Asia Pacific Insurance - Malaysia

Regulatory Landscape and Issues in Bancassurance

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# 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.

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