Asia Pacific Insurance - Thailand

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# 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?

The Office of Insurance Commission (OIC) must approve the appointment before it can be registered with the Ministry of Commerce (MOC).

## 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, but only the appointment of the company's directors requires prior approval from the OIC. There is no distinction between executive directors and non-executive directors.

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

There is no distinction between the appointment of executive directors and non-executive directors, as all appointments are subject to OIC approval prior to registration with the MOC. However, unlike non-executive directors, executive directors do not qualify as independent directors of an insurance company.

## 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 removal of a director requires prior approval from the OIC before the registration to effect the change with the MOC. There is no distinction between executive directors and non-executive directors.

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

Yes. At least three-fourths of the total number of directors of the company must be Thai. However, the OIC can allow foreigners to constitute one-fourth to one-half of the total number of directors of a company upon request. Also, if the company's standing or operations might cause damage to the insured or the public, the Ministry of Finance, upon recommendation from the OIC, may grant a relaxation for the company to have foreign directors beyond the above ratio.

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

A consultant to a company, director, manager or person authorized to act on behalf of a company is subject to fitness and propriety requirements and must hold a bachelor's degree or higher qualification or shall have work experience in relation to the insurance business (no minimum years of experience prescribed).

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

Yes. Candidates are subject to fitness and propriety requirements under the guidelines and relevant laws, including criteria relating to criminal records, sanction lists, disqualification records, dishonesty, ethics, bankruptcy status, incompetency, fiduciary, compliance, noncompetition, connected transaction notification duties and restrictions on loans.

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

Yes. This includes where a candidate causes the company to be in a condition that may cause damage to the insured or the public, such as by falsely submitting necessary reports, acting in bad faith, violating an OIC order, failing to meet the capital fund requirement, selling insurance products outside the permitted scope, failing to comply with investment requirements or causing delays in compensation.

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

No, not all. Not less than half of the directors must reside in Thailand.

## 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 assess the fitness and propriety of directors, whether they are qualified under the insurance laws and guidelines and whether they satisfy applicable independence requirements.

Information that needs to be submitted to the OIC includes personal particulars, educational and professional qualification, employment history, and an application form as prescribed by the OIC.

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

No explicit regulation distinguishes the duties and responsibilities or regulatory treatment between executive directors and nonexecutive
directors.

However, non-executive directors qualify as independent directors. In principle, an independent or external director is one who is
neither an executive director nor has business or is involved in a business relating to the company's benefit in a way that might affect
independent decision making.

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

In addition to general corporate laws, directors of an insurance company are responsible for carrying out the company's business, including compliance with applicable regulatory requirements and the OIC's guideline on good corporate governance.

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

Yes. If the director acts without authority or outside the scope of authority, and the company does not ratify the act, then the director may be personally liable. In addition, the OIC may impose a penalty on directors of an insurance company if it violates or fails to comply with the provisions, laws and regulations of the OIC.

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

Generally, no periodic filings apply specifically to directors.

However, when there is any change to the composition of the board of directors, an insurance company must obtain approval for such change from the OIC, and when the insurance company registers the change with the MOC, the company needs to file an updated certification document.

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

Yes. Thai-incorporated insurance companies are required to have at least five directors. The size of the board of directors should reflect
the company's size and the complexity of its business operations.

## 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)?

Yes. Under the OIC's guideline, the total number of executive directors must not exceed one-third of the total number of directors and at least a quarter of the total number of directors must be independent.

## 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 set up the following committees:

Audit committee – responsible for ensuring that the insurance company complies with the laws and regulations, has accurately
disclosed necessary reports and has an efficient internal control system

Risk-management committee – responsible for setting up a risk-management policy, specifying the company's strategy, and
ensuring that the company complies with applicable regulations

Investment committee – responsible for prescribing an investment policy, approving the company's regulations and procedures on investment, and monitoring the status of the company's investment

Nominating committee – responsible for preparing policies for the nomination of directors and authorized persons and selecting
and proposing qualified persons to be appointed as directors, members of subcommittees and persons authorized to manage the business

Remuneration committee – responsible for preparing policies for the payment of remuneration and other types of benefits,
ensuring that directors and authorized persons receive appropriate remuneration, and preparing guidelines for the performance evaluation

Rules on the composition (eg, minimum number, qualification and independence of members) 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 are no conflict of interest or non-competition issues. A director of an insurance company can hold a directorship position in another insurance company only under certain exceptions, eg, during the time of two licensed insurance companies implementing business integration, pursuant to the OIC's approval.

Generally, directors who may have passive business interests in other corporations should disclose such involvement at the meeting of shareholders to ensure that there is no objection.

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

Yes. Insurance companies cannot pay money or give property to a director, manager, advisor, officer or employee of the company as commission or remuneration for or in connection with any transaction or act, other than gratuities, salaries, bonuses or money that may normally be paid to them.

In addition, money or property shall not be given to a director and a connected person of the director, unless it is a payment of remuneration under the articles of association of the company. If the articles of association of the company do not prescribe it, the payment must be made by a resolution of the shareholders meeting, based on a vote of not less than two-thirds of the total votes of the shareholders attending the meeting.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

There are several regulators relevant to the operation of fintech/insurtech innovations in Thailand, depending on the operating entities and scope of business activities.

Key regulators include the following:

Ministry of Finance (MOF) – oversees the operation of financing, securities and credit financier business, and the business of financial institutions in Thailand

Bank of Thailand (BOT) – oversees business operation of commercial banks and other financial institutions, including finance companies, ranging from moneylending and currency exchange

Securities and Exchange Commission (SEC) – regulator in charge of securities business, including public fundraising through capital market

Ministry of Commerce (MOC) – oversees the general business operation of a company incorporated under the laws of Thailand, whether private, public or listed

Office of Insurance Commission (OIC) – in charge of business operation of insurance companies in Thailand

Electronic Transaction Commission under the Prime Minister – in charge of electronic transaction business conducted in Thailand

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

Activities involving insurers, insurance intermediaries and the insurance business may be regulated under the Life Insurance Act B.E. 2535 (1992), as amended, and the Non-Life Insurance Act B.E. 2535 (1992), as amended, and subordinate legislation issued by the OIC.

Regulated insurance companies seeking to commence or develop fintech/insurtech activities must ensure that any new activities comply with the foregoing (as applicable) and do not breach any existing license conditions. In order to keep pace with the rapid changes, the OIC has approved the utilization of a regulatory sandbox in Thailand to enable insurers, agents, fintech/insurtech players to beta test insurtech innovations.

For financing-related activities, financial services in Thailand are a very heavily regulated sector. When offering fintech/insurtech products and services to the Thai market, the key questions that need to be answered are whether the business operator will be able to operate legally in Thailand and whether a license, registration or approval is required, such as a banking license, e-payment license, securities license, personal loan license, credit card business license, FX license, money transfer license, crowdfunding portal approval, etc.

Securities-related business is also subject to licensing requirements by the SEC.

## 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 in the following ways:

Crowdfunding – Further to the notification in relation to equity-based crowdfunding issued by the SEC, effective since 16 May 2015, which allows a qualified company to raise funds from the public by offering shares through an electronic platform provided by a funding portal approved by the SEC, the SEC is currently holding a public hearing regarding the revision to be made to the notification to further facilitate the fintech innovation. The key revised principles include (i) allowing the funding portal to use technologies, for example, blockchain, smart contract in managing shares subscription's
money, instead of requiring the funding portal to have an escrow agent, an intermediary, or a reliable person to keep the member’s assets; (ii) allowing the funding portal to act as a secondary market by providing an e-trading platform to enable shares offered through funding portals to be traded, in order to provide more exit options for investors; and (iii) removing the current restriction that requires the company raising funds through a funding portal to use such same funding portal in the next fundraising rounds. The public hearing is open for comments until 23 August 2017.

Payment system law – A draft new payment system law, intended to reform and unify the laws in relation to payment systems in Thailand, was approved in the third reading by the National Legislative Assembly on 10 August 2017 and is pending only the last process of being published in the Royal Gazette in order to become a law. According to this final draft, this draft involves the key payment systems important to the security of the financial system (and the payment finality concept) as well as the payment system under supervision (where new requirements include, for example, protection of float money in case of the business operator's insolvency).

National e-Payment Master Plan – The Cabinet approved the Master Plan in principle on 22 December 2015, showing the recognition and intention to drive the transformation of Thailand's payment system to full electronic payment infrastructure both in the government and private sectors. It is hoped that the Master Plan will bring about payment infrastructure development (for example, any ID payment system), e-tax system, e-payment system for social welfare, financial inclusion, and a cashless society, the environment in which fintech businesses will likely thrive.
• Regulatory Sandbox – On 9 May 2017, the OIC launched a new notification on insurance regulatory sandbox, which would support the development of new innovations and allow applicants to experiment on new innovations within a more flexible regulatory requirement as deemed appropriate by the OIC.

FinTech Challenge – In July 2017, the SEC, the OIC, the BOT and other six authorities launched a contest opening up opportunities for new start-up companies to present fintech/insurtech innovations. Categories of this contest include Customer-Centric, RegTech, and Infrastructure. This initiative is introduced with an aim to support and encourage new fintech/insurtech innovations.

Others – It is also expected that there will be continued developments in other laws and regulations relevant to the operation of fintech/insurtech businesses such as anti-money laundering law, exchange control law and data protection law.

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

The licenses required will depend on the specific activities contemplated. We recommend seeking the advice of local counsel.

In brief overview, key licenses for financial services operation in Thailand include:

finance company license (for accepting deposits of money, or accepting money from the public, subject to withdrawal on demand, or at the end of a specified period, other than the acceptance of deposits of money, or acceptance of money from the public in accounts
to be withdrawn by checks, and of employing such money in any way, such as the granting of credits, or buying and selling of bills of exchange or any other negotiable instruments)

personal loan license (for providing loan, accepting, buying, discount purchasing, or discount purchase subrogating a bill or any ownertransferred instrument to a natural person without stipulating the objective or having the objective to acquire goods or services, and with no objective to be used in one's own business, with no property or assets as collateral; and providing loan arising from hire purchase and leasing of goods to a natural person that the business operator does not sell in normal trade, except for cars and motorcycles

foreign exchange business license

international money transfer agent license

treasury center license

securities license based on types of regulated businesses such as securities dealing, securities brokerage, securities advisory, securities underwriting, private fund management, mutual fund management, securities lending or short sale, and venture capital

license for derivatives dealer, derivatives agent, derivatives advisor or derivatives fund manager

license for electronic payment business, such as e-money provider, credit card network provider, EDC (electronic data capture) provider, transaction switching provider, clearing service provider, settlement service provider, substitute payment service provider, and provider of electronic payment through any device or network

As there are many licenses involved in the conduct of finance-related and security-related businesses in Thailand (depending on the specific fintech/insurtech activities contemplated), advice of local counsel on the criteria or qualifications for obtaining such licenses
should be sought.

However, from a general standpoint, the criteria for obtaining each license shall be based on the following qualifications of the applicants:

nationality

types of entity

registered and paid-up capital

objectives of the company

board composition

directors and major shareholders qualification

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

There are no specific regulations for the use of telematics or biometrics on its own; however, insurance companies should ensure that such use is compliant with any existing regulations or conduct of business requirements. Further, depending on how such technology is used, we may need to consider whether other areas of regulation are attracted (for example, telecommunications or pharmaceuticals).

In addition, if any insurance company engages in an electronic transaction, such insurance company shall be subject to the Secure Method Royal Decree issued under the Electronic Transactions Act (the E-Transactions Act), which requires an application of information
technology security at a strict level.

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

Currently, there is no specific distinction between institutions that are "too big to fail" versus "too small to care." Distinction is drawn based on types of entity and types of businesses that such entity is engaged in.

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

Licensed insurers will need to comply with the OIC Notification re: Criteria, Processes and Conditions in Prescribing Minimum Standard for Risk Management of Life Insurance Companies B.E. 2560 (2017) and OIC Notification re: Criteria, Processes and Conditions in Prescribing
Minimum Standard for Risk Management of Non-Life Insurance Companies B.E. 2560 (2017). These new notifications have adopted the concept of enterprise risk management in accordance with the international standard of International Association of Insurance Supervisors (IAIS) and a number of new requirements, for example, establishment of risk management committee, preparation of frameworks, and reporting requirements. The notifications have been announced by the OIC and are expected to be published in the Royal Gazette by September 2017 and come into force 180 days thereafter.

As mentioned in the response to question 3, the Secure Method Royal Decree requires insurance companies that engage in e-transaction to apply the required information technology security at a strict level and to comply with the security method management stipulated therein.

If any insurance company offers an e-payment service to customers and if it is regarded as an e-payment service provider under the E-Transactions Act, it is required to comply with security methods applicable to e-payment service providers under the Bank of Thailand Notification No. SorRorKor 3/2552 Re: Policies and Measures on Security of Information Systems for Business Operations of Electronic Payment Service Providers.

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

There is currently no specific law governing big data. Exploitation of personal data may be done without the consent of the data subject if that use does not unlawfully injure the personal data rights of the data subject. However, any use of personal data in a way that unlawfully injures the right to personal data, intentionally or negligently, would violate the Constitution and may constitute a wrongful act (a tort) under the Thai Civil and Commercial Code.

In addition, the use of personal data by certain types of business sector is regulated under specific laws, such as telecommunications, credit bureau or financial services.
If an insurance company offers an e-payment service to customers and if it is regarded as an e-payment service provider under the E-Transactions Act, it is required to stipulate a personal data policy (that is, user data retention and confidentiality level).

The Thai Cabinet approved in principle the Personal Data Protection Bill (the PDPB) in January 2015. It is pending further consideration by relevant authorities before passing into law. The PDPB has certain restrictions with regard to the collection, use, storage, disclosure and
transfer of personal data. For example, consent must be obtained from the data owners for the collection, use, and disclosure of personal data. The transfer of personal data is subject to certain conditions unless the consent is obtained from data owners for the transfer. If the
PDPB enters into force, insurance companies would be subject to the requirements under the PDPB.

Please note, however, that there is no specific timeline when the PDPB will be passed and it is still subject to changes.

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

Currently, Thailand does not have a consolidated law governing personal data protection. However, if the PDPB is passed under the current format, there are certain restrictions that could hinder the growth and usage of insurtech such as:

an organization (including insurance companies) acting as data controller is required to ensure that personal data in its possession and control is protected from unauthorized access and use, and implement appropriate security measures

cross-border transfer of personal data will also be subject to certain requirements and restrictions

an organization (including insurance companies) acting as data controller should cease to retain personal data as soon as the data owners revoke their consent (unless there is any restriction on revoking consent), after the expiration of the retention period, or
personal data that is no longer relevant or in excess of necessity

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

Thailand has the Computer Crime Act B.E. 2550 (2007) and its recent amendment in 2017 (Computer Crime Act) criminalizing certain activities, including the unauthorized access, use and modification of computer data and computer systems. It also empowers the officials under the act to be able to investigate offenses under the Computer Crime Act. These powers include, among others:

copying computer data and traffic data of such computer system for which there is reasonable ground to believe that there has been an offense committed, in the case that the computer system is not in the possession of the competent officer

accessing a computer system or computer data storage equipment

decoding a person's computer data

seizing or attaching a computer system for the purpose of obtaining further details of an offense

The Thai Cabinet also approved in principle the National Cyber Security Bill in January 2015. It is pending further consideration by relevant authorities before promulgation. The Bill prescribes certain criteria to combat cyberattacks and ensure cybersecurity. Please note, however, that there is no specific timeline when the Bill will be passed and it is still subject to changes.

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

We have seen certain insurance companies/brokers using fintech/insurtech innovations as new channels for offering new insurance products to customers. Certain insurance companies have partnered with these fintech/insurtech operators, such as AgentMate, Savinsure, Directasia.com, etc., in offering their insurance products through this channel.

From the regulator's perspective, the OIC has launched the utilization of a regulatory sandbox in Thailand in July 2017 to enable insurers, agents, fintech/insurtech players to test their innovations. This regulatory sandbox is still at an initial stage and it remains to be seen
whether it would attract intention of fintech/insurtech developers. In addition, the OIC has also announced the new notifications on enterprise risk management, which aim to improve the standard of internal control within insurance companies in Thailand; this would be in line with the rapid changes in the insurance business sectors given the forthcoming innovations and the fierce competition among
existing and new players in the market.

From the insurers' perspectives, we have seen many players' movements in relation to introducing new innovations to the market, particularly on motor and health insurance. Insurance products have been developed to fit into the customers' daily life; for example,
motor insurance products in which the coverage can be activated and deactivated at the customer's sole intention, or health insurance products, which factor in technology to facilitate and monitor the customer's behavior on a daily basis. More innovations are expected to
be introduced, especially with the recent introduction of the regulatory sandbox regime.

## 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?

Lack of supporting legislation and regulations for governing the secure implementation of fintech/insurtech innovation, including consolidated data privacy protection laws. Current regulations are still unsupportive for small players in the market.

Thai consumers still do not have much knowledge about fintech/insurtech innovations and still prefer traditional methods when transacting.

Small user base and lack of funding and finances for fintech/insurtech innovation.

Regulatory and compliance – Insurtech businesses may not always fall squarely within any particular regulatory regime in Thailand. The regulatory sandbox approach seeks to mitigate the uncertainty over the application of laws and regulations to new insurtech
businesses.

There is no proper ecosystem to support the development and improvement of insurtech innovations. The regulators are aiming to address this matter, but it would generally take time and support from many parties.

General public has very limited knowledge and understanding on insurance business. For example, young generation of innovation developers find it has nowhere to design and fit their innovations to the insurance sector. This limits initiatives on insurtech innovations. In order to encourage insurtech innovation, a basic understanding of insurance business must be portrayed to the developers.

The Thai insurance industry comprises several big players dominating the market. These insurers have a more profound understanding of the business and are extremely active in spotting opportunities to develop insurtech innovations. This makes it difficult for new insurtech start-up to make a breakthrough entry to the market. Even though they were able to do so, there is a possibility that they would need to partner with the insurer or eventually sell the business.

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

The development of fintech/insurtech technologies and innovations will continue to shape customer behavior, business models, and the structure of the financial services industry, and will become new trends that should be closely monitored. It would also urge big players in the marker to be more innovative and promote competition among all of them. From the regulators standpoint, the regulators are forced to have a better understanding of new innovations and business trends in order to catch up with the rapid changes in the business sector, so that appropriate rules and regulations can be issued and implemented in such a way that would not only help regulate new innovations, but also support the implementation that would, in turn, provide benefit to the general public as a whole. From the customers' standpoint, fintech/insurtech innovations could redefine the way in which financial services industry are conducted and it could reinvent. Traditional method of communication between the customers and business operators are likely to be reinvented. Most importantly, insurtech innovation would also serve as a key function to reconnect the customers and the business operators.

The development of fintech/insurtech would also offer more business opportunities to both young generation of developers and players within the financial service industry. It is also likely to promote cooperation within the industry, for example, joint venture. Existing players could become key investors in new fintech/insurtech start-ups. There will also be more opportunities for M&A activities in a later stage as it serves as a way to either expand or protect the ongoing business.

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

We expect to see insurance companies more involved in insurtech innovation in many areas, whether by themselves or through partnership with other insurtech operators, in order to create efficiency in providing insurance services to customers.

Potential areas that insurtech innovation could play roles in insurance business might include the offering of insurance products, price comparison between insurance products and policy underwriting, claims management services.

We can also expect to see competition between insurance companies to capture this new business opportunity. Insurance companies are likely to be forced to improved its products to catch up with the customers' lifestyle and for this, a close monitoring and research of the
customer's interest and behavior would be the key focus. They may also look to invest in venture capital companies focusing on insurtech start-ups and must also look for recruitments of young generation with potential to drive the organization toward the current trends.

# 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?

Insurance intermediaries in Thailand can be classified into agents and brokers. Both types must be licensed by the Office of Insurance Commission (OIC) and are required to take an exam. An insurance agent must be an individual who is domiciled in Thailand, while an insurance broker can be either an individual or a corporate entity. In general, an insurance agent must represent one insurance company exclusively. However, an insurance agent may represent another insurance company, with consent from the insurance company it is already representing.

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

No.

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

No.

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

Yes. However, there is a limit prescribed by law. In general, the first year's commission of a life insurance agent/broker shall not exceed 40% of the first-year premium. The commission for a non-life insurance agent/broker is generally capped at 18% of the premiums received for such sale.

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

Yes. In principle, an insurance company shall be jointly liable with its insurance agent for the damages that such agent causes when acting for the insurance company.

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

No. However, banks acting as insurance brokers shall not force customers to purchase insurance from them or from a specific insurance company. Banks shall also not force customers to purchase insurance from a specific insurer as a condition for approving loans and shall allow customers to purchase insurance from any insurance companies or through any brokers.

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

There is no restriction in this regard. However, only commissions paid by insurers are subject to the prescribed limit explained in question 4.

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

In principle, insurance premium must be approved by the OIC and cannot be altered except by the OIC. Insurance companies are therefore prohibited from offering rebates and special benefits in addition to those specified in the policy. However, these requirements apply only to insurance companies. Therefore, strictly speaking, there is currently no legal restriction for agents or brokers to offer rebates or give special benefits to customers. The new Insurance Acts will likely extend such restrictions to agents and brokers.

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

No express restriction prohibits insurers from appointing offshore agents or brokers. Therefore, to the extent permissible by foreign law, insurance companies are generally allowed to appoint onshore licensed agents and accept business from offshore brokers, provided that insurance companies have no active role in securing the business. In other words, they must only be approached by offshore brokers/agents at the brokers or agents' own initiative.

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

Yes. In offering insurance policy for sale via telephone, an insurance company must manage the people offering insurance for sale via telephone to act or omit to act according to legal requirements under the telemarketing regulations. If the prospect does not want to be insured or contacted, the insurance agent must stop the conversation immediately. If the prospect wants to know the source of their details, the insurance agent must inform the prospect of the source before finishing the conversation. When being permitted by the prospect to offer insurance for sale, the insurance agent must ask for permission to record the conversation. If allowed to record the conversation, the insurance agent must send the prospect a confirmation of the recording. The recording must continue throughout the conversation and must be maintained as evidence for the same period as the contract. If not allowed, the insurance agent is barred from recording any conversation.

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

Yes. In February 2017, the OIC announced specific notifications that aim to regulate insurance activities undertaken via electronic channels. The notifications stipulate that all activities conducted through electronic means must be carried out in accordance with the OIC's regulations, including regulations on market conduct and advertising and must comply with the Electronic Transactions Act, B.E. 2544 (2001) in terms of the level of security procedures and the requirements for a reliable electronic signature under the said act. The offering of insurance products via electronic channels may only be conducted by an insurer, broker company and/or bank (with the insurer's consent in the case of a broker company or bank).

An insurer must provide proper information on the method of claiming a compensation payment, and there must be a process for the insured/beneficiary to identify themselves via electronic channels before any compensation is paid. All compensation must be paid to the insured or their beneficiary's account (as the case may be). Insurers, brokers and banks must have in place procedures to manage personal data privacy, arrange for independent audits to assess the information technology systems, and register with the OIC before implementing the regulated electronic activities. Any outsourcing of services to third parties requires the approval of the OIC in order to
ensure that the service provider complies with these requirements under the notifications.

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

There is currently no specific law governing personal data. Personal data may be exploited without the consent of the data subject if that use does not unlawfully injure the data subject's personal data rights. However, any use of personal data in a way that unlawfully injures the right to personal data, intentionally or negligently, would violate the Constitution and may constitute a wrongful act (a tort) under the Thai Civil and Commercial Code. In addition, the use of personal data by certain segments of the business sector — such as telecommunications, credit bureaus or financial services — is regulated under specific laws.

# 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?

There are no limitations or criteria on the type of start-ups that an insurer can invest in.

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

The insurer can invest in an insurtech start-up either in forms of equity instruments or granting of loan.

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

The insurer will be subject to the general investment regulation on the equity instruments: (i) not exceeding 10% of the total equity instruments issued by a company; or (ii) 20% or more of the total equity instruments issued in a company, provided that such company is established to operate a business that provides benefits to the insurance business in general. Both circumstances are subject to written approval from the Office of Insurance Commission (OIC).

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

The insurer can invest up to 10% of the total equity instruments issued by the offshore insurtech start-ups, provided that such start-up operates a business that supports the insurance business of the insurer.

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

Yes, there are two types of loans that the insurer can grant to insurtech start-up (without OIC approval required):

Loans with property mortgaged or pledged as collateral. The loan for each company shall not exceed 70% of the assessed price of the property, which the insurtech start-up mortgages or pledges as collateral.

Loans guaranteed by financial institutions, foreign banks or international organizations.

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

Investments in insurtech start-ups must be approved by the board of directors and shareholders of the insurer.

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

If a person holds at least 25% of the shares in a company, that person would have veto rights on important shareholders' resolutions such as resolutions to increase and decrease capital, merge with other companies, amend the Articles of Association or Memorandum of Association of the company and dissolve the company.

## 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 no restrictions on the insurer as regard appointing its staff or management to join the insurtech start-up's board of directors or management team.

## 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?

There are none, assuming that the insurer is not a listed company.

Investment in the insurtech start-up must be approved by the investment committee.

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

There are none, assuming that the insurer is not listed company.

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

The insurer can provide back-office services to the insurtech start-up. However, the provision of such operational support should not prejudice the insurer's support for its own core functions.

## 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 are permitted. The payment shall not tie to the premiums received from the insurer as it might raise questions on whether the start-up is an insurance intermediary without a proper license.

Profit sharing with the insurer may be problematic for the same reason as paying service fees tied to premiums received.

## 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?

Currently, there are none. However, there is the draft Personal Data Protection Bill that is currently under the consideration of the National Legislative Assembly of Thailand.

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

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

Office of Insurance Commission (**OIC**)

## 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 25%.
However, the OIC is empowered to permit foreign investor to hold up to 49%.With the approval of the Minister of Finance, a foreigner can own more than 49% if:

It would improve the insurance company's standing or operation, which exists in such a state that may cause damage to the insured or the public.

It would enhance the stability of the insurance company.

It would enhance the stability of the insurance industry as a whole in Thailand.

## 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?

No.

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

Not applicable.

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

No. The OIC's current position is to encourage mergers and acquisitions among insurance companies.
Under the Insurance Acts, the MOF may grant permission to an insurance company allowing foreigner(s) to hold more than 49% (up to 100%) of the total voting shares sold in the company if:

It would improve the insurance company's standing or operations, which exist in such a state that may cause damage to the insured or the public.

It would enhance the stability of the insurance company.

It would enhance the stability of the insurance industry as a whole in Thailand.

According to the draft MOF's notification, foreigner(s) who had received approval from the MOF under conditions b and c to hold more than 49% of the total voting shares sold or entities under the same group of such foreigner(s) will not be permitted to operate an insurance business in Thailand, either through a branch of a foreign insurer or by holding shares in other licensed insurance companies in Thailand, unless it is an investment in a mutual fund or other forms of business similar to a mutual fund; provided that such investment is not for the purpose of circumventing the single presence rule.

## 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**

If a foreigner's stake is not more than 25% of the insurance company, no approval is required. If the foreigner's shareholding is more than 25% or 49%, prior approval from the OIC or MOF is required (as the case may be). If the foreigner's shareholding is more than 49%, the foreigner will be subject to the single presence policy.

**Asset deal**

A transfer of business, either in whole or in part, must be approved by the OIC. The board of directors of the acquiring company and the transferring company must jointly prepare and submit the project plan to the OIC. When granting approval, the OIC may prescribe any conditions to protect the insured's interest and to ensure stability of the company.

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

**Share deal**

The approval to increase foreign shareholding limit up to 49%t takes approximately three months, whereas the approval to increase foreign shareholding limit to 100% takes approximately six months.

**Asset deal**

Approval takes approximately three months.

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

Thers is no statutory prohibition. The OIC does not favor private equity participation unles it has a solid record of investing in the insurance markets.

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

There is no FHC concept for insurance companies.

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

Agency force, brokers, telemarketing and bancassurance

## 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. Banks conducting bancassurance business must obtain an insurance brokerage license from the OIC. In addition, the person who sells must be a bank officer who holds an individual insurance brokerage license.

The salient terms are:

Fees and commissions

Products

Term and renewal

Risk allocation

Exclusivity

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

**Share deal**

Approval from the OIC or MOF if acquiring more than 25% or 49% (as the case may be)

Stringent shareholding requirements

Price

**Asset deal**

Approval from the OIC

Practical obstacle in obtaining consent of insured for the transfer of insurance policies

# Data Protection and Cybersecurity

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

Currently, there is no main regulator overseeing this matter, as there are no consolidated laws or regulations regarding data privacy.

However, according to the latest draft of the Data Protection Bill (the Bill), which as of yet has no indicated time frame for promulgation, the Data Privacy Committee (to be established) will be the main regulator.

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

The Data Protection Bill will be the main legislation on the protection of personal data and privacy. There is no indication as to when it will be promulgated.

# Regulatory Landscape and Issues in Bancassurance

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

The Office of Insurance Commission (**OIC**) and Bank of Thailand (**BOT**).

## 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:

a) exclusive arrangements;
b) preferred partner arrangements; and
c) 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 are:

a) exclusivity;
b) term and renewal;
c) products to be distributed;
d) duties of insurer and bank;
e) fees and timing for such payment; and
f) the mining 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?

Banks are required to hold an insurance brokerage license to carry on insurance brokerage business.

Insurance companies must be licensed under the Life Insurance Act or the Non-life Insurance Act, as the case may be.

## Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

Currently, there is no regulatory restriction for an insurer to appoint a bank as its exclusive distributor.

The length of the exclusivity is a matter of negotiation between the parties.

## 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 required.

## 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.

## 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 the broad application of, and significant penalties for breach under, the Trade Competition Act in Thailand.

## 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, including whether the parties are considered having dominant position.

For information the Trade Competition Act was recently announced on 5 October 2017 and it is expected that there will be a number of subordinate regulations to provide more guideline and clarity on relevant factors.

## 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, although care will have to be taken by the bank in sanitizing the customer information before it is extended to the insurer.

Although there is no specific law in this regard, but generally speaking, individuals have their privacy rights, hence it is advisable for banks to obtain customer consent.

## 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?

There are no laws or regulations on this. However, the BOT has issued the guideline to prohibit the dissemination of customer information without the customers’ consent.

## 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)?

The compensation payments are regulated by the OIC and vary according to the type of products.

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

A monetary penalty is imposed.

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

The OIC has broad powers as a regulator, and therefore can request information on compensation arrangement in Thailand.

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

None, provided that the bank has obtained the insurance brokerage license before selling.

## 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 policy needs to be approved by the OIC.

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 the level of access to its customer data.

## 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 (mostly for
obtaining the insurance brokerage licenses).

The compensation arrangements between the insurer, the bank and the bank sale personnel are based on the consideration arrangement 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 the level of access to its customer data.

## 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)?

The current Life Insurance Act and the Non-life Insurance Act are being amended.

## 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?

There is currently no specific restriction on exclusivity arrangement. This is commercial in nature and is a matter of negotiation. However, given the recent implementation of the Trade Competition Act in Thailand, proper analysis from the competition law standpoint is recommended. It is also worthwhile to note that from the regulator's perspective, banks acting as brokers should represent the customers and therefore, it is remained to be seen whether the regulator will issue any regulations or guidelines which would restrict exclusivity arrangement in the future, so as to ensure that customers will be offered with more choices and most suitable products from different insurers.

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

Insurers will generally provide training support for the sales and marketing of the bancassurance products. Banks are also generally required to commit that the staffs will participate in such training. However, insurers should be aware that their staffs should refrain from conducting sale or marketing activities to the banks' customers at the banks' premises.

## 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?

As the banks are under a strict requirements to maintain confidentiality and secrecy, they may not normally allow the insurer the right to access their customers database, without proper customer's consent. However, in practice, more banks tends to limit the insurers' right for such access so as to ensure their absolute control. Certain related points would also depend on discussion and negotiation between the banks and the insurers e.g., who will be the owner of data obtained by the insurers from the banks' customers.

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

The commission payable to the banks is subject to the maximum legal limit. A proper planning on payment arrangements is therefore crucial and should be clearly discussed between the parties to the bancassurance agreement from the outset. Timing of payment should also be addressed due to the fact that advance commission payment is prohibited.

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

This is a matter for negotiation between the parties. The insurers might lose exclusivity and the banks may be permitted to engage other insurer(s) to develop the products. The banks may also be entitled to termination right and seek for recovery of losses, depending on terms and conditions under the bancassurance agreement. The banks may take into account several factors if the situations arise including; potential partners as a substitution and timeframe for products filing approval (which generally takes at least six months).

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

The bancassurance agreements generally contain provisions which would address intellectual properties involved in the agreed sale and marketing activities. For instance, given both parties' IP-related marks might be used in relevant materials, consents from both sides are therefore required to be addressed. Specific provisions with respect to JDIP are not commonly seen in the bancassurance agreement in Thailand, but this would also depend whether the proposed partnership would result in any JDIPs.

## 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?

In case of an early termination, it is possible that the insurers will request for a termination fee as per the specific pre-agreed formula, instead of calling back the amount already paid. However, this would depend on negotiation and how the facilitation fee is structured or defined in the first place. Mechanism to deal with facilitation fee for early termination should be properly designed given a strict interpretation of the regulator on restriction for the insurers in making advance payment.

## 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 could be addressed through the specific pre-agreed formula of the "termination fee."

## 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. Indemnity is commonly seen in bancassruance agreements, although this is a matter of negotiation between the parties and will largely depend on the parties’ negotiation powers.

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

Typically, two committees will be formed: one being responsible for the day-to-day operations (working committee), and the other being responsible for determining the objectives and strategies of the bancassurance business (steering committee). Scope of work of each committee should be clearly specified by taking into account terms and conditions agreed under the bancassurance agreements.

# Digitalization in Insurance Guide

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

Yes. The Office of Insurance Commission ("**OIC**") issued a specific regulation governing the sale of insurance through online platform which came into force on 26 August 2017 (Online Sale Regulations).

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

Yes.

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

Three key regulatory requirements are: (i) the products sold online must have obtained a specific approval from the OIC, (ii) the products must be sold only by the insurers, brokers, or banks, and (iii) the sale must be done in accordance with requirements under the laws on 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?

There is no specific insurance regulation governing e-KYC at the moment. Therefore, in practice, insurers would have to ensure that their e-KYC process meets all general KYC requirements prescribed under the Anti-Money Laundering Act B.E. 2542 (1999).

## 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 under the laws on electronic transactions.

## 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?

The Online Sale Regulations prescribe a number of requirements relating to customer service. For example, insurers and brokers are required to demonstrate to customers the application process, contact channels, claim process, and urgent contact in case issues arise with respect to online service. In addition, they must also inform the customers of summary of benefits, exclusions, and online premium payments process. Further, they must allow the insured to inspect the insurance policies.

## 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. Insurers may perform online sales with their current insurance licenses. However, insurers are required to register with the OIC in order to perform online sales.

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

No. Brokers may perform online sales with their current insurance brokerage licenses. However, they are required to register with the OIC in order to perform online sales.

## 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?

No. In principle, the sale of online insurance through brokers and banks is subject to the insurers' prior approval. Insurers, however, although not directly conduct the online sale, has duty to ensure that brokers and banks comply with all requirements for the online sale. If non-compliance arises, insurers are require to suspend the approval given to the brokers and banks within 7 days.

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