Asia Pacific Insurance - Philippines

Top 10 Issues to Consider in a Regional Bancassurance Deal

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# What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

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.

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