Asia Pacific Insurance - Malaysia

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Approval from the Bank Negara Malaysia (BNM) is required for the appointment of the chief executive officer and directors.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes, BNM approval is required for the appointment of directors and the chief executive officer. There is no distinction between an executive director and non-executive director (to the extent that it relates to the approval requirement).

## Is there generally any distinction between EDs and NEDs?

No. There is no distinction between EDs and NEDs presently (to the extent that it relates to the approval requirement). However, there is a requirement that the insurance company must not have more than one ED, unless BNM approves otherwise in writing. Further, the chair of the board must not be an ED.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

Yes. The approval of BNM must be obtained prior to the removal or resignation of an independent director. Additionally, BNM must be notified if a director or anybody from senior management (including the chief executive officer) ceases to hold office. There is no distinction between EDs and NEDs (to the extent that it relates to the resignation and removal of EDs and NEDs).

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

No. However, residency requirements may apply.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

Directors and senior management are subject to fit and proper requirements specified by BNM.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Candidates must satisfy the fit and proper requirements, which include minimum requirements relating to probity, personal integrity and reputation, meet the competency criteria and fulfill the financial integrity requirements.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. This includes where a director is an active politician, has competing time commitments that impair his/her ability to discharge his/her duties effectively, is an undischarged bankrupt, has suspended payments, has compounded with his/her creditors, has been convicted for criminal offense(s) relating to dishonesty or fraud, is prohibited by a court order from being a director of a company or being involved in the management of a company in Malaysia or has been subject to any form of restrictions or supervision including an order of detention, supervision and deportation under any law relating to prevention of crime, drug trafficking or immigration. A partner of the external auditor of an insurance company and any of its officers directly involved in its engagement are also disqualified from being a director of that insurance company.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

Each Malaysian-incorporated insurance company must have two resident directors at all times. Further, a chief executive officer of an insurance company shall have his principal or only place of residence within Malaysia.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is expected to objectively assess the fitness and probity of directors and senior management prior to their appointment. The assessment must be supported by relevant information, which may vary according to the degree of the proposed candidate's influence and responsibilities in the affairs of the insurance company, and should be verified by the insurance company where possible.

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

There is no distinction in the duties and responsibilities or regulatory treatment for EDs and NEDs.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

Directors are responsible for the oversight and supervision of the affairs and policies of an insurance company, and promoting the sustainable growth and financial soundness of an insurance company. The board of directors of an insurance company is also subject to specific corporate governance roles and responsibilities.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes, unless it is proven that the breach was committed without their consent or connivance and that they have exercised all such diligence to prevent the commission of the offence as they ought to have exercised, having regard to the nature of their functions in that capacity and to all the circumstances.

Statutory penalties include fines and/or imprisonment, and the quantum of the fine and/or the length of imprisonment varies according to the offense(s) committed.

BNM may also take administrative actions on the directors/senior management, which include written orders of restitution and public reprimands.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

Generally, no periodic filings apply to the directors/senior management.

However, ad hoc filings by the insurance company to the registrar of companies or the stock exchange (if the insurance company is listed) may apply where there are changes in relation to the status of the director/senior management in the insurance company.

Additionally, an independent director must disclose to the board any change in the circumstances affecting his status as an independent director, and the board must review the independent director's designation and notify the same to BNM.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Malaysia-incorporated insurance companies are generally required to have a minimum of two directors.

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

An insurance company may have only one executive director unless otherwise approved by BNM, and the majority of the board must comprise independent directors.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes, an insurance company is required to establish the following board committees:

Nominations committee – supports the board in the appointment, removal, composition, performance evaluation and
development, and fit and proper assessments of the board, senior management and company secretary

Remuneration committee – supports the board in overseeing the design and operation of the remuneration system, and the
periodic review of the remuneration of directors

Risk management committee – supports the board in meeting the expectations on risk management, implementing risk
management policies, processes and controls of the insurance company, managing the key and emerging risks to the insurance
company, and assisting the implementation of a sound remuneration system.

Audit committee – supports the board in ensuring that there is a reliable and transparent financial reporting process, overseeing
the effectiveness of the internal audit function and/or the external auditor, and monitoring all related-party transactions, chair's statements and compliance with conflict of interest policy

Rules on the composition (for example, the minimum number, qualification and independence) of the various committees apply.

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

Yes, provided that there is no conflict of interest, appropriate disclosure of any such conflict by the director to the board of directors of the insurance company having been made.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific prohibition in this regard provided the relevant disclosures are made.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

There are several regulators overseeing the financial services sector, and each such regulator would have oversight of their respective regulated institution. Specifically:

Bank Negara Malaysia (that is, the Central Bank of Malaysia) (BNM) would have regulatory oversight of fintech-related issues affecting the banking, insurance, money broking, financial advisory, payment systems and instruments, foreign exchange, moneychanging and remittance services.

Securities Commission Malaysia (SC) would regulate fintech/insurtech activities affecting the capital markets and its participants.

Given that fintech/insurtech involves technology and data, it is likely to also fall within the purview of:

The Malaysian Communications and Multimedia Commission (MCMC), which regulates the communications and multimedia industry in Malaysia.

The Malaysian Personal Data Protection Department (PDPD), which administers the data protection regime.

The Intellectual Property Corporation of Malaysia (MyIPO), which administers the intellectual property regime.

## What are the types of fintech/insurtech activities that are regulated?

Activities involving insurance, banking, money broking, financial advisory, payment systems and instruments and foreign exchange activities may be regulated by BNM under the Malaysian Financial Services Act 2013 (FSA), and its related regulations, directions, notices, guidelines and industry codes. Fintech/insurtech activities involving the money changing and remittance services may be regulated by BNM under the Malaysian Money Services Business Act 2011.

BNM had, in 2014, issued an announcement stating that Bitcoin (and likely, by extension, other virtual currencies) is not legal tender and that BNM does not regulate the operation/use of Bitcoin.

Any activities that relate to the dealing with derivatives, securities, fund management, advising on corporate finance, as well as providing investment advice and financial planning services may be regulated under the Malaysian Capital Market and Services Act 2007 (CMSA). The SC has issued guidelines to regulate the crowdfunding sector (both equity and peer-to-peer), and more recently, revised various guidelines to regulate digital investment management (robo-advice). Note that financial exchange derivatives fall within the purview of BNM.

To the extent that the activities relate to cryptography and data encryption, and the export of cryptographic/data encryption technology, the activities may be subject to regulation under the Malaysian Strategic Trade Act 2010.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

The regulators have been positive and encourage fintech/insurtech innovation.

The SC has adopted a collaborative approach. In September 2015, the SC launched the aFINity@SC initiative (that is, the Alliance of FinTech Community) to create a network for fintech stakeholders to engage with the SC. More importantly, the SC intends to introduce policy and provide regulatory clarity for fintech/insurtech businesses through aFINity@SC. The SC also intends to work together with relevant fintech-related stakeholders, including innovators, entrepreneurs, established businesses, investors and other authorities, as part of a concerted effort to accelerate growth and innovation in the financial industry. The SC will function as the network organizer in pursuing key deliverables, which include (i) creating awareness and catalyzing development in fintech; (ii) forming hubs to organize and nurture a wider fintech/insurtech ecosystem; and (iii) providing policy and regulatory clarity that is conducive for innovation.

In June 2016, BNM established the Financial Technology Enabler Group (FTEG), which is responsible for the regulatory framework to facilitate fintech in the Malaysian financial services industry. FTEG demonstrates BNM's commitment toward supporting fintech innovations for a progressive financial services sector. BNM has also shown awareness of fintech initiatives in the industry. For example, BNM launched the Financial Technology Regulatory Sandbox Framework in October 2016 to allow regulatory flexibilities to be granted to financial institutions and fintech companies to experiment with fintech solutions in a live controlled environment with appropriate
safeguards for a limited period of not more than 12 months. The initiatives by the FTEG will complement other initiatives by BNM, for example, regulating the establishment and operations of the product aggregators in the insurance sector and launching the Market Development Fund framework to impose annual targets of point-of-sale terminals in Malaysia to be achieved by participating card organizations in collaboration with payment system operators.

## What are the licenses required and what are the criteria and process involved?

The licenses required will depend on specific activities that are contemplated. The relevant licenses that may be required include, among others:

Banking or insurance licenses and approvals for other approved businesses. No person may carry on banking or insurance businesses or any other approved businesses such as the operation of a payment system, issuance of a designated payment instrument, moneybroking businesses or financial advisory businesses without a license or an approval from BNM. However financial technology companies (approved by BNM under the Financial Technology Regulatory Sandbox Framework issued by BNM) are exempt from obtaining licenses required under the FSA and IFSA to carry out, among others, banking and insurance businesses.

Capital market services license. No person may carry on a business in any of the regulated activities (which include dealing with derivatives, dealing with securities, fund management, advising on corporate finance, providing investment advice and financial planning services) unless licensed by the SC. Individuals undertaking such activities must also obtain a capital market services representative license from the SC. It should be noted that the SC also introduced a new category of capital market services license for fund management companies which undertake discretionary portfolio management by incorporating innovative technologies (robo-advice).

Crowdfunding license. Any person carrying on a crowdfunding business (including peer-to-peer crowdfunding/lending activities) must be licensed by the SC.

Moneylending license. Any person undertaking moneylending services must be licensed by the Ministry of Housing and Local Government, unless exempted.

Money services license. Any person engaged in the money-changing or remittance businesses must be licensed by BNM.

MCMC license. Network services, network facilities, application services and content application services providers must be licensed by the MCMC.

Intellectual property registrations. Trademark and/or patent registrations can be filed for fintech/insurtech innovations, which involve a patentable innovation or which can be registered as a trademark with MyIPO. Depending on whether there are any objections raised to such registrations, it may take between 1 and 1.5 years to register a trademark and 5 and 6 years to register a patent in Malaysia.

Save for trademark registrations, which may take between 1 and 1.5 years, and patent registrations, which may take between 5 and 6 years, it generally takes 3 to 6 months to obtain licenses and approval from the various regulators above, subject to the submission of a complete set of documents and information for the application.

## Is the use of telematics and/or biometrics regulated?

There are no specific regulations for the use of telematics or biometrics. It is likely that insurers will continue to be subject to general conduct of business and data privacy requirements. Further, depending on how such technology is used, other areas of regulation (for example, telecommunications or pharmaceuticals) may apply.

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

Yes, both BNM and the SC have indicated that different markets are subject to different levels of regulation, that is, adopting the concept of proportionate regulation. By way of examples:

The SC takes the position that "the level of regulation imposed will depend on the proposed market characteristics, including the structure of the market; sophistication of market users and rights of access; types of products traded; and risks posed by such
markets" for operators of equity crowdfunding.

The CMSA distinguishes between the levels of investor protection for institutional and non-institutional investors.

The FSA distinguishes payment systems and designated payment systems, which could affect public confidence or impact monetary stability and therefore carry a higher risk than normal payment systems.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

Among others, licensed insurers must comply with the Guidelines on Management of IT Environment and Guidelines on Data Management and MIS Framework issued by BNM. Licensed insurers that carry out Internet insurance activities must also comply with BNM's Guidelines on Internet Insurance (Consolidated) issued by BNM. The Guidelines on Risk Governance and Guidelines on Stress Testing and the Code of Conduct for Malaysia Wholesale Financial Markets, both of which extend to the use of technology, also apply.

There is also a reporting and/or notification requirement on insurers in the event of cybersecurity breaches and cyber threats.

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

The Malaysian Personal Data Protection Act 2010 (PDPA) governs personal data collected or processed in respect of commercial transactions by persons established in Malaysia or who use equipment in Malaysia to process personal data. In addition to the baseline
requirements of the PDPA, additional requirements apply with respect to sensitive personal data (such as medical records, political affiliations and others) and data users in prescribed industries (such as the medical, banking and insurance industries).

The PDPA sets out data protection principles governing the collection, use, disclosure, accuracy, retention, access to and security of personal data. Data users are also required to develop and implement a security policy that complies with prescribed security standards.
Insurers are also required to comply with the Code of Practice on Personal Data Protection for the Insurance and Takaful Industry in
Malaysia issued pursuant to the PDPA effective on 23 December 2016 (Relevant Code of Practice).

The FSA and CMSA also have specific confidentiality restrictions relating to regulatory-related information and customer information.

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

Yes, the PDPA and the Relevant Code of Practice provide certain requirements in relation to the processing of personal data. Some of the requirements under the PDPA are as follows:

consent from the data subject is required prior to the personal data being processed (including a transfer of such personal data)

a written notice must be issued to notify the data subject of a prescribed list of information in the Malay and English languages

the personal data shall not be disclosed for any purpose other than the purpose for which it is disclosed

a data user shall take practical steps to protect the personal data

the personal data processed shall not be kept longer than is necessary

a data user must take all reasonable steps to ensure that the personal data is, among others, accurate and not misleading

a data subject must be provided access to his personal data and be able to correct his personal data

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

The Malaysian Penal Code criminalizes theft, which could extend to conduct involving cybersecurity breaches/theft.

The Malaysian Computer Crimes Act 1997 criminalizes unauthorized access to computer material and unauthorized modification of the contents of any computer.

In addition, the Malaysian Communications and Multimedia Act 1998 criminalizes unauthorized use of any device and unauthorized interception of any communications and the distribution or advertising of any communications equipment used for interception.

The PDPA also has a security principle that requires data users to take practical steps to protect the personal data from any loss, misuse, modification, unauthorized or accidental access or disclosure, alteration or destruction.

It should be noted that the SC has issued the Guidelines on Management of Cyber Risks, which apply to capital market entities (but not insurers). Among other requirements, the roles and responsibilities of the board and senior management in the governance of cyber risk is clearly stipulated. The guidelines have also mandated capital market entities to identify a responsible person to be accountable for the effective management of cyber risk.

As discussed previously, there is a requirement imposed on insurers to provide the relevant report/notice to BNM in the event of material security breaches and cyber threats.

Further, on 9 June 2017, the Deputy Prime Minister of Malaysia announced that the Malaysian government will introduce a new law that is aimed at protecting Malaysians from cybersecurity threats. The Deputy Prime Minister also mentioned that the draft Bill has been handed over to the Attorney-General of Malaysia and will be tabled in the next Parliament sitting, starting 24 July 2017. The National Cyber Security Agency, which was set up in January 2016, will coordinate all efforts in order to ensure that more effective actions may be taken against cybersecurity threats in Malaysia.

## What innovations are insurance companies and/or regulators looking at implementing?

As mentioned in question 3 above, BNM has launched the Financial Technology Regulatory Sandbox Framework. In addition, BNM indicated that it intends to regulate the establishment and operations of the product aggregators by publishing requirements on the same in 2016. However, this has been delayed to 2017/2018 to enable BNM to draw on the experience from the regulatory sandbox.

Further, BNM, through FTEG has rolled out an initiative called "Fintech Hacks," which allows the public to submit their innovative ideas through, among others, its website on the improvements to the financial services sector by harnessing innovation and technology.

To date, banks in Malaysia have publicly announced the implementation of innovation and accelerator programs (rather than insurance companies). We expect insurance companies to undertake similar initiatives in the near future (as there have only been a handful that
have indicated or collaborated in the launch of accelerator programs).

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

There are no specific cases by the financial regulators so far.

## What are the most immediate challenges to insurtech innovation?

Regulatory and compliance – Currently, many fintech/insurtech businesses do not fall squarely within any particular regulatory regime in Malaysia. Until such time as there are clear regulatory prescription governing fintech/insurtech companies and their businesses,
fintech/insurtech companies must evaluate their fintech/insurtech innovation at the outset and question whether their business activity can be undertaken without the fintech/insurtech company becoming a regulated entity, or whether it would have to seek
appropriate licenses or approval and incorporate internal compliance frameworks such as anti-money laundering procedures. An understanding of the consumer protection and liability exposures may also be lacking.

The high costs of development and innovation – Particularly for start-ups, the lack of funding has not been adequately dealt with and hinders access to facilities, especially for the fintech sector.

Skill and talent – The necessary infrastructure, talent and skill set to catalyze fintech/insurtech developments in Malaysia are lacking. Guidance will have to be sought from more developed markets.

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

The most imminent impact of fintech/insurtech on the financial services industry in Malaysia will likely be in the banking and insurance (please refer to question 15 below) sectors.

In respect of the banking sector in particular, there has been an evolution in payment methods. Further, CIMB and Maybank (which are among the largest banking institutions in Malaysia) have also implemented innovation and accelerator programs in Malaysia.

Also, the regulation of crowdfunding platforms and peer-to-peer lending operators by the SC encourages alternative lending platforms, which provide an online marketplace for lenders to exercise greater discretion and choice, based on their risk appetite. There will also be
lower costs of borrowing and greater transparency in the communications chain between borrowers and lenders.

Finally, we foresee that the use of technology will eventually displace traditional labor-intensive working models and result in greater automation in respect of client-fronting activities and decision-making processes, through the use of robo advisers, artificial intelligence and blockchain technology, reducing reliance on skill-based labor.

## What insurtech trends or disruptions may impact insurance companies?

Insurance companies will be disrupted at key pressures across the value chain.

In respect of product distribution, online aggregators that assist customers with comparisons of insurance coverage may displace traditional distribution channels, which are primarily manpower-focused (that is, through insurance agents and distributors). With such information easily accessible through a "one-click solution," there will be greater competition between insurers to leverage on technology to modify their traditional processes and allow for a shorter time for the issuance of insurance policies while at the same time ensuring compliance with underwriting risks measures.

Self-driving and pay-as-you-go rentals may affect traditional insurance underwriting models development based on a single or paper ownership structure. Risk determination for underwriting models may also shift toward the use of personalized statistical data through
telematics.

We expect insurance companies to vary their business models in the future, whereby they may choose to partner with or acquire noninsurance technology players to incorporate business models that are more data intensive (and less manpower and capital intensive) and platform/infrastructure based. This could result in greater access to more innovative product offerings, with better value for end customers. The greater utility value derived from the use of big data by insurers will also assist with ensuring such outcomes.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

Third-party intermediaries include insurance brokers, insurance agents (which also include bancassurance partners) and financial advisers.

An insurance agent does not require a license or approval under the Financial Services Act 2013 (FSA), but must be registered with the Persatuan Insurans Am Malaysia (PIAM), for general insurance; and the Life Insurance Association of Malaysia (LIAM), for life insurance. The FSA also provides that any person carrying on an insurance broking business or financial advisory business must be approved by Bank
Negara Malaysia (BNM) (ie, the Central Bank of Malaysia).

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

Yes. It is mandatory for licensed life insurers to offer standalone life insurance products with no commission through at least one direct distribution channel, ie, through either (a) the head office and branch premises of the insurer, or (b) an online platform (whether developed as the insurer's proprietary system or outsourced), where consumers deal directly with the life insurer without the involvement of intermediaries (for example, by way of direct mailing, telemarketing or online distribution) [Direct Distribution Requirement]. Insurers providing life insurance products that are critical illness products or medical and health products are required to comply with the Direct Distribution Requirement starting 1 July 2018.

We are not aware of any similar requirement applicable to general insurers.

## Do agreements between insurers and their agents need to take a certain form?

There should be written agreements between insurers and their agents, but we are not aware of any prescribed form in relation to such agency agreements by PIAM and LIAM.

## Can insurers pay volume-based commission to their appointed agents?

There is no overarching prohibition on insurers paying volume-based commission to agents. However, this is subject to the overall limit on commission payable by insurance companies to their appointed agents as prescribed by BNM.

For general insurance, insurers can pay profit commissions up to a maximum of 10% of the average underwriting profit for the past three consecutive financial years. Such commissions may only be paid after the third year of the agent's service. Profit commissions cannot be paid to bancassurance partners.

For life insurance, insurers can pay production and persistency bonus on an individual policy bonus over and above the maximum commission limits subject to certain caps. That being said, BNM has set out a roadmap for the deregulation of operating cost control limits (as well as the removal of limits on commissions payable to agents), which will be implemented over 2018 and 2019 for life insurers. As part of the deregulation of operating cost control limits, life insurers are required to incorporate, in their remuneration policy for intermediaries, the balanced score card (BSC) framework that links intermediaries' remuneration to quality of service.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. Under the FSA, a statement made, or an act done, by the insurance agent shall be deemed to be a statement made, or act done, by the insurer.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

There are no specific rules in this regard.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

There is no statutory restriction on insurance brokers receiving commission from both insurers and their customers.

For general insurance, commissions paid by insurers will be subject to the overall limit on commissions prescribed by BNM. For general insurance, profit commissions are not payable to brokers.

For life insurance, insurers will need to implement the BSC Framework (as previously explained in question 4) for brokers from 1 January 2018.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

Agents are not allowed to offer rebates on insurance premiums or other special concessions to customers.

## Can insurers appoint offshore agents or accept business from offshore brokers?

While there is no specific prohibition on Malaysian insurers appointing offshore agents or accepting business from offshore brokers, it is likely that the insurer will attract licensing or regulatory issues in the offshore jurisdiction. Therefore, insurers should consider the laws of the offshore jurisdiction before accepting business from offshore brokers or appointing offshore agents.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

Yes. Specific requirements apply to third-party call centers and telemarketing providers to ensure that professional services are provided to potential policy owners. These requirements are issued by LIAM and PIAM via circulars to insurers, and these circulars are not publicly available.

## Are there specific requirements on selling products through online channels?

Yes. Specific requirements apply to insurers that carry out internet insurance activities, including the sale of products through online channels. Insurers are required to identify, quantify and manage internet insurance risks, which includes security risks, operations risks and reputation risks. In setting up a sound and secure insurance business on the internet, the insurer must have a written security policy that draws up comprehensively and puts in place adequate measures to address both critical customer and the insurer's concerns over security and privacy in using the internet insurance system.

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

The handling of personal data in Malaysia is governed by the Malaysian Personal Data Protection Act 2010 (PDPA). Insurers can share client information with agents and brokers and vice versa, provided that clients are notified of the purpose for which their personal data is collected and have consented to the use and disclosure of their personal data. The PDPA does not specify the form or nature of the consent and whether consent can be implied by conduct. However, the Code of Practice on Personal Data Protection for the Insurance and Takaful Industries provides examples of when the data user is deemed to have given consent. This includes where the processing of personal data is necessary to enable an insurer to conduct its insurance business (as well as processing for the purpose of disclosure to third parties, including intermediaries such as bancasssurance partners, brokers and financial advisers).

However, the transfer of personal data outside Malaysia is generally prohibited unless certain conditions are satisfied. These include the insurer/agent/broker having obtained the client's consent in respect of the cross-border transfer or having ensured that the receiving jurisdiction has privacy safeguards of equivalent standards.

# Investing in Insurtech Start-ups

## 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?

Any such investment will likely have to relate to the insurance business of the insurer. However, there is a likelihood than BNM will be issuing a guideline to require an insurer to seek prior approval from BNM if it intends to acquire or hold any direct or indirect material interest in an insurtech start-up if such investment will assist in realizing business synergies.

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

An insurer may acquire the equity interest or invest by way of a debt instrument in an insurtech start-up. However, in certain instances and based on specific thresholds, such investment may require the prior approval of BNM.

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

The investment is likely to attract a capital charge under the Risk-Based Capital Framework ("RBC Framework"), and such investment may be approved by BNM subject to specific conditions.

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

The insurer must obtain the prior approval of BNM to acquire or hold a subsidiary outside Malaysia. In any event, such an investment will attract a capital charge under the RBC Framework.

Also, Malaysia has foreign exchange administration rules that apply to investments abroad. If a resident (that is, a Malaysian insurer) or its group companies do not have domestic Malaysian ringgit borrowings, there is no restriction on the amount that it can invest in an offshore insurtech start-up. If a resident or its group companies have domestic Malaysian ringgit borrowings, there are limits on the amount of such investments, depending on the source of the funds to be invested. The approval above will take between four and six months to obtain, from the time a complete set of documents is submitted.

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

An insurer is required to obtain the approval of BNM to grant loans to companies that the insurer, among others: (i) has any interests in as a controller, manager or agent; (ii) the insurer's directors have any interests in as director, partner, manager or agent; and (iii) has interest in voting shares of 20% or more. If the insurtech start-up does not fall within these categories, the insurer is permitted to grant loans to it without BNM's approval.

Also, depending on the currency of such loans and whether the insurtech start-up is located within or outside Malaysia, the foreign exchange administration rules may apply.

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

Depending on the materiality of the investment, the investments will likely require the approval of the board of directors and (if applicable) the investment committee of the insurer. Under the Malaysian Companies Act (MCA), substantial acquisitions falling within prescribed thresholds will require shareholders' approval. Further, if the insurer is a publicly listed company, the listing requirements may similarly require the insurer to obtain shareholders' approval if the investment falls within prescribed thresholds.

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

There are certain matters subject to statutory protection under the MCA. If a shareholder holds at least 25% of the shares in a Malaysian company, it would have veto rights on important shareholders' resolutions such as resolutions to increase or decrease capital, merge with other companies, amend the constitution of the company or wind up the company. The MCA also provides relief to minority shareholders against oppressive conduct by the directors of the company by entitling any shareholder of the company to apply to the Malaysian Court for an order. Upon such an application, the Malaysian Court may make any order it thinks fit, including directing or prohibiting any act, or cancelling or varying any transaction or resolution.

## 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?

There are generally no restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board or management team, save for the appointment of the insurer's CEO to the insurtech start-up. An insurer's CEO is required to devote their entire professional time to the service of the insurer.

## 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?

Generally, there are none, as long as such transactions are bona fide and at arm’s length.

Material related-party transactions must be approved by the board of directors of the insurer.

BNM's approval is required if the transaction will result in a material gain for the insurer's directors or if the insurer's director has 20% or more equity interests in the insurtech start-up.

Also, depending on the type of services provided under the service contract, the guidelines issued by BNM regulating outsourcing arrangements may apply, and may be subject to the prior approval of BNM.

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

An insurer is required to disclose all related-party transactions in its financial statements in accordance with prescribed accounting standards. It is also required to report its related-party transactions to BNM if such transactions are material or involve a consideration exceeding RM 1 million in aggregate.

As set out above, and unless exempted, material outsourcing arrangements must be approved by BNM.

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

An insurer may be required to seek the approval of BNM to provide such support, as the provision of operational support is not the authorized business of the insurer.

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

Reasonable arm’s-length service fees payable by the insurer is are permitted. The payment should not be linked to the premiums received by the insurer as it might raise questions on whether the start-up is carrying out an insurance business without a license.

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

Intellectual property rights are generally transferred through an assignment agreement. If an intellectual property in question is a registered intellectual property, for example, trademarks or patents, an assignment agreement must also be recorded with the competent registrar.

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

The Malaysian Personal Data Protection Act (PDPA) applies to the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up. Any person processing personal data is required to comply with the seven core principles under the PDPA. In particular, the consent of the data subject (that is, the person whose personal data is being processed) is required and a PDPA-compliant dual-language notice in English and Malay is required to be issued to the data subject.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

Bank Negara Malaysia (**BNM**)

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

There is a maximum foreign ownership of 70%.

A higher foreign equity limit will be considered by BNM on a case-by-case basis.

Individuals are subject to a shareholding cap of 10%. However, where such person had previously been approved by the Minister of Finance to hold such interest, then the relevant individuals have a five-year grace period from 30 June 2013 to comply with the cap.

The maximum foreign shareholding cap is a policy observed by BNM. The individual shareholding cap is encapsulated within the Financial Services Act (FSA) for conventional insurers, and the Islamic Financial Services Act (IFSA) for *takaful* operators.

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (a matter of law).

## Are there other conditions imposed by the regulator in doing an M&A transaction?

Approval must be obtained to commence negotiations and separately to execute the definitive agreement.

In connection with the approval to commence negotiations, BNM generally imposes a time frame to conclude the negotiations. It may also require a local joint venture partner to be identified and the submission of a business plan by the incoming shareholder.

The MOF or BNM (as the case may be) may impose further conditions when granting its approval to execute the definitive agreement. These conditions may include the provision of an undertaking in favor of the MOF by the incoming shareholder and/or other operational conditions.

## Is dispensation given for fulfillment of these conditions and in what circumstances?

On a case-by-case basis, applications can be submitted to BNM to seek a waiver from having to comply with the conditions. Cogent reasons have to be provided. By way of example, BNM may grant an extension of time to parties to negotiate the definitive agreement if it is supported by examples of the efforts made to drive the progress of the discussions.

If an undertaking is issued in favor of the MOF, it can only be withdrawn or amended with the consent of MOF.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

There is no express provision within the FSA in respect of the single presence policy. However, BNM continues to enforce a single presence policy as a matter of practice.

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

**Share deal**

BNM approval is required if the foreign entity is acquiring 50% or more shareholding.

Thereafter, approval must be sought if further acquisitions would result in the foreign entity holding more than any multiple of 5%, or of the acquisition would result in the foreign entity, triggering a mandatory general offer.

MOF approval is required if the foreign entity is intending to acquire control of an insurer.

**Asset deal**

Generally, only a Malaysian company can acquire an insurance business.

Approval will have to be sought from BNM (and BNM will in turn liaise with MOF for approval). The transfer scheme is also subject to the confirmation of the High Court.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

**Share deal**

Generally, a share deal takes between four and eight weeks for approval to negotiate, and between six to eight weeks for final approval.

**Asset deal**

Asset deals are typically more protracted (i.e., six to nine months), given the need to obtain regulatory and court approval. The court process takes between two and three months.

## How open is the regulator to private equity participation in an insurer?

There is no statutory restriction. As a matter of policy, BNM would generally favor a strategic investor over a private equity investor since strategic investors generally focus on long-term investments as opposed to private equity investors, who are perceived to have short investment horizons.

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

Yes, there is a concept of an FHC. The following companies will have to apply for a FHC status or approval:

A company currently holding more than 50% of the interest in shares in an insurer

Acompany proposing to acquire more than 50% interest in shares in an insurer

Prudential requirements (e.g., restriction on the payment of dividends, the business that is carried out) set out in the FSA or the IFSA (as the case may be) apply to the FHC and its subsidiaries.

## What are the typical modes of distribution for insurance companies?

Agency force, bancassurance and walk-in customers

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution.

No regulatory approval is required. However, insurers are required to notify BNM of the arrangement before the agreement comes into effect.

The salient terms are:

Exclusivity

Term and renewal

Products to be distributed

Fees and timing for such payment

The mining of the bank's customer data

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

The two-stage approval process, which gives rise to the issues of securing exclusivity and preserving the value of the target's business in the interim

The 70% cap on foreign shareholding and identifying a local joint venture partner (a foreign entity making its maiden entry into Malaysian insurance sector would not have any contacts with local investors)

Transfer of all other business undertakings

Transfer of employees

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

The Personal Data Protection Commissioner (Regulator)

## What is the main legislation on the protection of personal data privacy?

The Personal Data Protection Act 2010 (PDPA). The Code of Practice on Personal Data Protection for the Insurance and Takaful Industries in Malaysia (Code), which came into effect on 23 December 2016, should be read together with the PDPA.

# Regulatory Landscape and Issues in Bancassurance

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

Bank Negara Malaysia (**BNM**).

## 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;

preferred partner 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?

The salient terms typically relate to:

exclusivity;

term and renewal;

products to be distributed;

product development arrangements;

fees and commissions, and timing for such payment;

rights and obligations of each party; and

ownership and use of the bank’s customer data.

## 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, insurance companies and banks must be licensed under the Malaysian Financial Services Act 2013 (**FSA**) to carry on insurance business or banking business (as the case may be) in Malaysia.

## 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 insurer to appoint a bank as its exclusive distributor, although there may be limitations on the part of the banks to offer exclusivity.

To the extent that an exclusive arrangement is possible, the length of the exclusivity is a matter of negotiation between the parties. However, note that a long-term exclusive agreement could potentially amount to an infringement of the Malaysian Competition Act unless the parties fall within the prescribed safe harbour or if the parties can rely on the efficiency argument.

## 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?

Yes, preferential treatment is common in instances where a bank resists an exclusive arrangement. The form of the preferential treatment is a matter of negotiation.

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

No regulatory approval is necessary but insurance companies are required to notify BNM of the bancassurance arrangement prior to the commencement date.

## 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?

No statutory or regulatory requirement to submit the agreement(s) although the practice and convention in the manner in which the insurer liaises with BNM could dictate the supporting documents that it would provide to BNM as part of the notification described in Question 7 above.

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

BNM has broad powers as a regulator and has the right to direct an insurer to modify or unwind a distribution agreement/arangement (as it deems appropriate).

## 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 that the broad application of, and significant penalties for breach under, the Malaysian Competition Act.

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

The Malaysian Competition Commission is a relatively young regulator, and it has not, to date, issued any guidelines specific to distribution agreements in the context of a bancassurance arrangement.

However, as noted above, under the general principles of the Malaysian Competition Act, a long-term exclusive agreement could amount to an infringement unless the parties fall within the prescribed safe harbour or if the parties can rely on the efficiency argument.

## 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, provided the bank has obtained the necessary consent of the customers and the sharing of information with the insurance company is within the scope of the consent granted by the customers.

## 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 bank is subject to the secrecy provisions under the FSA, as well as the provisions of the Personal Data Protection Act (**PDPA**). The bank may also be subject to contractual confidentiality restriction. Appropriate consent should therefore 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?

None.

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

Yes.

There are restrictions relating to the payments and amounts that can be paid by an insurer. Notably, commission rates are regulated.

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

The sanctions are imposed by BNM and include an order in writing requiring compliance, monetary penalty, and/or a public and private reprimand.

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

No statutory or regulatory requirement for BNM to request information on compensation arrangements. However, as noted above, the practice and convention in the manner in which the insurer liaises with BNM could dictate the supporting documents/information that it would provide to BNM as part of the notification described in Question 7 above.

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

No, provided that the classes of insurance products to be offered pursuant to the bancassurance arrangement are in line with the scope of the insurer's licence issued under the but there is an obligation to FSA.

## 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?

No, although BNM has a right to require an insurer to lodge its proposal form with them.

Yes, insurance companies generally 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?

No, there is no specific regulatory prohibitions or limitations.

## 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?

No. However, the bank would generally exercise care regarding level of access to its customer data, and to ensure continued compliance with the FSA, PDPA and any contractual confidentiality obligations.

## 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?

There is no statutory requirement for training or oversight responsibility by the insurer. However, it is common for the insurer to provide training to the bank personnel.

No, the bank would be compensated based on the consideration set out within the distribution agreement.

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

No. However, the bank would generally exercise care regarding level of access to its customer data, and to ensure continued compliance with the FSA, PDPA and any contractual confidentiality obligations.

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

Yes. Banks are allowed to lease space to insurance companies.

## 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)?

BNM has recently issued new guidelines that would apply to life insurance products, and which has the effect of liberalising the caps on commission limits for certain products in the coming years.

## 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.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

Parties typically enter into a bancassurance arrangement with a view of establishing a long-term relationship. As such, there are often restrictions in relation to the marketing, promotion, distribution or sale of the bancassurance products or even partnering up with another insurer or bank without prior written permission of the disclosing party. The scope of restrictions have to be carefully crafted and the restriction may be in the form of a geography, time or even the holding of an equity interest in a company that is competing with the bancassurance partner. Carve-out for affiliates from such restrictions, as well as change of control provisions, can also attract deep discussion. There is no regulatory restriction for an insurer to appoint a bank as its exclusive distributor, although there may be limitations on the part of the banks to offer exclusivity. To the extent that an exclusive arrangement is possible, the length of the exclusivity is a matter of negotiation between the parties. However, note that a long-term exclusive agreement could potentially amount to an infringement of the Malaysian Competition Act.

## What are generally the obligations of an insurer in terms of providing manpower support?

An insurer is generally obliged to provide support to the bank by sending individuals to guide and train the bank’s staff or even second personnel to assist with the marketing and sale of the bancassurance products alongside the bank’s sales staff.

The extent and frequency of support, training, materials and manpower to be provided by the insurer are usually detailed and oftentimes, heavily negotiated as there is a need for the insurer to balance the costs (involved in recruiting and training the insurance personnel which in turn will be involved in training and managing the bank’s personnel) and benefits of providing such support to the bank.

## What are the typical rights and provisions in relation to insurer’s right to access the bank’s customer database and also the obligations of an insurer that is in receipt of such information?

The bank’s customer database is subject to banking secrecy, data protection and privacy laws. As the banks are under a strict duty to maintain confidentiality and secrecy, banks will only allow the insurer the right to access their customer database after it has received the relevant consent from the customer or as may be permitted by the regulators or under law.

The disclosure by the bank to the insurer is also typically subject to strict confidentiality provision e.g., the insurer agreeing to use such customer data for purposes specified in the consent only.

## What are the issues to consider in respect of compensation payable by the insurer to the bank and cost of distribution of bancassurance products?

Banks typically request for the maximum amount of commission payable under the guidelines issued by Bank Negara Malaysia.

## What can parties do if the insurer is unable to develop or refuses to develop a bancassurance product or cease offering a bancassurance product?

An insurer will usually require some time to evaluate the feasibility of a new bancassurance product offering. If the insurer is unable to develop or refuses to develop a bancassurance product within an agreed time frame, the banks may regard that as a waiver of a right from the insurer. The bank will typically insist that this triggers the right to seek out another insurer to offer a similar product.

As a bancassurance arrangement is a joint initiative between the banks and insurer, there are often provisions requiring for any unresolved issues relating to bancassurance product offerings to be escalated to the senior management before the bank is given the right to seek out another insurer for such products.

## What are the possible terms and issues relating to intellectual property that has been jointly developed (JDIP) pursuant to a bancassurance agreement?

A party that is responsible for creating and/or developing a JDIP will be expected to provide a warranty that the JDIP does not infringe any third-party rights or laws and also typically be required to grant a non-exclusive and non-transferable royalty-free license to use the JDIP in connection with the performance of the parties’ respective obligations for the term of the bancassurance agreement. Generally, a JDIP that is attributed solely to one party shall remain with that party.

A dispute may potentially arise after the bancassurance agreement is terminated if both parties have contributed to the creation of the JDIP and it is not entirely clear which party owns the JDIP. The best practice is for the parties to establish ownership of the JDIP up-front to avoid subsequent dispute.

If ownership of the JDIP is not clearly identifiable, the dispute is typically escalated to the senior management for a determination before referring the matter to the court or for arbitration (if not resolvable by senior management).

## What happens to the facilitation fee for the promotional and marketing activities paid by the insurer to the bank in the event of an early termination?

The position will vary depending on the reason for the early termination and which party is at fault.

There is also a possibility that the bancassurance agreement may be terminated in a no-fault situation (e.g., as a result of a change in the regulatory environment or a force majeure event). In such instance, the insurer may request that a pro-rata amount of the facilitation fee be refunded for the unexpired period.

The consequences of termination will also vary where there is a change of control or merger of either entity, as the commercial dynamics will be very different.

## A pro-rata refund of the facilitation fee in the event of an early termination may not be fair to the banks as the banks would typically invest and incur more costs and expenses during the initial years of a bancassurance agreement to promote and market and put in place a business structure to supports the objectives of the bancassurance agreement. How can the parties address this issue?

This is a matter of negotiation between the parties. It is not uncommon for an insurer to segregate payments into separate periods. So for instance, if the facilitation fee is split over two separate periods, the parties may agree that the amount for the first period should be higher (since more costs and expenses will be incurred then) than that for the second period.

## Can a party ask for an indemnity for any losses, expenses and damages suffered as a result of an act by a bank staff and conversely can a bank to ask for an indemnity or any losses, expenses and damages suffered which is attributed to the other party?

Yes, insurers often seek an indemnity for any breach by the bank staff of regulatory requirements or fraud or any activity infringing the laws directly or indirectly related to the sale of the bancassurance products or a misrepresentation of the bank’s products. The banks, however, may decide to only agree to a more narrow indemnity.

## What are the issues to consider when forming a bancassurance steering committee?

A bancassurance steering committee (**BSC**) is jointly formed by the insurer and the bank to facilitate collaboration and ensure the effective implementation of the bancassurance business and the annual business plan.

The issues that the parties may wish to consider may include composition of the BSC; frequency of BSC meetings; quorum for BSC meetings; matters falling within the scope of the BSC; decision-making process and proposed resolutions if there is a deadlock in the BSC.

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

Yes. The Central Bank of Malaysia (**BNM**) has issued the Guidelines on Internet Insurance (**Internet Insurance Guidelines**) which governs internet insurance activities specifically and the Guidelines on Management of IT Environment (GPIS 1) (**IT Environment Guidelines**) which sets out the minimum responsibilities and requirements for planning and managing, as well as establishing preventive and detective measures to mitigate the risks pertaining to IT environment. These guidelines are under review by BNM, with the view that a new policy document governing risk management in technology coming into force in 2019.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

Yes. However mobile applications will likely be subject to additional minimum control measures under the new policy document that may be issued by BNM in 2019.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

The three regulatory requirements for the distribution of products online or through mobile applications are: (i) the Insurer must be licensed to carry on insurance business and provide a notification along with the prescribed supporting documents to BNM to conduct internet insurance activities; (ii) to ensure that online system, product and other risks are managed in accordance with the relevant guidelines; and (iii) to conclude the distribution and sale in accordance with requirements under the laws on advertising and electronic transactions.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

Yes, provided the insurer has in place policies and procedures to address any specific risks associated with non-face-to-face business relationships. The insurer must establish appropriate measures for the identification and verification of customer's identity that shall be as effective as that for face-to-face customer and implement monitoring and reporting mechanisms to identify potential money laundering or terrorism financing activities.

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

Yes, but the e-signature must meet all requirements set out under the Electronic Commerce Act 2006.

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

No. Advertising of insurance products through online platform is subject to the same regulation as advertising through other means.

## Are there any customer service requirements if the insurers sell their products online?

Yes. Insurers must establish a centralized platform for lodging a complaint and to assist customer in pursuit of redress or resolution of a complaint. Insurer must establish a dedicated single point of contact such as a complaint or customer service unit for referring customer complaints, which may be in the form of e-mail or other online platforms.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There is no such obligation imposed yet.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

No. But licensed insurers are required to provide a notification along with the prescribed supporting documents to BNM prior to conducting online insurance sales.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

No. Insurance agents may conduct online sales provided that the insurer they are an agent for has satisfied the BNM notification requirements in respect of internet insurance activities. Insurance brokers may conduct online sales under their existing approval under the FSA.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

No. There is no difference on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

Yes. The offering and selling of insurance products online through insurance agents, who act on behalf of insurers, would likely be regarded as the sale of insurance by the insurer.

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