Asia Pacific Insurance - Philippines

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# 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?

No licensing requirements are imposed on the chief executive officer, directors or senior executives of an insurance company. However, directors are subject to an assessment by the Insurance Commission as to their qualification, moral character, integrity and competence. Moreover, an insurance company is required to submit the bio-data of its board of directors, a list of independent directors, and a list of officers, as contained in its by-laws. Subsequent changes must be reported to the Insurance Commission.

## 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?

No, but the election or appointment of directors and officers of an insurance company, whether executive or non-executive, is subject to evaluation by the Insurance Commission.

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

There is no major distinction between the approval requirements of an executive director and a non-executive director. Under the Insurance Commission Corporate Governance Principles and Leading Practices (IC CGPLP), an executive director heads a department/unit within the corporate organization.

## 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?

No, but changes in the list of directors or officers must be reported to the Insurance Commission.

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

The number of directors who are foreign nationals must be in proportion to the foreign shareholding in the insurance company.

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

Under the Amended Insurance Code, only persons of good moral character, unquestioned integrity and recognized competence may assume the positions of stockholders, directors and officers of an insurance company.

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

Yes, candidates must satisfy various criteria as to age, experience, capabilities, moral character and stock ownership.

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

Yes, the grounds for disqualification include prior convictions relating to fraud, dishonesty or moral turpitude, violation of laws, insolvency, prior mismanagement of companies, and derogatory records from the police or other law enforcement authorities.

## 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. However, the majority of the members of the board of directors must be residents.

## 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 (particularly its nomination committee) has to evaluate its directors and senior management before appointing such persons.

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

Non-executive directors must scrutinize the performance of management in meeting agreed goals and objectives.

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

Generally, directors must avoid conflicts of interest, conduct fair business transactions, act honestly and judiciously, in good faith and with loyalty to the best interests of the insurance company, its stockholders and other stakeholders (eg, policyholders, investors, borrowers, other clients and the general public), devote time and attention necessary to properly discharge their duties and responsibilities, exercise independent judgment, have a working knowledge of the statutory and regulatory requirements affecting the institution, and observe confidentiality of non-public information obtained by reason of their position.

Directors have the overall responsibility for ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of policyholders, members, planholders, card holders, claimants, creditors and other stakeholders. For instance, directors have the duty to approve an overarching policy on the handling of related-party transactions to ensure that there is effective compliance with existing laws, rules and regulations at all times, that these are conducted on an arm's-length basis, and that no stakeholder is unduly disadvantaged.

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

Yes. The Insurance Commissioner may impose fines/suspension/removal upon insurance companies, their directors and/or officers and/or agents, for (i) willful failure or refusal to comply with, or violation of any provision of the Amended Insurance Code (or any order, instruction, regulation, or ruling of the Insurance Commissioner), or (ii) any commission or irregularities, and/or conducting business in an unsafe or unsound manner. The courts may also impose fines and/or imprisonment on officers or directors (or other persons responsible for an insurance company's operation, management, or administration) for criminal violations of the Code. The Insurance Commission may also issue a warning, reprimand, suspension, removal and disqualification of an insurer's directors, officers and employees in case of failure to comply with the guidelines on related-party transactions.

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

There are no specific reporting requirements imposed on directors/senior management officers.

The insurance company, however, is obliged to submit a list of its inactive and active officers and employees who may have been found guilty of or have pending complaints filed against them before the company, any administrative body or court for violations of the Amended Insurance Code and other acts of fraud or misrepresentation. Moreover, an insurance company must disclose in its annual report, if applicable, the original and outstanding individual and aggregate balances, including off-balance sheet commitments, of material related-party transactions, including those that involve directors and senior officers.

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

Yes. The board of directors must be at least five but not more than 15 members, at least two of whom are independent directors.

## 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. The insurance company must have at least two independent directors.

There should also be a balance between the number of executive and non-executive directors to ensure that no particular group dominates the board's decision making.

## 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.

The board must create the following committees:

Audit committee – composed of independent directors, preferably with accounting and finance experience, this committee
provides oversight of the company's internal and external auditors and is responsible for setting up the company's internal audit department and appointing the company's internal and external auditors

Compensation and remuneration committee – composed of at least three members/directors, one of whom must be an
independent director, this committee plans on positioning the company in terms of compensation in relation to other insurance
companies and recommends and monitors the level and structure of salaries, including remuneration for senior management (as
defined by the board)

Nomination committee – composed of three members/directors, one of whom is an independent director, this committee reviews
and evaluates the qualifications of all persons nominated to the board as well as those nominated to other positions requiring
appointment by the board and prepares the job specifications of the chair

Related-party transaction committee - composed of at least three non-executive members of the board of directors, two of
whom shall be independent directors, including the chairperson, this committee evaluates on an ongoing basis existing relations
between and among businesses and counterparties to ensure that all related parties are continuously identified and related-party
transactions are monitored

## 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?

All incoming officers and senior managers must declare under penalty of perjury all their existing business interests or shareholdings that may directly or indirectly affect the performance of their duties.

No person shall concurrently be a director and/or officer of an insurance company and an adjustment company.

The chief executive officer and other executive directors of the insurance company must submit themselves to a low indicative limit (ie, four or lower) in terms of membership in other corporate boards. The same low limit applies to independent non-executive directors serving as full-time executives in other corporations.

A higher indicative limit (ie, five or lower) may be imposed for other directors holding non-executive positions in any corporation.

In any case, the capacity of directors to serve with diligence should not be compromised.

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

Here is no prohibition against remuneration to directors/senior management. However, such compensation must be provided in the bylaws of the corporation. Total yearly compensation for directors (as directors) must not exceed 10 percent of the corporation's net income before income tax of the corporation during the preceding year.

Generally, remuneration for non-executive directors should not include share options. If options are granted, shareholders' approval is necessary.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

The relevant regulators are the Securities and Exchange Commission (SEC) (with respect to, among others, capital market participants, financing companies, adjustment companies and lending companies), the Bangko Sentral ng Pilipinas (BSP) or the central bank of the Philippines (with respect to, among others, banks, trust companies and investment management companies), and the Insurance Commission (with respect to insurance companies and insurance intermediaries).

Depending on the specific activities involved, other regulators may be involved, including the Department of Trade and Industry, the National Telecommunications Commission (NTC) Office of Cybercrime (OCC), and the National Privacy Commission (NPC).

The NTC implements the Public Telecommunications Policy Act of 1995, as amended (Telecoms Law). It also regulates and supervises the provision of public telecommunications services, including value-added services in the telecommunications industry.

The OCC under the Department of Justice coordinates the law enforcement efforts of the government against cybercrime and assists in the prosecution of cybercrimes. The OCC implements the Cybercrime Prevention Act of 2012 (Cybercrime Law).

The NPC is the regulatory agency tasked to administer the Philippines' Data Privacy Act of 2012 (DPA).

The Intellectual Property Office of the Philippines (IPOPHL) administers the intellectual property regime.

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

The use by BSP-regulated entities of information technology in the provision of their services is subject to the BSP Guidelines on Information Technology Risk Management for All Banks and Other BSP-Supervised Institutions. Other than this and the regulations on e-money, remittance/money transfer services, and virtual currencies used for delivery of financial services (for example, payments and remittances), to date, the BSP has not yet issued regulations specifically on fintech activities. However, there are pending bills in the Philippine Congress that seek to regulate online and non-traditional payment systems and vest on the BSP regulatory powers over those payment systems.

Similarly, to date, the SEC has not yet issued regulations specifically on fintech activities in the capital markets sector.

With respect to the insurance sector, the buying, selling, or providing of insurance products and services online or via the internet are subject to the Guidelines on Electronic Commerce of Insurance Products issued by the Insurance Commissioner in 2014. Other than this, to date, the Insurance Commission has not yet issued regulations specifically on fintech activities of insurance companies and insurance intermediaries.

Given the absence of specific regulations on fintech activities in the banking, capital markets and insurance sectors, a person wishing to introduce a fintech product or service will need to confer with the regulator to get confirmation on whether the product or service may be introduced in the Philippines. Based on our experience, regulators are generally receptive to the introduction in the Philippines of fintech products and services that have been introduced in many other countries, subject to the regulator's imposition of certain conditions for the protection of the public. The process of obtaining such regulatory confirmation/approval usually takes time, and the grant of confirmation/approval is subject to the regulator's sole discretion.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

Based on our experience, regulators are generally receptive to the introduction in the Philippines of fintech products and services that have been introduced in many other countries, subject to the regulator's imposition of certain conditions for the protection of the public. Regulators view fintech as a way of pursuing financial inclusion through digital technology. Having said that, the process of getting such regulatory confirmation/approval of a fintech product or service that is not specifically governed by existing laws and regulation usually takes time, and the grant of confirmation/approval is subject to the regulator's sole discretion.

In the case of the BSP, for example, it is known for encouraging innovations in financial services. As an example, with the advent of e-money in the Philippines, the BSP has established a new supervisory unit bringing together the skills of regulators from its information technology area as well as the banking supervisory area. Through this newly established supervisory unit, the BSP strengthened its regulatory capacity to oversee e-money issuers. The BSP is closely monitoring the progress of fintech/insurtech in the Philippines and its
impact on the local banking industry.

The IPOPHL fully supports technological innovation, including financial technologies. To this end, the IPOPHL has established a nationwide network of Innovation and Technology Support Offices, which assists local innovators in claiming and protecting their intellectual property rights.

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

Entities engaged in fintech products/services relating to e-money and remittance services (including virtual currency exchange systems), are generally required to obtain a license or authority from the BSP.

For instance, recent BSP regulations require remittance, money changing, and/or foreign exchange dealing entities to register or reregister with the BSP, the SEC, and the Anti-Money Laundering Council Secretariat. Moreover, remittance platform providers must now conduct business in the Philippines through a locally incorporated subsidiary. These entities will also be required to obtain the BSP's prior approval for any change in the control of the entity.

For the following activities, a financial services licenses must be obtained from the BSP:

Remittance/money transfer services

Virtual currency exchanges, if used for delivery of financial services (such as payments and remittances)

Issuance and operations of electronic money. With respect to the use of technology, the following licenses may be required

Value-Added Services (VAS) Provider License. Under the Telecoms Law, a VAS provider is an entity which, relying on the transmission, switching, and local distribution facilities of a local exchange or inter-exchange operator or overseas carrier, offers enhanced services beyond those ordinarily provided for by such carriers. The NTC considers as VAS the delivery of applications services, including mobile banking, electronic payments, and point-of-sale services. To register with the NTC as a VAS provider, an entity must be at least 60% Filipino-owned.

Intellectual Property Rights Registrations. Patents, industrial designs, utility models, trademarks and service marks may be registered with the IPO. Computer programs are also entitled to copyright protection. Copyrighted works may be registered with the IPO or the National Library.

It usually takes about a month to obtain a financial service license from the BSP. With respect to insurtech, the Insurance Commission has not yet issued regulations specifically on insurtech activities.

Further, the Philippine Data Privacy Act (DPA) mandates the registration of processing systems of personal information controllers and processors which are involved in the processing of sensitive personal information of at least 1,000 individuals, whether it be of employees, clients, customers, or contractors. The current deadline for this registration requirement is on 9 September 2017.

For patents, information is available at <http://info.ipophil.gov.ph/dev/services/patents/patent-application-flow-chart>
For copyright, information is available at <http://info.ipophil.gov.ph/dev/services/copyright/guidelines-on-copyright-registration-and-deposit>
For trademarks, information is available at <http://info.ipophil.gov.ph/dev/services/trademark/application-process-flow-chart>

## 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, the processing of personal information attached to the telematics or biometrics will attract data privacy implications under the DPA.

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).

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

Yes, some banks in the Philippines are tagged as "too big to fail" or "D-SIB" (for domestic systemically important banks). D-SIBs are characterized as banks whose distress or disorderly failure would cause significant disruptions to the wider financial system and economy. A bank's classification as a D-SIB is based on four criteria: size, interconnectedness, substitutability and complexity.

Higher capital requirements are imposed on banks identified as a D-SIB. Furthermore, D-SIBs are subject to higher supervisory expectations by the BSP.

Furthermore, IPOPHL fees for IP services vary for big entities vis-à-vis small entities.

With respect to capital markets participants, the SEC does not make such a distinction.

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

Insurance companies should comply with the Guidelines on Electronic Commerce of Insurance Products issued by the Insurance Commissioner. The guidelines provide for online privacy requirements and security of payment and personal information, among others. Department Circular No. 2017-002, issued by the Department of Information and Communications Technology, prescribes the use of cloud computing technology for all government agencies. The Circular contains guidelines on developing security frameworks according to a government agency's specific needs and the type of data being handled.

In addition, the Philippines’ Data Privacy Act of 2012 (DPA), its implementing rules and regulations, and the related issuances of the National Privacy Commission (NPC) regulate the processing of personal data. The DPA requires all personal data processors and controllers to
implement reasonable and appropriate organizational, physical, and technical security measures for the protection of personal data.

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

Insurance companies should comply with the Guidelines on Electronic Commerce of Insurance Products issued by the Insurance Commissioner. The guidelines provide for online privacy requirements and security of payment and personal information, among others.

In addition, the Philippines’ Data Privacy Act of 2012 (DPA), its implementing rules and regulations, and the related issuances of the National Privacy Commission (NPC) regulate the processing of personal data. “Processing” of personal data is defined under the DPA as “any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.”

Personal data, as it is defined under the DPA, may refer to any of the following:

Personal information, which refers to “any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.”

Sensitive personal information, which refers to personal information: (a) about an individual’s race, ethnic origin, marital status, age, color, and religious, philosophical or political affiliations; (b) about an individual’s health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings; (c) issued by government agencies peculiar to an individual, which includes, but is not limited to, social security numbers, previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and (d) specifically established by an executive order or an act of Congress to be kept classified.

The principal requirement under the DPA for the processing of personal data is the consent of the data subject. As a general rule, the consent of the data subject to the processing of his or her personal data is required, and must be evidenced by written, electronic or recorded means. If personal data is intended to be shared or transferred to third parties, service providers or other data processors, the data subject’s specific consent to such data sharing would also be required. The timing of the consent would vary depending on the type of information involved in the processing. If the information pertains to simply personal information, then consent must be procured prior to the collection, or as soon as practicable and reasonable. On the other hand, with respect to the processing of sensitive personal information, the DPA exacts a stricter standard: the data subject’s consent at all times must be procured prior to the processing of the
sensitive personal information.

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

Yes. The DPA imposes stringent compliance obligations on persons or entities engaged in the processing of personal data.

For instance, under the DPA, personal information controllers and processors shall have the following responsibilities:

ensure that proper safeguards are in place to guarantee the confidentiality of the personal information processed and prevent its use for unauthorized purposes

implement reasonable and appropriate organizational, physical and technical measures intended for the protection of personal information against any accidental or unlawful destruction, alteration and disclosure, as well as against any other unlawful processing

use contractual or other reasonable means to provide a comparable level of protection while the information is being processed by a third party

designate an individual, called a data protection officer, who is accountable for the entity's compliance with the DPA

Furthermore, the DPA mandates the registration of processing systems of personal information controllers and processors that are involved in the processing of sensitive personal information of at least 1,000 individuals, whether it be of employees, clients, customers or contractors. The current deadline for this registration requirement is on 9 September 2017. Note that failure to comply with the DPA may mean not only mandatory business closure for the controller and processor but also payment of damages and of steep fines. For responsible officers and employees, non-compliance by their organizations may even result to imprisonment.

Moreover, an obscure law, Presidential Decree No. 1718, passed in 1980, prohibits the transfer of documents or information relating in any manner to any business carried on in the Philippines, unless the sending thereof complies with the following:

consistent with and forms part of a regular practice of furnishing to a head office or parent company or organization outside of the Philippines

in connection with a proposed business transaction requiring the furnishing of the document or information

required or necessary for negotiations or conclusions of business transactions, or is in compliance with an international agreement to which the Philippines is a party

made pursuant to the authority granted by the designated representative of the President of the Philippines While Presidential Decree No. 1718 has not been strictly enforced, it nevertheless imposes criminal penalties for violations thereof.

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

The Cybercrime Law enumerates and punishes cybercrimes, imposes duties upon service providers, and provides tools for enforcement of cybersecurity.

Under the Cybercrime Law, a service provider is an entity that provides users of its service with the ability to communicate by means of a computer system. It can also be an entity that processes or stores computer data on behalf of such communication service or users of
such service.

A service provider is expected to do the following:

disclose or submit subscriber's information, traffic data or relevant data in its possession or control to competent authorities within 72 hours after the receipt of an order to submit

collect or record by technical or electronic means, and/or cooperate and assist competent authorities in the collection or recording of computer data upon the issuance of a court warrant

report to the OCC its compliance with enforcement orders and reporting requirements under the Cybercrime Law

immediately and completely destroy computer data subject of a preservation and examination when the required period expires

ensure the confidentiality of preservation orders issued

The Cybercrime Law also enumerates cybercrimes, including computer-related forgery, computer-related fraud and computer-related identity theft. It also punishes certain offenses that violate the confidentiality, integrity and availability of computer data and systems. Among such crimes are illegal access to computer systems, illegal interception of computer data, unauthorized data interference, unauthorized system interference, misuse of devices and cybersquatting.

Similarly, the DPA also punishes the unauthorized access or intentional breach of any system where personal data is stored.

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

Sun Life of Canada (Philippines), Inc., a life insurance provider in the Philippines, and Voyager Innovations, a digital innovations arm of a major telecommunications company, have recently entered into a strategic partnership for the development of insurtech services for emerging markets. One of these initiatives is to implement the country's first insurance and micro savings program for public school students. The initiative is supported by the BSP and the IC.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

In a case decided by the NPC on 28 December 2016, the National Privacy Commission (NPC) recommended the criminal prosecution of the Chairman of the Philippine Commission on Elections (Comelec) for his "gross negligence," which resulted in the massive leak of voters’ registration information involving around 77 million voters.

In so ruling, the NPC noted that the Comelec’s platforms, although secured with specific measures, were designed without clear lines of responsibility, continuous testing and feedback mechanisms, and contingency and response plans in case of breach. The NPC also highlighted the Comelec chairman lacked appreciation of the fact that “data protection is more than just implementation of security measures, but must begin from the time of collection of personal data, to its subsequent use and processing, up to its storage or destruction.” The NPC found that the chairman failed to promulgate a data privacy and protection framework, which ultimately led to the data leak.

The hackers directly responsible for the data leak are also currently being prosecuted.

## What are the most immediate challenges to insurtech innovation?

Absence of regulations – Because of the absence of, or gaps in the, regulations on fintech/insurtech, there is uncertainty on whether a proposed new product or service would receive regulatory approval. In such cases, the fintech/insurtech provider has the burden of convincing the regulator that the product or service does not fall under any legal prohibition and would bring benefit to the economy/consumers.

Cybersecurity – Local networks, including government networks, and websites remain vulnerable to hacking.

Unregulated digital money such as Bitcoins can be used as a medium for illegal transactions, and can also expose consumers to risk.

Accessibility for potential consumers – Around 40% of the municipalities in the country do not have any banking presence, and many cannot access app-based financial services in far-flung areas.

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

Fintech/insurtech will be critical in ensuring that financial services are readily available for those that currently cannot access them. According to the BSP, around 70% of the working adults today are "underbanked" or "unbanked."

In addition, the rise in fintech/insurtech has already led to more cooperation between banks and fintech entities. Banks have also explored options that allow for a digital transition in its operations.

However, local networks, including government networks, and websites remain vulnerable to hacking, while unregulated digital money such as Bitcoins can be used as a medium for illegal transactions.

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

We expect insurance companies partnering with insurtech and technology entities to help them develop their technology and business strategies.

# 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?

Third-party intermediaries who assist in the solicitation or procurement of admitted insurance products include insurance brokers and insurance agents licensed by the Insurance Commission (IC). A person (such as an individual, partnership or corporation) must file an application for an insurance broker or insurance agent in the IC and pay the corresponding application fees in order to be licensed.

An insurance broker must comply with the minimum paid-up capital of PHP 20 million for an insurance broker, or PHP 50 million for both an insurance and reinsurance broker. In order to be issued a license, a brokerage company must have a qualified and approved soliciting official.

On the other hand, an insurance agent must be a resident of the Philippines and pass a qualifying examination conducted by the IC. An insurance agent license issued to an entity authorizes only the individuals named in its IC license. A licensed life insurance agent can represent only one life insurance company and, in case of transfer from one life insurance company to another, the agent is required to submit an application to the IC. A licensed non-life insurance agent can represent up to seven non-life companies.

An insurance broker/agent license must be renewed every three years.

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

There is no law or regulation requiring insurers to offer customers the option to purchase insurance products directly from them without going through financial advisers or intermediaries.

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

There is no prescribed form for the written agreement between an insurer and an insurance agent/insurance broker. However, if an insurance agent is a general agent (ie, an insurance agent who, aside from soliciting and obtaining insurance on behalf of an insurer, is empowered to conduct other business on behalf of an insurer), then a general agency agreement must specify the terms and conditions upon which the general agent may perform acts and conduct business on behalf of the insurer.

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

Insurance laws and regulations allow insurers to pay volume-based commission to their appointed agents. Insurance regulations provide that insurers may pay commission or other forms of compensation to insurance agents, on the condition that such insurance agents must place with the insurers an equal amount of outside business for the duration of the license.

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

The IC has guidelines for selling life and non-life insurance products that insurers must follow. For instance, the IC has adopted Market Conduct Guidelines for the guidance, compliance and implementation of all life insurers and their agents doing business in the Philippines. Non-compliant companies, officers or agents shall be subject to discretionary sanctions provided under the Insurance Code and imposed by the IC.

Moreover, under the principal-agent principle in Philippine law, a principal is liable to third parties for the acts of its agent. However, the written agreement between the insurer and its agents may provide that the agent will indemnify the principal in case of liability to third parties due to the agent's acts. Under Philippine law, an agent must act in accordance with the instructions of the principal and answer for damages that the principal may suffer due to the agent's fraud, negligence, or non-performance.

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

There are no laws or regulations providing for rules on the number of insurers that insurance brokers need to present to their customers. An insurance broker is expected to give independent advice about what insurance products are available from different insurers.

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

No law or regulation prohibits brokers from receiving commission (or other forms of incentive) from both insurers and customers, but it is recommended that brokers have appropriate processes and controls in place in order to address conflict of interest arising from such arrangement. A volume-based commission arrangement with insurers may compromise an insurance broker's independence to act for the
interest of the insured.

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

The Insurance Code expressly prohibits rebates and inducements by insurers or agents. Insurers and their brokers/agents are not allowed to offer any rebate on the premium that is not specified in the insurance policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in the policy or contract of insurance.

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

No law or regulation under Philippine law prohibits insurers from appointing offshore agents or brokers (to the extent permitted by foreign law). Insurance laws and regulations generally apply to activities and transactions conducted in the Philippines.

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

Under IC Circular Letter No. 2016-61, insurance companies and their brokers/agents are allowed to introduce, present and sell insurance products via telemarketing subject to the guidelines and requirements of the IC. Telemarketers engaged by insurance companies may or may not be IC-licensed insurance agents. A telemarketer that is an IC-licensed agent may solicit and/or sell insurance product/s and receive appropriate commission for such sale. On the other hand, a telemarketer that is not an IC-licensed insurance agent is allowed to conduct only preliminary introduction and presentation of insurance products. Telemarketers engaged by insurance brokers shall only be
allowed to conduct preliminary introduction and presentation of insurance products.

Under a bancassurance arrangement, an insurance company is allowed to present and sell insurance products to bank customers within the premises of local banks. The bancassurance agreement must be approved by the IC, and the bank must be authorized by the Philippine Central Bank to engage in cross-selling.

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

Insurers may engage in electronic commerce (ie, buying, selling or providing insurance products and services online) in accordance with IC Circular Letter No. 2014-47 and 2016-60. The IC requires insurers to, among others, (1) make available online: sufficient, accurate and current information regarding the insurer and the insurance policy/ies; (2) highlight the exclusions and limitations of a policy and ask customers to confirm that they have read and understood such exclusions and limitations; (3) in case of variable life insurance products, refer the customer to a licensed agent or intermediary for servicing and product advice prior to the execution or issuance of the variable life contract online; and (4) provide a summary of the application form for further validation, prior to requesting a customer to signify consent.

The use of a mobile application requires prior approval of the IC. The mobile application should be registered with a major digital platform (eg, Apple lnc. App Store, Google lnc. Google Play, and Microsoft Windows Marketplace).

An insurance policy issued online must comply with the pertinent provisions of the Electronic Commerce Act and IC regulations.

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

Insurers can share information with insurance agents/brokers and vice versa, with the consent of customers.

lnsurers and their agents/brokers must comply with the relevant provisions of the Data Privacy Act of 2012 and its implementing rules and regulations. Further, in IC Circular Letter No. 2016-20, the IC expressly grants policyholders the right to confidentiality of information. Specific to electronic commerce, insurers and their agents/brokers must comply with privacy requirements in online transactions as provided in IC Circular Letter No. 2014-47, including properly disclosing the terms of use of personal information of customers and providing clearly worded opt-in processes.

It is recommended that insurers obtain the consent of their customers or to ensure compliance with the regulations for processing of "personal information" and/or "sensitive personal information" under the Data Privacy Act, before data collected from customers is shared with other entities (eg, insurance agents/brokers).

# 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?

Subject to the conditions provided by the Insurance Code, an insurance company may purchase, hold and own the following:

Real properties that serve as the main place of business and/or branch office

Bonds or other instruments of indebtedness of the Philippine government or its political subdivisions

Bonds or other instruments of debt of government-owned or government-controlled corporations

Bonds, debentures or other instruments of indebtedness of any solvent corporation or institution created or existing under Philippine laws

Common, preferred or guaranteed stocks of any solvent corporation or institution created or existing under Philippine laws

Securities issued by a registered enterprise under the Omnibus Investments Code

Certificates, notes and other obligations issued by the trustees or receivers of any institution created or existing under Philippine laws, which, or the assets of which, are being administered under the direction of any court

Equipment trust obligations or certificates that are adequately secured or other adequately secured instruments evidencing an interest in equipment wholly or in part within the Philippines

Any obligation of any corporation or institution created or existing under Philippine laws that is adequately secured and has qualities and characteristics wherein the speculative elements are not predominant

Other securities as may be approved by the Insurance Commissioner

An insurer is not allowed to have equity in an adjustment company.

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

An insurer may invest in an insurtech start-up in the form of equity investment or granting of loan.

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

Investment in an onshore insurtech start-up is subject to the general restriction that the total investment must not exceed 20% of the net worth of the insurer or 20% of the paid-up capital of the insurtech start-up.

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

Investment in an offshore insurtech start-up is subject to the general restriction that the total investment must not exceed 20% of the net worth of the insurer or 20% of the paid-up capital of the insurtech start-up.

Investment in an offshore insurtech start-up is subject to the approval of the Insurance Commissioner. The approval process generally takes 30 working days from the submission of complete requirements.

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

Subject to the restrictions imposed by the Insurance Code, an insurer is allowed to grant loans to an insurtech start-up, provided that such loans are secured by any of the following:

First mortgages or deeds of trust of registered, unencumbered, improved or unimproved real estate

First mortgages or deeds of trust of actually cultivated, improved and unencumbered agricultural property in the Philippines

Purchase money mortgages, lease purchase agreements or similar securities executed or received by it on account of the sale or exchange of real property acquired pursuant to the Insurance Code

Bonds or other instruments of indebtedness issued or guaranteed by the Philippine government or its political subdivisions, or government-owned or -controlled corporations and instrumentalities

Obligations issued or guaranteed by registered universal banks, commercial banks, offshore banking units, investment houses or other financial intermediaries

Obligations issued or guaranteed by foreign banks or corporations with a net worth of at least USD 150 million or as may be prescribed by the Insurance Commission

Assignments of monetary instruments such as cash deposits, deposit certificates or other similar instruments of registered universal banks, commercial banks, investment houses or other financial intermediaries

Pledges of shares of stock, bonds or other instruments of indebtedness specified in the Insurance Code

Chattel mortgages over equipment not more than three years old

Such other security as may be approved by the Insurance Commissioner

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

Subject to the restrictions/limitations imposed by the Insurance Code and provided that the Articles of Incorporation (AOI) of the insurer does not expressly prohibit the same, a domestic insurer may invest in another corporation and enter into credit transactions with third parties upon the approval of the majority of its board of directors. Under the Corporation Code, an insurer may also invest its funds in another corporation or business or for any other purpose other than the primary purpose as stated in its AOI when approved by a majority of the board and ratified by the stockholders representing at least two-thirds of the outstanding capital stock.

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

All stockholders may exercise their appraisal right or their right to withdraw from the corporation, and demand payment of the fair value of their share, after dissenting from corporate acts involving fundamental changes in corporate structure, such as:

Amendment to the AOI to the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence

The investment of corporate funds in another corporation or business or for other purposes than those stated in the AOI

In case of a sale or disposition of all or substantially all assets of the corporation

Mergers or consolidations

## 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 is none. Generally, however, directors should avoid situations that would give rise to a conflict of interest.

## 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?

The following rules apply to connected party transactions:

Overlapping interests in the insurance entity must be disclosed to the board and any material transaction involving such interests must be similarly disclosed.

Related-party transactions must be conducted in terms that are at least comparable to normal commercial practices to safeguard the best interest of the insurance corporation, its policyholders, creditors and claimants.

Related-party transactions should be disclosed fully to the board. Prior board approval must be obtained for related-party transactions that are material in nature.

In general, the board of directors must approve corporate polices in core areas of operations, specifically underwriting, investments, reinsurance and claims management. If the service contract with the insurtech start-up involves the insurer's core operations, then board approval is necessary.

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

Yes, insurer companies are required to adequately disclose their related party transactions in their annual reports and comply with certain related party transaction reporting requirements.

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

There are no limits under current insurance regulations regarding the extent to which an insurer can provide operational support to the insurtech start-up. However, the board must oversee the conduct of the company’s business to ensure that the business is being properly managed. The board must also identify principal business risks and ensure the implementation of appropriate risk management systems to specifically manage the underwriting, reinsurance, investment, financial and operational risks of the company.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

The type of remuneration is not prescribed. However, the payment or remuneration to an insurtech company must not adversely affect the performance and financial condition of the insurer (including underwriting risk, reinsurance risks, investment risk, geographical risk, operational risk and legal risk).

## How can the insurtech start-up transfer the intellectual property rights for its

Under Philippine law, intellectual property rights may be sold, assigned or licensed from one entity to another. Assignment/transfer of patents must be in writing, notarized and must be recorded with the Intellectual Property Office of the Philippines (IPO). Assignment/transfer of trademarks and copyright need to be in writing and recorded with the competent registrar; it need not be notarized, but it is preferred.

Contract or agreements involving the transfer of intellectual property rights are known as Technology Transfer Arrangements (TTA). Republic Act 8293 enumerates certain prohibited clauses that should not be in the TTA. It also enumerates mandatory provisions that must be in the TTA. TTAs conforming to the requirements do not need to be registered with the IPO. However, noncompliance with these requirements renders a TTA unenforceable, unless it is approved and registered with the proper bureau of the IPO.

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

The Data Privacy Act of 2012 (DPA) and its Implementing Rules and Regulations (DPA-IRR) govern the processing (which includes collection usage, storage, disclosure, and transfer) of data from the data subject to a personal information controller (PIC), from a PIC to a personal information processor (PIP), and from one entity to another.

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

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

Insurance Commission (**IC**)

## 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?

No.

## 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?

Yes (a matter of law), if the insurer has been specifically authorized to do so by the Insurance Commission.

## Are there other conditions imposed by the regulator in doing an M&A transaction?

The acquisition of control of a domestic insurer requires the prior approval of the Insurance Commissioner. Moreover, the Insurance Commissioner may refuse to issue a Certificate of Authority to any insurance company if, in its judgment, such refusal will best promote the public interest. No Certificate of Authority is granted to any such company until the Insurance Commissioner has satisfied itself that the company is qualified by law to transact business, that the grant of such authority appears to be justified in light of economic requirements, and that the direction and administration, as well as integrity and responsibility of the organizers and administrators, the financial organization and the amount of capital reasonably assure the safety of the interests of the policyholders and the public.

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

Generally no.

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

Yes, under Philippine insurance law and regulation, a foreign insurance company may only invest in or establish a single insurance company, through one of the following modes of entry:

Ownership of the voting stock of an existing domestic insurance company

Investment in a new insurance company incorporated in the Philippines

Establishment of the branch

## 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?

Prior written approval of the Insurance Commissioner is required for a share deal or an asset deal resulting in the acquisition of control of a domestic insurer. In a share deal, approval is required in order to acquire 40% or more of the voting stock of a domestic insurer.

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

Regulatory approvals range from one to six months, depending on the availability of supporting documents. No distinction is made between share and asset deals.

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

Generally, it is open to private equity participation, given the government’s thrust to attract foreign direct investment, and because of its policy not to impose limits on foreign equity ownership in a domestic insurance company.

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

Yes, there is a "holding company system" concept under the Amended Insurance Code. An insurer controlled directly or indirectly by a holding company is subject to registration, reporting, and other requirements imposed by the Insurance Commission. "Control" means power to direct, or cause the direction of the management and policies of the domestic insurer, and is presumed to exist when one person/entity owns, controls or holds, directly or indirectly, 40% or more of the voting shares of the domestic insurer.

The Insurance Commissioner will consider the following:

The financial condition of the acquiring person and the insurer

The trustworthiness of the acquiring person or any of its officers or directors

A plan for the proper and effective conduct of the insurer's operations

The source of the funds or assets for the acquisition

The fairness of any exchange of stock, assets, cash or other consideration for the stock or assets to be received

Whether the acquisition will substantially lessen competition in any line of commerce in insurance or tend to create a monopoly therein

Whether the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or stockholders

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

Agency force and brokers

## 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.

Prior approval of the monetary board is required before banks may be used as outlets for the presentation and sale of insurance products. The insurance products to be cross-sold must have been previously approved by the Insurance Commissioner.

Moreover, the bank and the insurer must belong to the same financial conglomerate (i.e., a group of interrelated entities promoting significant services in at least two of the following financial services: banking, securities, and insurance).

The salient terms are:

Exclusivity

Term and renewal

Presentation and sale of products

Remuneration

Grievance mechanism

Consumer protection requirements

Limited role of bank employees

Risk allocation

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

**Share and asset deals**

Compliance with documentary and other submissions may be required by the Insurance Commission

Obtaining a tax clearance in order for the share or asset deal to be consummated

Valuation of the assets in an asset deal could be time-consuming and needs to be vetted by the Securities and Exchange Commission

# Data Protection and Cybersecurity

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

The National Privacy Commission (NPC) is the regulatory agency tasked to administer the Philippines' Data Privacy Act of 2012 (DPA).

With respect to data privacy-related regulations of the Philippine Insurance Code and regulations issued by the Philippine Insurance Commission (IC), the same is administered by the IC.

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

The DPA (Republic Act No. 10173), which took effect on 8 September 2012, and its implementing rules and regulations (DPA IRR), which took effect on 9 September 2016, govern personal data protection in the Philippines.

# Regulatory Landscape and Issues in Bancassurance

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

The Insurance Commission and the Bangko Sentral ng Pilipinas (**BSP** or the Philippine Central Bank).

## 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; and
b) 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) presentation and sale of products;
d) remuneration;
e) risk allocation;
f) grievance mechanism;
g) consumer protection requirements; and
h) limited role of bank employees.

## Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes. Insurance companies must have a certificate of authority from the Insurance Commission while banks must have an authority to cross-sell from the BSP.

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

We are not aware of any regulatory restriction against an insurance company or a bank providing exclusivity to the other party.

To the extent that an exclusive arrangement is possible, the length of the exclusivity is a matter of negotiation or contractual agreement between the parties. Such agreement may be upheld for as long as the agreed duration of the exclusivity agreement is reasonably necessary to protect the interests of the parties and does not unduly restrict trade or competition.

## 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 may be possible. The form of the preferential treatment is a matter of negotiation or contractual agreement.

## What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

The bank must obtain approval from the Monetary Board of the BSP before it may engage in bancassurance. It must submit an application letter along with various documentary requirements prior to engaging in bancassurance.

Insurance companies must submit annual summary reports and other regulatory reportorial requirements to the Insurance Commission.

## 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?

The BSP requires banks to keep various documents for examination as part of the BSP’s exercise of its regulatory powers over the bank. These documents include the contract between the insurance company and the bank. However, the contract between the insurance company and the bank need not be submitted to the BSP prior to approval.

The pre-approval application letter to the BSP must contain an explanation of the relationship (i.e., how the bank and the insurance company are related under a common financial
conglomerate) between the insurance company and the bank as well as a description of the products and justification for entering into a bancassurance arrangement.

The bancassurance arrangement or agreement must be reviewed and approved by the Insurance Commission. Any amendment must likewise be submitted for prior approval.

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

The Insurance Commission has broad powers as regulator, and may require amendments to be made to distribution agreements (as appropriate).

## Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

The Philippine Constitution, the Revised Penal Code, and the Philippine Competition Act prohibit monopolies and combinations in restraint of trade. In this context, it would be prudent to undertake a competition analysis to ensure that the distribution agreement is valid in light of these prohibitions.

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

The Revised Penal Code and the Philippine Competition Act of 2014 prohibit combinations in restraint of trade. However, Philippine case law indicates that agreements providing for exclusivity may be valid for as long as the restriction on trade is reasonably necessary to protect the interests of the parties and such restrictions are only partial or limited in place or duration.

## 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?

It depends on the purpose/s for the processing of personal information that was declared to the data subject. Customer information may be processed only in ways compatible with such specified and legitimate purposes declared to the data subject.

Hence, if the insurance company wants to use customer information to:

develop new products, refine marketing strategies, etc.;

conduct its own telemarketing or direct mail activities; and

cross-sell products,

The insurance company should confirm that the customer was informed by the bank that his personal information will be processed by a third party (i.e., the insurance company) in this manner and that the customer consented to such processing or use of his personal information.

## 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 Data Privacy Act of 2012 (Republic Act No. 10173) imposes penalties of imprisonment and fine for unauthorized disclosure of personal information. Yes, customers may waive these limitations or prohibitions by providing their consent to such disclosure.

Philippine bank secrecy laws also prohibit a bank from disclosing customer information. However, as in the Data Privacy Act, a customer may waive such prohibition.

## 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)?

Generally, compensation arrangements are subject to contractual agreement. Please note, however, that, under the Amended Insurance Code (Republic Act 10607), an insurance
company may not pay commission to any person or entity not licensed as an insurance broker or insurance agent in the Philippines. Thus, a bank may not be paid commission from the sale of insurance products.

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

The Amended Insurance Code imposes both a fine and imprisonment. The Insurance Commissioner may also suspend or revoke the license of the insurance company violating the prohibition.

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

As part of its exercise of its regulatory powers over insurance companies transacting business in the Philippines, the Insurance Commission may request information on compensation arrangements in relation to the bancassurance agreements of insurance companies in the Philippines.

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

Yes.

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

Only retail financial products that do not create exposure to investment risk may be cross-sold under a bancassurance arrangement.

## 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 forms have to be approved by the Insurance Commission.

Yes, insurance companies own the intellectual property rights to such policy forms.

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

Under the General Banking Law (Republic Act 8791), a bank may not directly engage in insurance business in the Philippines. A bank must also ensure that promotional materials clearly indicate the relationship between the insurance company and the bank. Such materials must not create the impression that the insurance product is the product of the bank whose premises are used for bancassurance.

## 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?

The presentation and sale of the insurance products may only be done within a designated area within the bank premises that is clearly distinguishable as a separate entity from the bank.

## 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?

A bank may not employ sales personnel to sell insurance products. Bank personnel may not sell or solicit insurance contracts and may only:

refer bank clients to representatives of the insurance company; and

make a preliminary presentation of the insurance product to bank clients, provided they have undergone training from the insurance company

With regard to item (b), the Insurance Commissioner may require bank employees to obtain a license to act as insurance agent for said activity.

Bank employees may receive referral incentives from the insurance company.

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

The presentation and sale of the insurance products may only be done within a designated area within the bank premises that is clearly distinguishable as a separate entity from the bank.

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

The bank may lease space to insurance companies as part of its distribution/bancassurance agreement with such 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?

Under the regulations of the BSP and Insurance Commission, the bank and the insurance company must belong to the same financial conglomerate before bancassurance activities may be allowed. Further, BSP regulations provide that the insurance company must have been disclosed and reported as part of the group structure of the bank.

## 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 Insurance Commission and issued Circular Letter No. 2016-40 dated July 25, 2016 and Circular Letter No. 2016-53 containing additional rules on bancassurance supplementing Circular Letter No. 2015-20 or the implementing rules and regulations of bancassurance.

## 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?

Exclusivity rights are commercial in nature and are subject to negotiation or contractual agreement between the parties. An exclusivity agreement may be upheld for as long as the agreed duration of the exclusivity is reasonably necessary to protect the interests of parties and does not unduly restrict trade or competition.

From the antitrust law perspective, Philippine laws prohibit monopolies and combinations in restraint of trade. An exclusivity arrangement that does not run counter to the anti-competition laws is generally acceptable.

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

An insurer is obligated to provide primary manpower support as bank personnel are prohibited from directly engaging in insurance business in the Philippines under the General Banking Law. Only licensed insurance agents may sell, solicit and discuss details and particularities of insurance products.

However, bancassurance regulations permit bank employees to make a preliminary presentation of the product features of insurance products, provided that they have been specifically trained and qualified by the insurance company. The Insurance Commission shall prescribe and approve such training programs for bank employees. As preliminary presentations are merely incidental to their duties, bank employees are not obligated to obtain an insurance agents’ license, but may be required by the Insurance Commission should such license be deemed proper.

## 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?

The bank’s customer database are subject to banking secrecy laws and the Philippine Data Privacy Act. As banks are under a strict duty to maintain confidentiality and secrecy, customer information may be processed only in ways compatible with the purpose/s declared and consented to by the data subject.

The insurer should confirm that proper disclosure was made by the bank to the customer that his personal information will be processed by a third party (i.e., the insurer) in the manner and extent agreed to by the customer. The insurer also ensures compliance with the Data Privacy Act by employing reasonable and appropriate organizational, physical, and technical measures to protect the security of personal information.

Customers may waive the application of bank secrecy laws and the Philippine Data Privacy Act, but the waiver must typically be written and express, and cannot consist of a general waiver. The waiver must pertain to specific rights (i.e., acts consented to and/or rights waived) and/or to the type of information (i.e., sensitive information and sensitive personal information) covered by the waiver.

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

Generally, compensation arrangements are commercial in nature and subject to contractual agreement. However, under the Amended Insurance Code, an insurer may not pay commission to any person or entity not licensed to engage in insurance business as an insurance agent or insurance broker. Thus, a bank may not be paid commission from the sale of insurance products, but may be compensated under other allowable arrangements. Further, there is no prohibition under bancassurance rules for the insurer to provide referral incentives (through the bank) to bank employees for successful referrals of bank clients to representatives of the insurer.

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

Any issue arising from the insurer’s inability or refusal to develop a bancassurance product or the discontinuance in the offer of a bancassurance product is subject only to the contractual agreement between the insurer and the bank.

From the perspective of consumer protection laws, the Insurance Commission obligates the insurer and the bank to have a consumer protection framework in a bancassurance transaction. An effective consumer protection network must include processes and procedures for handling any complaint arising from cross-selling, including after-sale claims. The insurer must present documentary proof of the existence of the consumer protection framework to the Insurance Commission.

Moreover, the insurance commissioner has the power to resolve/adjudicate claims and complaints filed by customers against the insurer.

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

An insurer and a bank cannot create a JDIP (i.e., co-branding) pursuant to a bancassurance agreement.

Under the Philippine General Banking Law, a bank may not engage directly in insurance business in the Philippines. A bank must also ensure that promotional materials clearly indicate the relationship between the insurer and the bank. Such materials cannot create the impression that the insurance product is the product of the bank whose premises are being used for bancassurance.

Moreover, bancassurance rules provide that there should be a clear distinction between insurance agents and bank employees inside the premises of the bank. Areas within the bank premises where bancassurance activities are conducted must also be distinct and clearly marked/delineated to differentiate them from areas where bank products are being sold.

Hence, current banking and insurance laws do not seem to permit a JDIP or any form of co-branding as the intention of the law is to separate the business of the bank from the business of the insurer.

## 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?

The consequence/s in the event of early termination of the bancassurance agreement may vary depending on the contract terms or agreement of the parties, or in default thereof, on Philippine contract laws. Under Philippine contract law, the principle of unjust enrichment generally applies (i.e., no person may unjustly enrich himself at the expense of another). Hence, unearned facilitation fee for the promotionaland marketing activities paid by the insurer to the bank will typically have to be returned to the insurer on a pro-rata basis.

## 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?

There are no laws and regulations covering the facilitation fee in the event of an early termination. This issue is commercial in nature and subject to the bancassurance agreement. To address this, the parties may agree on mutually acceptable commercial terms and conditions that not only support the objectives of the bancassurance agreement, but also adequately protect the business interests of the parties. The parties may carve out payment periods and payment schemes acceptable to them. The parties may also carve out default provisions or agree on penalties and fees instead of a pro-rata refund in case of pre-termination of the bancassurance agreement.

## 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, this is a typical arrangement in commercial/business transactions such as a bancassurance agreement. It would be prudent for the parties to provide for specific indemnities and damages in case of breach by one party in its obligations to the other or in case of any claim by a third party due to the fault/breach of one party.

Absent such agreement, Philippine civil laws shall apply as far as practicable.

Bancassurance rules recognize that the insurer may solely or jointly be liable with the bank in case of claims and complaints from customers.

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

There is no requirement under Philippine banking and insurance laws regarding the formation of a bancassurance steering committee.

If parties agree to the creation of a steering committee, its mandate may be to ensure the effective implementation of the bancassurance agreement. It would generally be the insurer’s obligation to manage insurance products, insurance business plans, commission schemes and other relevant issues pertaining to insurance products and services.

Bancassurance arrangements are currently limited to the grant of limited rights to an insurer to share a part of the bank’s premises/physical office space. Amidst space-sharing, a bank and an insurer shall, at all times, separately maintain and operate banking and insurance businesses, respectively.

# Digitalization in Insurance Guide

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

Yes. The Insurance Commission of the Philippines has issued the Guidelines on E-Commerce of Insurance Products which regulates the sale of insurance through online platform.

## 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.

The key regulatory requirements are: (i) the use of mobile application should be with prior approval of the Insurance Commission, (ii) prior to or after submission of the electronic application, the insurance provider shall refer the consumer to the insurer's insurance agent or intermediary for servicing or availability of product advice; and (iii) insurance providers shall not transmit marketing e-mail to consumers without their consent, except when insurance providers have an existing relationship with them.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

The use of technology in the conduct of face-to-face contact as required under KYC regulations may be allowed, provided that the insurer is in possession of and has verified the identification documents submitted by the prospective client prior to the interview and that the entire procedure is documented.

## 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, in lieu of an actual specimen signature from the consumer to validate the information indicated in the on-line application form, the consumer may signify his consent by clicking the confirmation button to finalize the processing of the application.

## 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?

Yes, lnsurance providers are required to provide consumers with access to fair, timely and effective means to resolve problems with any transaction.

## 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?

lnsurance providers must maintain effective controls designed to promptly rectify any mistakes in transaction records.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

No. lnsurance providers are not required to ask for prior approval in the establishment and roll-out of its system to support electronic commerce of insurance products. However, the insurer must submit various documents to the Insurance Commission prior to roll-out. Note that the use of mobile application requires prior approval from the Insurance Commission.

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

Yes. Insurance intermediaries must be authorized by the insurance company to conduct electronic commerce of its insurance policies and licensed as an insurance agent by the Insurance Commission.

## 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?

Yes. The offering and selling of insurance products online through insurance agents, who act on behalf of insurers, would likely be regarded as the sale of insurance by the insurer.

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.