Asia Pacific Insurance - Hong Kong

Regulatory Landscape and Issues in Bancassurance

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

The Hong Kong Federation of Insurers (**HKFI**), Insurance Authority (**IA**), and Hong Kong Monetary Authority (**HKMA**).

# Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.  
  
Bancassurance partnerships are generally divided into the exclusive and non-exclusive arrangements.

# What are the main parameters in negotiating a distribution agreement?

The salient terms are:  
  
a) exclusivity;  
b) term and renewal;  
c) product development arrangements;  
d) remuneration; and  
e) the ownership and use of the bank's customer data.

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

Yes, banks must be registered with the HKFI and the bank staff who are responsible for selling insurance must be registered as technical representatives.

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

There is no regulatory restriction for an insurer to appoint a bank as its exclusive distributor or the term/duration of the appointment.

# 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, and the form of the preferential treatment is a matter of negotiation.

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

No regulatory approval is necessary. In practice, the insurer will notify the IA and the bank will notify the HKMA.

# 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?

In practice, the insurer and the bank will notify their respective regulators.

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

In practice, it is uncommon that regulator will comment on the terms, although the regulators have an extensive regulatory power to do so.

# 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 Competition Ordinance applies to all agreements, not just agreements between competing businesses. It may be prudent to undertake a competition analysis given that the broad application of, and significant penalties for breach under, the Competition Ordinance in Hong Kong.

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

The Competition Ordinance prohibits agreements that have the object or effect of preventing, restricting or distorting competition in Hong Kong. Certain provisions of a bancassurance agreement may raise issues under the Competition Ordinance and therefore should be reviewed on an agreement-by-agreement basis (for example, exclusivity, territorial or customer restrictions, non-competes).  
  
Factors relevant to this analysis will be: (i) the market positions of the parties; (ii) whether similar restrictions exist in other agreements in the market; and (iii) the extent to which the  
agreements are efficiency enhancing (e.g., because they guarantee or encourage investments by one or more parties to the agreement).

# Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

Yes, provided that the requisite notification is given at the time of data collection and (in case of use of data for direct marketing) consent be obtained.

# 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 Personal Data (Privacy) Ordinance requires that customers' notification be given at the time of data collection and (in case of use of data for direct marketing) consent be obtained.

# 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?

Consent must be obtained from the customers.

# Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

No statutory limitations.

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

Not applicable.

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

The regulators have wide power but it is not a common practice that they will request for the information.

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

Yes, the bank must be registered for the relevant line of business before it can sell the relevant products.

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

None.

# Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

For investment-linked policies, product documentation has to be authorized by the Securities and Futures Commission.  
  
Yes, insurance companies own the IP rights to such policy forms.

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

No, there is no specific regulatory prohibitions or limitations, but the regulators always have the power to raise requisitions or concerns if co-branding creates market confusion.

# 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?

Clearance would need to be obtained from the HKMA, but in practice it would be difficult.

# 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) There is no statutory requirement for training or oversight responsibility by the insurer. However, it is common for the insurer to provide training to the bank personnel.  
b) There is no statutory requirement as to how insurers should compensate the bank.

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

Clearance would need to be obtained from the HKMA, but in practice it would be difficult.

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

Not a common practice in Hong Kong.

# Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

# Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

The Insurance Authority will implement a new licensing and regulatory regime for insurance intermediaries, which is expected to come into force in 2019. Bank intermediaries will be subject to such new regime.

# 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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