Asia Pacific Insurance - Indonesia

Regulatory Landscape and Issues in Bancassurance

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

The Financial Services Authority or *Otoritas Jasa Keuangan* (**OJK**).

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

Yes.

Over the past several years bancassurance has become a marketing trend for life and other insurance companies. Most life insurance companies try to expand their business by entering into bancassurance partnership agreements with major banks in Indonesia.

Based on OJK Circular Letter No. 32/SEOJK.05/2016 on the distribution channel of insurance products in cooperation with banks (bancassurance) (Circular 32), there are three types of business models for bancassurance cooperation:

product reference;

distribution cooperation; and

integrated products between a bank and insurance products (bundled products).

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

The salient terms are as follows:

exclusivity;

fees, commissions and terms of payment;

nature of distribution (business model) of insurance products;

period of agreement, renewal and termination; and

limitations on rights and obligations of each party.

# 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. An insurance company must obtain approval for each specific bancassurance activity from the OJK, and a bank must report the bancassurance activity to the OJK.

# 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, except on a credit-linked portfolio under a referral business model where the bank must have a panel of at least three insurers.

# 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, 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?

There is no regulatory approval or notification needed just for entering into a negotiation. Insurance companies, however, must obtain approval from the OJK before entering into a bancassurance arrangement.

# 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 obtaining an approval of the bancasurance partnership from the OJK, the insurance company must submit an application along with documents, including:  
  
a) a draft bancassurance agreement (parties must place their initials in the draft);  
b) a copy of approval of the insurance products;  
c) a sample of the brochure, marketing media, or an application letter which includes information on the commission payable to the bank;  
d) description of insurance product that will be sold; and  
e) procedure under the insurance policy closing and premium payment.  
  
The regulation also prescribes the minimum content of a bancassurance agreement.

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

The OJK, in its sole discretion, can ask for the agreement to be amended with a view to ensuring compliance with the regulation.

# 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?

There is no requirement under the Insurance Law or Anti Monopoly Law to make antitrust or competition analysis related to the bancassurance agreement. However it would be prudent to do so if a dominant position or unfair competition is likely to be created.

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

The Business Competition Supervisory Commission (a state agency established to examine allegations relating to the Anti-Monopoly Law) (**KPPU**) may consider that the exclusivity  
arrangement in a bancassurance arrangement between a major bank with a large numbers of customers can create unfair competition and market closure and that these practices are violations of the Anti-Monopoly Law. This is all a matter of fact and it would be prudent to undertake a competition analysis and for the issue to be considered in identifying a bank and dealt with in negotiations.

# 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?

Based on data privacy, insurance and banking regulations, both the bank and insurance company are obliged to maintain confidentiality of customers’ data. A bank is only allowed to provide personal information of its customers to the insurance company if the bank has obtained written approval from the customers (specific purpose consents are required). Subject to consent from the customers, there is no prohibition for an insurance company using customer information for its business.

# 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. Please see response to Question 12.

# 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?

Under the Electronic Information and Transaction Law (and implementing regulations), any use of personal data (e.g., data collection, transfer, process, disclosure) through electronic media may only be done with proper prior consent from the relevant data owners. Further, similar with Circular 12/35, the Financial Services Authority Regulation No.1/POJK.07/2013 on Protection for Financial Sector Consumers requires financial services providers (which includes insurance companies) to maintain the confidentiality of their customer data.

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

There is no prohibition on agreeing up-front/staggered payments to be paid by insurance companies to banks for their platform.  
  
For life insurance companies, fees and compensation payment can be agreed between the parties.  
  
For certain general insurance products (e.g., property and motor insurance products), acquisition costs are capped.

# 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)?

No.

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

No, although note that there is a delineation between insurance companies (general versus life, and sharia products need to be dealt with separately). Any insurance product sold through a bancassurance arrangement must be approved by the OJK.

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

None provided such products are within its license.

# 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?

All insurance products sold in Indonesia (including sold using bancassurance arrangements) must be approved by the OJK. Before approving a product, the OJK will review the specifications of the product, including the insurance policy.  
  
Yes, insurance companies generally 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?

Indonesia does not recognize a brand partnership between two insurance companies (or more) or between an insurance company and a bank.  
  
Under the Indonesian Insurance Law an insurance product must be issued by an insurance company and this product must be registered under the name of the insurance company.  
  
The Indonesian Insurance Law prohibits an insurance product from being registered under the name of two insurance companies.

# 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?

No. However, the bank would generally exercise regarding the level of access to its customer data.

# 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) The bank personnel must be trained and qualified to sell the product and must obtain agent certification. The regulations related to bancassurance do not stipulate whether providing training to the bank employees who sell the insurance products is an obligation of the bank or the insurance company or whether training expenses must be paid by the insurance company. In practice this arrangement is agreed between the parties under the bancassurance agreement.  
b) No, the bank would be compensated based on the consideration set out within the distribution agreement.

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

No. However, the bank would generally exercise regarding the level of access to its customer data.

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

Yes. There is no restriction for banks to lease space to insurance companies. In practice the bank will provide some space to insurance companies to distribute its products.  
  
If the insurance companies were to lease some space in the bank's premises, it must show:

The name of the insurance companies in the table/room that is used by the insurance companies; and

The insurance companies personnel must keep using his/her identity card of 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?

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)?

None.

# 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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