Asia Pacific Insurance - Japan

Regulatory Landscape and Issues in Bancassurance

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

The Financial Services Agency (**FSA**).

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

Yes.  
  
Bancassurance partnerships are generally divided into agent arrangements or intermediary arrangements.

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

The salient terms are:

remuneration;

products;

term and renewal; and

risk allocation.

# 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, the bank serving as an insurance agent shall be registered with the competent regional financial bureau to carry on insurance solicitation in Japan.

# 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 the insurance company or the bank to provide exclusivity, although it may be prudent to undertake a competition analysis as set forth in the answer to the Question 10.

# 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 permissible. 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.

# 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).

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

Not applicable.

# 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 may be prudent to undertake a competition analysis given that the broad application of, and significant penalties for breach under, the Antimonopoly Act in Japan.

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

Various terms and conditions would be considered, especially exclusivity, amount of compensation and amount of insurance products to be offered, as well as market shares of the parties, business justification for entering into the agreements and the general market circumstances such as the level of concentration in the market for the relevant products or services.

# 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?

No, unless the bank obtains the customers’ consent when the bank discloses customer information to the insurance company for the purpose as set forth above.

# 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 Act on the Protection of Personal Information prohibits the dissemination of customer information without the customers' consent. Also the regulations under the Insurance Business Act and the relevant guidelines of the FSA are applicable to the sharing of customer information. Yes, customers can provide comprehensive consent when they disclose their personal information.

# 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, the insurance company is required to set the appropriate amount of the compensation in the distribution agreement in terms of ensuring the soundness in management of the insurance company and the fairness of the insurance solicitation by the bank under the relevant guideline.

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

The insurance company that is not in compliance with the regulation mentioned in the answer to Question 15 above may be subject to the administrative sanction by the FSA.

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

It is unlikely that the FSA requests information on compensation arrangements between the insurance company and the bank except where the insurance company is suspected  
to be in violation of the regulation mentioned in the answer to Question 15 above.

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

No restrictions.

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

None.

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

Yes, the contents of the insurance policy need to be examined and approved by the FSA under the Insurance Business Act.  
  
There are no specific provisions in Japanese IP laws or court cases supporting the view that the insurance company owns the IP rights to its policy forms.

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

None.

# 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?

It is not customary for the sales personnel employed by the insurance company to carry on bancassurance services at the bank’s branches except when the sales personnel of the insurance company is seconded to the bank to engage in bancassurance services.

# 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?

Yes, the insurance company is required to monitor and oversee the circumstance of the insurance solicitation made by the bank under the relevant guideline.

There are no specific restrictions on such compensation arrangement. Where bancassurance services are provided by the sales personnel employed by the bank, which is a popular mode of bancassurance in Japan, compensating the bank personnel will not be applicable. On the other hand, where bancassurance services are provided by the bank sales personnel who is a secondee from the insurance company, it would be a matter of negotiation whether the salary of such seconded employee is paid by the insurance company or the bank.

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

It is not customary for the sales personnel employed by the insurance company to carry on bancassurance services at the bank’s branches except when the sales personnel of the insurance company is seconded to the bank to engage in bancassurance services.

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

It is not customary that bank leases spaces to insurance company to market insurance products in the bank’s branches because the sales personnel of the insurance company usually does not carry on bancassurance services at the bank’s branches (see the response to Question 24 above). For your information, if the insurance company is to establish its sales office at the premises of others (including the bank), such insurance company needs to implement appropriate measures to avoid misunderstanding by customers, to protect customer information and to prevent crimes under the relevant guideline.

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

None.

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

None.

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

None.

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