Asia Pacific Insurance - Taiwan

Regulatory Landscape and Issues in Bancassurance

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# Who is the main regulator with oversight of bancassurance matters?

The Financial Supervisory Commission (**FSC**).

# Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.

Bancassurance partnerships are generally divided into the following arrangements:

exclusive arrangements; and

conventional arrangements (i.e., bank will distribute the insurance products of insurer without preferential treatment).

# What are the main parameters in negotiating a distribution agreement?

For joint promotion activities by and between banks, securities firms, insurance companies, insurance agents/brokers, the Insurance Association of Taiwan promulgated (1) a tripartite model agreement, the Template Agreement for Banks, Securities Firms, Insurance Companies, Insurance Agents and Insurance Brokers Conducting Joint Promotion of other Business; and (2) a bilateral agreement between an insurance company and a bank which has obtained an approval from the FSC to concurrently engage in either the insurance agency or brokerage business. Such model agreements have been reviewed and recognized by the FSC. Though not mandatory, such agreement is usually adopted when the parties conduct bancassurance business in Taiwan.

# Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes, either a bank or an insurance company must comply with the requirements and apply to the FSC for approval before conducting bancassurance business.

There is a regulatory requirement that when a bank or an insurance company first enter into bancassurance arrangements, it shall get approval from the FSC. After the first approval being acquired, a bank can deal with any other insurance companies or an insurance company can deal with any other banks without further approval unless the FSC suspends their bancassurance business (due to their violation of laws or regulations).

# Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

There is no regulatory restriction for an insurance company or a bank to provide exclusivity to the other party.

The length of the exclusivity is a matter of negotiation between the parties.

# Assuming full exclusivity is not possible for legal or regulatory reasons, would the bank be able to grant the insurance company preferential treatment? If yes, under what conditions?

There is no regulatory restriction for an insurance company or a bank to provide exclusivity to the other party.

# What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

There is a regulatory requirement that when a bank or an insurance company first enters into bancassurance arrangements, it shall obtain approval from the FSC. After the first approval being acquired, a bank can deal with any other insurance companies or an insurance company can deal with any other banks without any further approval unless the FSC suspends their bancassurance business (due to their violation of laws or regulations).

# Would the insurance company and/or the bank be required to submit the distribution agreements (and any ancillary documents) to the regulators as part of any notification/approval process? If yes, do the regulators require any specific terms to be included in the distribution agreements?

Only when a bank or an insurance company first enters into a bancassurance arrangement, it shall submit the agreement and other required documents to the FSC as part of the
approval process.

After obtaining the first approval for the bancassurance business, a bank or an insurance company can engage in bancassurance business with other parties without submitting
any distribution agreements to the FSC (unless the FSC suspends the bancassurance business due to their violation of laws or regulations).

# If the distribution agreements are submitted, would the regulators review/provide comments and require that the agreements be modified?

There is a tripartite model agreement and a bilateral model agreement as mentioned in Question 3 above for joint promotion activities (i.e., bancassurance business) by and between banks, securities firms, insurance companies, insurance agents and insurance brokers. If the model agreement is adopted, the FSC usually does not require the agreement to be modified before granting the first approval for the bancassurance business.

# Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

It would be prudent to undertake a competition analysis given the broad application of, and significant penalties for breach under, Taiwan's Fair Trade Act (**FTA**).

# What are the competition law considerations that might impact the term (e.g., duration) of a distribution agreement?

Article 20 (5) of the FTA prohibits any enterprise from restricting its counterparts’ business activity improperly by means of the requirements of business engagement, which is likely to lessen competition or to impede fair competition. "Restrictions" pursuant to the Enforcement Rules of the FTA, refers to the circumstances under which an enterprise engages in restrictive activity in regards to tie-ins, exclusive dealing, territory, customers, use, or otherwise.

Nevertheless, please note that the restrictions are not per se illegal. It is only the "improper" restriction that is prohibited by the FTA.

# Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

Yes, although care will have to be taken by the bank in sanitizing the customer information before it is provided to the insurer. According to the Personal Data Protection Law of Taiwan (**PDPA**), when collecting the personal data form an individual customer, a bank must inform such customer of the specific purpose of data collection (e.g., to be further shared with the insurers, telemarketing cross-selling) and obtain his/her written consent in the form prescribed by the PDPA.

# Are there any laws or regulations limiting or prohibiting the dissemination of customer information without the customers’ consent? Are customers allowed to waive any of these limitations or prohibitions?

Yes, the PDPA prohibits the dissemination of customer information without the customers’ consent. Appropriate consent should be obtained from customers, and where relevant,
notifications should be issued to customers.

# Are there any other prohibitions or limitations resulting from applicable privacy laws relating to the sharing of customer information for purposes of marketing and distribution of insurance products?

Under the PDPA and the relevant regulations promulgated by the FSC, a customer can ask the bank or the insurance company at any time to remove him/her from the marketing or cross-selling list even after giving his/her written consent to the data collection and use.

# Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

There are no laws or regulations applicable to the commissions, fees and other remuneration paid to a bank in connection with bancassurance. However, the Life Insurance Association and Non-Life Insurance Association may promulgate self-disciplinary rules regulating payment of commission from time to time.

# What are the sanctions for non-compliance with the prohibitions or limitations in respect of compensation arrangements?

There are no laws or regulations applicable to the commissions, fees and other remuneration paid to a bank in connection with bancassurance.

However, if an insurance company does not comply with the selfdisciplinary rules regarding payment of commission, the FSC may hold that there is a defect in the internal control system and therefore impose a penalty.

# Would the regulators request information on compensation arrangements (for specific jurisdictions or globally)?

The regulators respect the commercial arrangements between the parties and do not request information on compensation arrangements for the bancassurance business. However, during financial inspections, the FSC may request information in this respect.

# Are there any restrictions in relation to the classes of insurance products which may be offered pursuant to a bancassurance arrangement?

There is no specific product specifications/requirements/limitations for insurance products distributed via banks under the regulations in connection with bancassurance.

# Are there any products or product lines that the insurance company would be unable to offer to and distribute through the bank?

None.

# Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

Yes, the policy forms used by the insurance company have to be reviewed and approved by the FSC.

Yes, insurance companies own the IP rights to such policy forms.

# Are there any prohibitions or limitations in respect of co-branding between the bank and the insurance company?

A co-branding insurance product is not allowed under Taiwanese law as a bank may not directly engage in the insurance business save for in the insurance agency or brokerage business that has been approved by the FSC.

When the bank personnel sell insurance products, they shall ensure customers can distinguish the sale of insurance products from the bank’s business and present relevant insurance solicitor licenses to customers.

# Would the bank personnel be required to hold any specific license in order to distribute the insurance products? Are there any reasons why bank personnel may be prohibited from distributing insurance products?

Under the bancassurance regulations of Taiwan, the sales personnel for bancassurance can only be employed by the bank, not the insurance company.

# If the sales person is employed by the bank: (a) is the insurance company required to have oversight or provide special training; and (b) are there applicable laws and regulations allowing the insurance company to compensate the bank for the service provided by its sales personnel?

For the banks without approval from the FSC to engage in either the insurance agency or brokerage business, the bank personnel need to be registered under the insurance
agent or the insurance broker. Such insurance agent or broker shall provide periodic training programs to those personnel. The bank is also required to ensure those personnel
complete the training programs.

For banks with approval from the FSC to engage in either the insurance agency or brokerage business, such banks bear the training or oversight responsibility.

There is no specific law and regulation on this.

# If the sales person is employed by the insurance company, are there any restrictions on their access to the bank’s branches?

Under the bancassurance regulations of Taiwan, the sales personnel for bancassurance can only be employed by the bank, not the insurance company.

# Are banks allowed to lease space to insurance companies to market its products in the bank’s branches?

No. Under the bancassurance regulations of Taiwan, the sales personnel for bancassurance can only be employed by the bank, not the insurance company. According to the regulations, the space where those sales personnel market insurance products must be segregated from the bank counters.

# Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

# Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

None.

# Are there any other issues that may affect the insurance company’s ability to enter into the distribution agreements and provide bancassurance services on an ongoing basis to the bank?

None.

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