Asia Pacific Insurance - Singapore

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 common in bancassurance arrangements, and typically restrict the marketing, promotion, distribution or sale of bancassurance products of another insurer or even partnering up with another insurer or bank without prior written permission of the counterparty. Exclusivity, and its term or duration, is a matter of negotiation between the parties, but parties should consider if any competition concerns arise.

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

There are no specific obligations on insurers other than as agreed between the parties. However, it is common for the insurer to be obligated to provide support to the bank by providing dedicated individuals, who may be seconded to the bank, particularly during the initial stages, to train the bank’s staff, assist with the marketing and sale of the bancassurance products, and provide compliance support, alongside the bank’s own staff.

# 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?

Any customer information possessed by the bank, including the bank’s customer database, is subject to banking secrecy provisions under the Banking Act, and such disclosure may only be made if one of the exemptions to banking secrecy applies or the information is processed such that it is not referable to a customer or group of customers.

Further, the Personal Data Protection Act (**PDPA**) requires the consent or deemed consent of the individual concerned for the collection, use and disclosure of personal data, unless an exemption applies. Unless consent has been obtained or there is an applicable exemption, the insurance company will not be allowed to use customer information other than for the original purpose for which the insurance company received the information.

The PDPA also establishes a Do Not Call Registry, and introduces obligations and restrictions that apply in relation to persons sending specified messages (in the form of voice calls, text or fax messages) to Singapore telephone numbers.

As a result of these privacy restrictions, bancassurance arrangements typically include extensive restrictions on the insurer’s ability to use the bank’s customer database, and often include express obligations regarding the insurer’s compliance with the Banking Act and the PDPA.

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

There are no specific prohibitions or limitations in Singapore in respect of compensation arrangements for bancassurance transactions, although note that the Monetary Authority of Singapore has issued a Consultation Paper on Recommendations of the Financial Advisory Industry Review dated 5 March 2013 and a Response to Feedback Received thereto on 30 September 2013. These papers propose certain changes to the regulatory regime for the financial advisory industry, with the key thrusts of, amongst other things: (i) raising the quality of financial advisory firms; (ii) lowering distribution costs; including specific recommendations in respect of distributing life policies; and (iii) promoting a culture of fair dealing. It is currently not known when these changes will come into effect. Depending on the precise changes introduced pursuant to the above consultation, there could be implications on the level of commission payable, and bancassurance arrangements more generally. Currently, however, the level of commission payable remains a matter for negotiation between the parties.

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

This is a matter for negotiation between the parties. The bancassurance arrangement typically specifies the rights of the parties in the event that the insurer is unable to develop, or ceases to offer, a bancassurance product, and may provide for the right for the bank to either source a new bancassurance product from a third party, or terminate the agreement if certain service levels, including the provision of specific bancassurance products, are not met.

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

The bancassurance arrangement will typically provide for a non-exclusive royalty-free license to be provided by each party to the other in respect of their trademarks and any JDIP in order for the parties to perform their respective obligations under the bancassurance arrangement.

A party that is responsible for creating and/or developing a JDIP will also be expected to provide a warranty that the JDIP does not infringe any third-party rights or laws.

In terms of the ownership of any JDIP, this should, generally, be agreed between the parties at the outset of the arrangement to avoid any future disputes regarding ownership of any JDIP.

# 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?

This is generally a matter for negotiation between the parties, but may involve the refund or partial refund of the facilitation fee where the early termination is caused by the bank. Depending on the negotiation position of the parties, the termination provisions may also provide that the facilitation fee (i) is refunded pro rata (in accordance with a specific calculation/methodology) in the event of a no-fault early termination (e.g., a change in regulation), and/or (ii) is retained by the bank in the event of a default by the insurer.

# 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?

The facilitation fee and any refund (pro-rata or otherwise) can be structured in any way that the parties determine. Depending on the negotiation position of the parties, and the anticipated expenditure by the bank in the early stages of the relationship, the facilitation fee may be paid by the insurer to the bank in tranches. If structured in this way, the bank may argue that no refund of the facilitation fee should be paid if there has been no default by the bank.

# 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, although this is a matter of negotiation between the parties and will depend on the parties’ negotiation powers. In any event, bancassurance agreements typically provide for specific undertakings from each party to comply with any regulatory requirements and applicable laws, including any anti-bribery, money laundering and corruption laws.

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

A bancassurance steering committee is jointly formed by the insurer and the bank to facilitate collaboration and to ensure the effective implementation of the bancassurance business and the annual business plan.

The issues that the parties may wish to address include the purpose of the steering committee and the authority that the steering committee has in relation to specific matters (such as approval of business plans, monitoring of compliance with service level agreements, resolution of disputes, allocation of resources, approval of new products or amendments to existing products and identification of business development opportunities). The parties should also consider the composition of the steering committee and identity of the chairman, voting (including deadlock resolution mechanisms) and frequency of the steering committee’s meetings.

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