Asia Pacific Insurance - Malaysia

Guide for Insurance Sales, Advisory and Distribution

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# 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.

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