Asia Pacific Insurance - Malaysia

Insurance Regulatory Landscape and Key Considerations for M&A Transactions

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# 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

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