Asia Pacific Insurance - Indonesia

Top 10 Issues to Consider in a Regional Bancassurance Deal

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

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

Regulation permits banks and insurers to enter into an exclusive bancassurance arrangement except for distribution of insurance products that are related to bank products (e.g., an insurance coverage granted over a debtor’s collateral in his or her loan arrangement with the bank).  
  
In practice though, banks often resist the use of the word “exclusive” and try to offer a “preferred” or "strategic" relationship instead where banks agree to use their best efforts to ensure that the insurance partner’s products are offered first to the banks’ customers and banks are maximizing sales of the insurance partner's products, given past inquiries made by the Business Competition Supervisory Commission to various banks on their exclusive bancassurance arrangements.  
  
How flexible a bank will be depends on its comfort levels and its current practices with other insurers.

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

The insurer is generally requested by the bank partner to provide the following support to the bank:

Prepare a training curriculum for bank personnel on the insurance product specs, marketing information and sales management (including coaching, motivating, mentoring and soft sales skills), and regulatory requirements and standards practices

Assist in the licensing of bank personnel to sell insurance products

Provide consultation, advice and support to the bank regarding all training and marketing activities

# 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?

A bank’s customer database is subject to privacy laws.

Further, the transfer of consumer database in the financial sector is also subject to regulations issued by the *Otoritas Jasa Keuangan* (**OJK**). Any transfer of consumer data is subject to consumers’ written approval.

Banks have to first secure consumers’ written approval on their transfer of data before transferring to any third party, including, in this case, to insurers. Usually, this is done at the time that accounts are opened with the bank.

In the context of bancassurance, banks would usually give a warranty that they have secured the relevant customers’ written approval before transferring or disclosing customer data to the insurers. In practice, such a warranty is specifically reviewed and commented (where necessary) by the OJK upon filing a copy of the bancassurance agreement for approval. Banks would also provide the insurers with reasonable access to the banks' customer data, depending on the agreed distribution model. For example, in a referral model, the insurers typically do not get an extensive access to the bank's customer data given the banks would refer the customers to the insurers.

It is also commonly agreed by banks and insurers that:

all banks’ customer data submitted to or obtained by insurers, relating from any policy issued under the bancassurance agreement will only be used in accordance with the bancassurance agreement provisions; and

the insurer is prohibited from using the data of any bank customer obtained in relation to the bancassurance agreement to cross-sell any other products which are not specified under the agreed distribution channel to any bank customers, unless consented by the bank.

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

For certain general insurance products, acquisition costs are capped. There is no cap on acquisition costs for life insurance products.  
  
Insurers also often ask for a refund of commissions when there is a cancellation of policies within a certain period of time after the policies are signed by the consumer. For the refund mechanism, insurance companies often require that refunds can be done by setting off the insurers payment obligation to the bank.  
  
The parties also need to agree on who will bear the withholding tax. Insurers should also discuss with the bank partners clearly what types of compensation payable by the insurers and in what circumstance the compensation becomes payable (e.g., earn-outs).

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

The insurer will lose exclusivity in respect of such bancassurance product.  
  
Insurers would usually negotiate provisions that a bank cannot unilaterally decide on product development, but this is mutually determined be the bancassurance steering committee (BSC) instead.  
  
The OJK also recently issued a regulation on insurance products requiring that proposed new products be listed in the insurer’s annual business plan.

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

This is more a commercial issue and mostly deals with a bundled product that involves the bank's certain know-how and the bank's banking product features. Regulation allows this business model, known as, the product integration business model. There are certain rules around this business model. For example, a bundled product must be a "protection" product in nature (the product cannot have "investment" features, e.g., unit-linked products). The insurers and the banks should also agree on who will have the IP rights over the bundled products and in what circumstance such bundled products can be distributed through distribution channels other than the agreed distribution channels.

# 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?

If the fee is paid upfront, the insurers may consider clawback provisions. This is more a commercial discussion between the insurers and the banks. The negotiating power may also be affected by the nature of the deal (bilateral vs auction process).

# 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?

In practice, the insurers typically bear the start-up costs (unless the banks have already sufficient infrastructure in place). This is commonly dealt in the agreed business plan or the agreed marketing plan before the commercial operations date of the bancassurance arrangements.

# 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, it is common for parties to ask for indemnity for losses, expenses and damages resulting from an act of the other party’s personnel, e.g., on providing misleading information or advice on the insurance products that are not in line with the training given.

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

The issues that the parties may need to consider, include:

composition of BSC, meeting frequency, meeting quorum, voting processes, etc.; and

matters to be agreed by BSC (e.g., approving the annual business plan, determining the bank’s marketing channels that are suitable and relevant to the insurer’s products, deciding strategic issues in respect of product development, approving a marketing plan, approving personnel incentives, acting as a mediation forum, approving formation of any working group, standard operating protocols, etc.).

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