes them to be more cautious, while also providing more legal certainty to the industry as long as insurers, intermediaries or financial advisers truthfully prepare their product information. Nevertheless, regulators could

[94][2013] SGHC 37, [2013] 2 SLR 478.

[95]For example, in the Notice on Recommendation on Investment Products (MAS Notice FAA-N16 issued in July 2011), any life policy other than an ILP falls within the category of an excluded investment product; therefore, the suitability requirement under this notice is technically not applicable. See Annex 1 of Note FAA-N16.

[96]Chen (2014a), pp. 200–202.

probably do more to control the presentation of information and the process leading up to the customer's receipt of the product's documents to ensure the customer knows what he or she is doing before the contract is signed. This should ensure that more transparency would be effective in delivering information to a customer in the insurance market.

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