Asia Pacific Insurance - Philippines

Regulatory Landscape and Issues in Bancassurance

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# 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.

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