Asia Pacific Insurance - Thailand

Top 10 Issues to Consider in a Regional Bancassurance Deal

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# 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.

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