Asia Pacific Insurance - Indonesia

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

# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Directors, commissioners, sharia supervisory board members, internal auditors and company actuaries (also known as primary parties) must obtain approval from the Financial Services Authority (Otoritas Jasa Keuangan or OJK) in the form of a fit and proper test.

Senior executives who are foreign employees can only hold limited positions in an insurance company. A foreign employee can hold a position one level below the board of directors and would be appointed as an actuary or as a consultant. An insurance company can only use a foreign employee to attend to limited functions, such as underwriting, actuary, marketing and/or information systems. An insurance company that uses foreign employees must give prior notification to the OJK.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes. The fit and proper test requirement applies to candidate officers mentioned in Question 1 and must be passed before a candidate's appointment.

## Is there generally any distinction between EDs and NEDs?

The Indonesian Company Law adopts a two-tier board system, namely a board of directors and a board of commissioners. The day-to-day management of a company is conducted by the board of directors, and the board of commissioners supervises the board of directors (at least half of the commissioners must be independent and must reside in Indonesia, and other residency requirements apply depending on direct and indirect shareholdings). Directors must be resident in Indonesia. Consequently, there is an expectation from the OJK that all directors will  
be executive directors.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

No. However, the OJK must be notified of the resignation or removal of directors, commissioners, experts, actuaries, members of internal audit and foreign employees, within 20 working days (for the removal or the resignation of experts, actuaries, an internal auditor or foreign employees), or within 15 working days (for the removal or the resignation of directors or commissioners).

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

All members of the board of directors (BOD) or board of commissioners (BOC) of an insurance company must be Indonesian citizens if the insurance company is wholly owned by Indonesian citizens and/or owned by any Indonesian legal entity that is wholly owned or majority-owned by Indonesian citizens. The BOD of a joint venture insurance company in which a foreign party has a direct shareholding can consist of either Indonesian citizens and expatriates or all Indonesian citizens. An independent commissioner of an insurance company must be an Indonesian citizen.

Please refer to our answers in Question 1 on the limitation of positions and functions for foreign employees.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

There is no clear minimum threshold. However, the OJK, in conducting the fit and proper test for directors and commissioners, will consider the candidate's competence, experience, integrity and financial reputation. There are time restrictions on when ex-OJK officials can be appointed as directors or commissioners of an insurance company.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Candidates must undertake a fit and proper test, which covers the candidate's competence, experience, integrity and financial reputation.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. The following factors may disqualify a candidate: a past conviction relating to fraud or dishonesty or other criminal offenses, being an undischarged bankrupt or having been a director of a body corporate that went into bankruptcy, or a past conviction for financial crimes.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

Yes. All members of the board of directors must be resident in Indonesia, and at least half of the members of the board of commissioners must be resident in Indonesia.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is expected to make self-assessment on the competence, integrity and financial reputation of the candidate based on a specific form provided under the prevailing insurance regulations and objectively assess the fitness and probity of directors/ senior management. The self-assessment exercise is to be conducted by a committee of the insurance company in charge of board nomination and remuneration (or by the board of directors of the insurance company if the insurance company does not have a specific nomination and remuneration committee).

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

There is no distinction in regulatory treatment of executive directors and non-executive directors as Indonesia does not distinguish between executive directors and non-executive directors.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

Broadly speaking, directors are responsible for the insurer's operations, including compliance with applicable regulatory requirements, with a focus on compliance, investment management, underwriting, risk management and audit.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes. If it is proven that the officer has acted not in the company's interests, or has not exercised proper diligence in managing the company.

Sanctions include revocation of fit and proper test results by the OJK (where the insurance company then is required to remove the director) and administrative fines. The Insurance Law also provides a longer list of criminal sanctions for management. For example, if a director conducts fraudulent acts, creates misleading or false reports, releases confidential information or undertakes business without appropriate licenses, that activity is deemed as a crime and the director will be subject to criminal sanctions.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

No periodic filings apply to directors specifically. An insurance company is, among other things, required to report to the Ministry of Law and Human Rights if directors and commissioners resign and/or new directors and commissioners are appointed.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Insurance companies are required to have at least three directors and three commissioners.

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

Yes. For the board of commissioners, at least half of the members of the board of commissioners must be independent commissioners.

There is no requirement for insurance companies to have independent directors (unless they are listed companies).

There are strict limits on how many positions a person can hold in other companies.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. Insurance companies are required to set up the following committees:

Investment committee – This committee is established by the board of directors, and its duty is to assist the board of directors in preparing the investment policy of the company and supervise the implementation of the policy. Its membership consists of at  
least one director in charge of investment management and the company's actuary.

Product development committee – This committee is established by the board of directors, and its duty is to assist the board of directors in preparing a strategic plan to develop, sell and evaluate products.

Audit committee – This committee is established by the board of commissioners and its duty is to assist the board of commissioners in supervising and ensuring the effectiveness of the company's internal control systems and the implementation of external and internal audits. Its members include at least one independent commissioner, who will also act as chair of the committee.

Risk supervision committee – This committee is established by the board of commissioners, and its duty is to assist the board of commissioners in overseeing the implementation of risk management as set out by the board of directors and evaluate the risk tolerance that the company can bear. Its members consist of at least one independent commissioner, who will also act as chair of the committee.

Also insurance companies must establish working units that cover underwriting, actuary, claim administration settlement, marketing,  
financial (including investment management), risk management, internal audit (with at least one expert and an actuary), administration and accounting, compliance, anti-money laundering and anti-terrorism funding, and services and settlement of complaints (effectively ensuring companies are self contained in line with the OJK's policy in these respects).

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

There is no regulation preventing commissioners or directors from having investments. Under the Indonesian Company Law, such investments (and any held by family) must be disclosed to the company. In addition, any such investment that reaches 5% or more (whether made onshore or offshore) must be reported to the company.

In relation to the restrictions on the number of positions board members can hold:

A compliance director is prohibited from holding another position.

A president director is prohibited from holding position as a commissioner in a company which is controlled by the insurance company in which he or she is a president director.

A director can hold only one commissioner position in a different insurance sector.

A director, excluding the president director, can hold only one commissioner position in a subsidiary.

A commissioner can hold another position as a commissioner, a director or a member of a sharia board only in a different insurance sector.

An independent commissioner is prohibited from holding a position as an independent commissioner in another insurance company (sharia and conventional) with a similar line of business.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

There are no specific regulations. The remuneration of directors is usually determined by the shareholders (unless delegated to the board of commissioners), the honoraria of the commissioners is determined by the shareholders, and the remuneration of senior management is determined by the board of directors.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

The main regulator is the Indonesian Financial Services Authority (OJK). The OJK regulates and supervises financial institutions, including insurance companies, and financial service activities in the banking, capital market, insurance and other financial services sectors. Insurtech will be supervised by the OJK.

Bank Indonesia (Indonesia's central bank) supervises the national payment system and exchange controls (including lending from offshore).

The Capital Investment Coordination Board (BKPM) supervises general foreign investment in Indonesia and to the extent that the OJK does not have jurisdiction, BKPM may have jurisdiction over insurtech depending on actual activities.

The Ministry of Communications and Informatics (MOCI) regulates and supervises telecommunications and media activities in Indonesia. The MOCI will have also a say on the technical aspects of insurtech, including the data protection regime and cybersecurity.

## What are the types of fintech/insurtech activities that are regulated?

In brief, there is no specific regulation for insurtech activities, which is a relatively new concept in Indonesia.

Although there are no specific fintech/insurtech regulations, the government is aware of technological developments and is now encouraging fintech/insurtech activities. Current laws and regulations impacting on fintech/insurtech activities include the following:

Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law) and its implementing regulation, Government Regulation No. 82 of 2012 on Implementation of Electronic Systems and Transactions (GR 82), which acknowledge electronic contracts such as e-policies. Under the EIT Law, an "electronic system operator" is defined as any person, state entity, business entity and community that provides, manages and/or operates an electronic system whether independently or collectively to an electronic system user for its own use and/or another party's use. Based on the above definitions (which are broad in nature), any person or entity that manages and operates electronic systems, and provides those systems to other parties, will be considered as an electronic system operator.

OJK Regulation No.1/POJK.07/2013 on Protection for Consumers of Financial Services Sector (POJK 1) and OJK Circular Letter No.13/SEOJK.07/2014 on Standard Agreements, which specifically acknowledges policies in electronic form

GR 82, which requires all Electronic System Operators for "public service" to have a data center and disaster recovery center onshore by October 2017

Bank Indonesia Regulation No. 9/15/PBI/2007 (BI Regulation 9/2007) requires the data centers and disaster recovery centers for banks to be located onshore

Bank Indonesia Circular Letter No. 16/11/DKSP, dated 22 July 2014 as amended by Bank Indonesia Circular Letter No. 18/21/DKSP dated 27 September 2016 on the Implementation of E-money Operations, regulates electronic money.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

Although there are no specific fintech/insurtech regulations, the government is aware of technological developments and is now encouraging fintech/insurtech activities and has acknowledged that a regulatory framework needs to be put in place.

## What are the licenses required and what are the criteria and process involved?

The licenses required will depend on the specific activities contemplated:

Insurance. In the absence of a specific regulation on insurtech, no specific license is required if an insurance company sells an e-policy.

Insurance broker. Am insurance broker business must obtain a business license from the OJK (whether services are offered through digital channels or not).

E-money. Licenses for e-money activities must be obtained from Bank Indonesia.

Licensing from Bank Indonesia is bureaucratic and the existing regulations were introduced some time ago and are convoluted. One of the requirements to become an e-money operator is that the applicant must be a limited liability company, whether it is a foreign investment company (majority or wholly owned) or a pure local company. In the licensing process, Bank Indonesia will review the submitted documents, verify the validity of information set out in them and conduct a site visit to see an applicant's readiness to become an e-money operator. During the review and verification process, Bank Indonesia may require an applicant to have a meeting with Bank Indonesia to elaborate on the e-money product that will be offered in Indonesia and other aspects relating to provision of the product. If Bank Indonesia is satisfied with what an applicant presents, Bank Indonesia will issue an e-money business license. Under the e-money  
regulations, there is no specific timeline for Bank Indonesia to issue an e-money business license.

Bank Indonesia has the authority to open, close and limit e-money licensing at its discretion, for example, for the purposes of maintaining national efficiency, provisions of public services and fair business competition.

Remittance business. Licenses for remittance activities must be obtained from Bank Indonesia.

Crowdfunding: Public crowdfunding activities require an effective statement from the OJK.

Intellectual property registrations. For completeness, if the fintech/insurtech innovation involves a patentable invention or if there are plans to register a trademark, investors need to register matters.

## Is the use of telematics and/or biometrics regulated?

There is no regulation regarding telematics and biometrics in Indonesia. The utilization of telematics and biometrics in Indonesia itself is still relatively rare.

In relation to personal data used in biometrics, under MOCI regulation the use, broadly defined, of any data analytic activities using customers' personal data must have received a specific consent from the data owner/customer.

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

Not for fintech/insurtech. at the moment (and this is relevant currently only for banks). Although there is no regulation that specifically regulates fintech/insurtech activities, the OJK appreciates that there may be a changing risk profile and proposed regulation will address the risk from fintech/insurtech innovation. However, regulation will be proportional to the risks associated with the relevant fintech/insurtech activities.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

There are no specific laws and regulations in the insurance sector prescribing rules on technology risk management. The existing regulations are more general in nature, old school and are principle-based regulations (rather than regulations that clearly set out relevant  
requirements). Given the absence of clear requirements, businesses need to be prudent, take security steps, do due diligence and ensure that internal control systems are properly implemented.

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

Indonesia does not have a regulation that deals specifically with big data. There are several regulations that govern the transfer of data or data storage:

**Transfer of data**  
Under Article 1 (27) of Regulation 82, private data means any individual data the validity of which is saved, maintained and kept, and the confidentiality of which is to be protected. As the EIT Law and Regulation 82 regulates electronic transactions, they only regulate data protection issues related to electronic transactions, and the term private data under the EIT Law is defined strictly as individual data that is saved, maintained or kept in the form of electronic data.

Under Article 15 of Regulation 82, the administrator of an Electronic System (Penyelenggara Sistem Elektronik) is obliged to:

maintain the confidentiality, unity and availability of private data

secure that the collection, use and utilization of private data is done upon the consent of the owner of private data, unless provided otherwise by applicable laws and regulations

secure that the use or disclosure of data is conducted with the consent of the owner of private data and in accordance with the purpose conveyed to him/her at the time of collection of the private data.

However, Regulation 82 and the EIT Law do not provide clear definitions of the terms "collection," "use" and "utilization" of private data. Therefore, the terms can be interpreted in a general manner.

The EIT Law and Regulation 82 do not clearly define "owner of private data." As a result, the definition of the owner of private data can be broadly interpreted (for example, an individual, Indonesian or foreign citizen, legal entities, etc.).

POJK 1 and Circular Letter No 14/SEOJK.07/2014 on Confidentiality and Security of Consumers' Private Information and/or Data provides that financial services companies that obtain personal data from third parties (including individuals and entities) and intend to use that data must obtain written statements from those third parties that those third parties have obtained written approval from their consumers consenting to the use of that data. Any transfer of consumers' data to any third party can be done only with prior written consent from the consumers, and when the financial services companies transfer these data to any third parties (based on the consumers' written consent), the financial services companies must ensure that the third parties receiving the data will only use the data for the agreed purpose. Circular 14 further provides that consumer personal information includes the following data: (i) for individual consumers:  
name, address, date of birth and age, telephone number and name of birth mother; and (ii) for corporate consumers: name of company, address, composition of directors and commissioners, including data of their identification documents such as passports, KTP or stay permits; and shareholders composition.

POJK 1 provides that consent from customers on the use of their data (including to transfer the data) must be obtained in writing.

**Data storage**  
GR 82 requires all electronic system operators for "public service" to have their data center and disaster recovery center onshore by October 2017. Under the EIT Law, an "electronic system operator" is defined as any person, state entity, business entity and community that provides, manages and/or operates an electronic system whether independently or collectively to an electronic system user for its own use and/or another party's use. Based on the above definitions (which are broad in nature), any person or entity that manages and operates electronic systems (such as websites, applications, email and messenger), and provides those systems to other parties, may be considered as an electronic system operator. Bank Indonesia BI Regulation 9/2007 specifically requires the data center and disaster recovery center for banks to be located onshore. BI Regulation 9/2007 stipulates that if a bank intends to have its data center and/or disaster recovery center offshore, it must first obtain a prior approval from Bank Indonesia and/or OJK and comply with certain requirements (as further explained below). BI Regulation 9/2007 also provides that banks may only engage an offshore third-party IT  
service provider with Bank Indonesia and/or OJK's prior approval.

Minister of Communication and Informatics Regulation No. 20 of 2016 on Personal Data Protection in Electronic System (Data Protection Regulation) requires any use, which is broadly defined, of personal data, through an electronic system, may only be done with the prior  
consent from the data owner. The consent must be in writing (meaning an express consent), whether manually or electronically, and in the Indonesian language (although there is no prohibition in using a dual language consent, so that format can be used, if preferred).  
Further, the consent is only effective if the electronic system operator has given an explanation on the specific intended use of the personal data.

The OJK issued a new regulation in December 2016 that requires, before October 2017, all insurance companies to localize their data centers and disaster recovery centers in Indonesia for the following customer data:

Data and information related to the personal data of the policyholder, the insured, or participants (name, address, date of birth, etc.)

Data and information relating to premium payments or claims

Data and information on the nationality (national ID number or passport details)

Data and information on the relevant legal entities (tax file number of participants, business license registration number, etc.)

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

No. However there is an express requirement to obtain written specific consent from customers before transferring data. Businesses need to consider the most practical way to obtain the written consent from customers. In practice, insurance companies include the consent  
in their standard insurance policy clause. Given the Data Protection Regulation (fully effective in December 2018), insurance companies must refine their consent language to conform with the Data Protection Regulation. Before the Data Protection Regulation was enacted, consent language could be very broad and general (for example, a blanket approval). Now consents must be very specific. For example, the customer must know and specifically consent to the actual use of that data (such as data analytics).

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

No. Indonesia does not have a cybersecurity law, although this is being considered. The government has enacted Presidential Regulation No. 53 of 2017 establishing a national cybersecurity agency. This agency will be a central agency for cyber protection in Indonesia  
with a focus on national security protection. The regulation is silent on whether this agency can directly assist the private sectors on cybersecurity issues, but the regulation mandates the agency to establish at least technical guides on the identification, detection, protection, monitoring and mitigation of cybersecurity issues. The technical guidelines could be used as guidelines by the private sector, for example, insurance companies.

## What innovations are insurance companies and/or regulators looking at implementing?

We are aware some insurance companies are selling online insurance products. However, the practices are only related to simple insurance products such as travel insurance protection with minor sum-insured values. In addition, most insurance companies are providing online accounts but more for the purpose of allowing customers to check their claims and their investment funds (for unit-linked products). This is primarily as regulation is still old school and requires, for example, that hard copies of insurance policies are provided to customers.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

We are not aware of any fintech/insurtech cases (noting that there are no law reports in Indonesia).

## What are the most immediate challenges to insurtech innovation?

Regulations – The government acknowledges that it is likely to be behind market developments in regulating fintech/insurtech activities. Consequently there is less clarity for businesses as to how matters may be regulated, and reliance on older regulations,  
which may not be as conducive to the fintech/insurtech sector (for example, written consent for data use and transfer). In November 2016, Bank Indonesia established a dedicated fintech office within its organization to assist fintech start-ups in risk assessment, licensing coordination and a regulatory sandbox. The effectiveness of this fintech office remains to be seen.

Technology – Local technology may not be sufficient to accommodate the development of fintech products.

Customers – Although internet utilization is becoming more common in Indonesia and Indonesians are more tech-savvy than before, customers may take time to accept fintech/insurtech. Currently most selling of financial products is personal in nature (for example, telemarketing and agents). Customers will need more assurance and more time to accept fintech/insurtech services.

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

The impact on financial services is just occurring (for example, mobile banking). There is a huge potential for online financial services in Indonesia, and with the appropriate products, education, security and regulation, fintech/insurtech will, no doubt, grow. Innovation developed offshore is likely to come onshore.

## What insurtech trends or disruptions may impact insurance companies?

In practice, distribution of products is personal in nature (for example, telemarketing and agents). If the regulations are not sufficient to give customers protection, the customers may stay with conventional products and distribution channels. The key issues are to ensure courts will accept digital evidence more readily and that regulation is updated so that e-policies can be issued and digitalization embraced. Innovation developed offshore is likely to come onshore. To the extent that customers embrace digitalization, this will allow small or start-up insurance companies to leapfrog and become major insurers without the existing expense incurred with using telemarketing and agents.

Insurance companies will seek to acquire or team up with non-insurance tech players such as new digital insurance start-ups or telematics-related companies in order to deliver new offerings, better price risk, extend the value chain and have greater overall efficiency. As a further example, insurance companies are also looking to mine data sets to identify underwriting opportunities for those who suffer chronic illnesses such as dementia and obesity. With big data, we also expect to see more insurers better adopt end-to-end analytics solutions that cross the entire insurance value chain. In doing so, they hope to gain an enriched, single client view and the ability to execute a targeted pipeline.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

Third-party intermediaries include insurance brokers and insurance agents. Insurance brokerage companies must obtain a business license from the Financial Services Authority (OJK). Insurance brokers must be registered with the OJK. Insurance agents must be certified and also registered with the OJK. In addition, the prevailing regulations provide that agency agreements must be reported.

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

No. It is not mandatory for insurers to offer customers the option to purchase insurance products directly from them without going through financial advisers or intermediaries.

## Do agreements between insurers and their agents need to take a certain form?

Yes. There should be written agreements between the insurers and their appointed agents. Agreements must include at a minimum (1) in-agency agreements on ethical principles set by the association in accordance with the business lines; (2) obligations on the insurance agents to comply with the ethical code set by the association, together with applicable sanctions for every violation by the insurance agents; and (3) time periods for the submission of premiums and contributions to the insurers. Agreements should be in the Indonesian language.

## Can insurers pay volume-based commission to their appointed agents?

There is no prohibition on paying sales-based commissions to appointed agents. However, there are limits under OJK Circular Letter No. 21/SEOJK.05/2015 (OJK Circular Letter 21) for (1) property insurance at a maximum 15% of the premium tariff or contribution, and (2) for motor vehicle insurance at a maximum 25% of the premium tariff or contribution.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. Generally, insurance companies are liable for mis-selling by the relevant insurance agents.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

No. There are no rules on the number of insurers that insurance brokers need to present to their customers. Banks, however, must offer at least three products if credit linked.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

Insurance brokers may receive fees from both insurers and customers, but the commission paid by insurers are subject to the limitations described in question 4.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

There is no restriction on this matter.

## Can insurers appoint offshore agents or accept business from offshore brokers?

Under Article 16 of Regulation No. 69/POJK.05/2016 on Business Implementation for Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies (OJK Regulation 69), insurance companies must appoint insurance agents registered with the OJK. Insurance companies, therefore, cannot appoint offshore agents. On the other hand, insurance companies may  
accept business from offshore brokers. Under Article 22 of OJK Regulation 69, insurance companies that accept business from offshore brokers must ensure that the brokers are licensed by offshore insurance regulators.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

Yes. Based on Articles 45 (1) and Article 47 (1) of Regulation 23/POJK.05/2015 on Insurance Product and Marketing of Insurance Products (OJK Regulation 23), insurance companies may market insurance products using long-distance communication media such as mail, telephone (telemarketing), internet, television, radio or short message services. OJK Regulation 23 provides that marketing materials for insurance products offered through remote selling must contain information on the identity of the insurance company, the offered insurance products, and also the terms and conditions of the insurance policy.

For investment-linked products, a face-to-face meeting must be held as a follow-up to the remote sale.

## Are there specific requirements on selling products through online channels?

Yes. Under OJK Regulation 23, insurance product marketing materials offered through remote selling (as defined in question 10) must contain information on the identity of the insurance company, offered insurance products, and the terms and conditions of the insurance policy.

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

Insurance companies can only share client information with insurance agents and brokers and vice versa if the customer has provided written consent to the use (defined broadly) and purpose of dealing with personal data.

Insurance companies must also ensure that third parties use data strictly for the purpose agreed by the third parties and the insurance companies.

Minister of Communication and Informatics (MOCI) Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems (Data Protection Regulation) regulates the following requirements for displaying, announcing, transmitting, disseminating and/or providing access:

a. The display, announcement, transmission, dissemination and/or accessibility of personal data are limited to the extent data is disclosed to and given consent by the data owners. Personal data used in these processes must be verified to ensure its accuracy.

b. Personal data used in these processes must be verified to ensure its accuracy.

c. Offshore data transfers may only be conducted after proper coordination with the MOCI (which involves reporting the plan and results of the transfer and seeking advocacy [though the later is unclear]). This process will need to be further clarified by the MOCI.

Access to personal data can be provided for law enforcement purposes based on a valid request from the law enforcement agency.

# Investing in Insurtech Start-ups

## Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

Indonesia does not have any specific regulations for insurers investing in start-ups (insurers can invest in unlisted securities); however, in general, the OJK expects and insurer investing in a start-up to provide a business justification for why it is inventing in a start-up, given the investment is funded from the insurer's investment accoung, which is sourced from premiums paid by the insurer's policyholders. There are no limitations or criteria on the type of start-ups that an insurer can invest in. The usual limitations on investments apply though (including meeting prudential requirements, amounts invested with any one party, none of which would likely be a concern for start-ups). If the insurer believes that the establishment of a subsidiary, or its shareholding in any company, could or would have a significant impact on the insurer's business (perhaps unlikely with a start-up), the insurer must submit a report to the Indonesian Financial Services Authority (OJK). If the start-up falls within the insurance criteria, then it must be licensed accordingly.

## What are the available options in terms of investments that an insurer can make in an insurtech start-up?

Subject to the investment limitations and the business justification test set out above:

An insurer can invest in a start-up through equity or equity securities.

An insurer cannot invest by granting of loans (e.g., convertible instruments) given an insurer is prohibited from granting a loan if it is not secured by a land mortgage (which a start-up typically does not have).

The above options are calculated toward the insurer's investment and risk-based capital calculation and funded by the company's investment account, which is sourced from premiums paid by the insurer's policyholders.

Alternatively, an insurer could grant a loan that is funded from the company's own fund (being the company's own profits, not being funded by the company's investment account and not being counted toward the company's risk-based capital calculation). This will subject to the business justification test as well. An internal assessment needs to be done as shareholders may prefer to extract such fund as dividends.

## What are the restrictions on investing in an onshore insurtech start-up?

Subject to meeting risk-based capital requirements, an insurer cannot invest more than 10% of its total investments with affiliated entities and not more than 20% of its total investments in an unaffiliated group. Foreign investment restrictions may also apply as to what percentage a foreign-owned insurer can hold in a start-up (depending on the activities of that start-up). The business justification test set out above applies as well.

## What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

Subject to meeting risk-based capital requirements, an insurer cannot invest more than 20% of its total investments offshore. The business justification test set out above applies as well.

## Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

Subject to the investment limitations and the business justification test set out above:

An insurer can invest in a start-up through equity or equity securities.

An insurer cannot invest by granting of loan (e.g., convertible instruments) given an insurer is prohibited from granting a loan if it is not secure by a land mortgage (which a start-up typically does not have).

The above options are calculated toward the insurer's investment and risk-based capital calculation and funded by the company's investment account, which is sourced from premiums paid by the insurer's policyholders.

Alternatively, an insurer could grant a loan to the start-up that is funded from the company's own fund (being the company's own profits, not being funded by the company's investment account and not being counted toward the company's risk-based capital calculation). This will be subject to the business justification test as well. An internal assessment needs to be done as shareholders may prefer to extract such fund as dividends.

## What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

Regulations do not stipulate what corporate approvals are required for investments. Any corporate approval requirements for the board of directors to conduct certain matters, including to invest, will be stipulated under the insurer's articles of association. The insurer's investment committee would need to approve the investment.

## Are there any general minority shareholder protection mechanisms in your jurisdiction?

The protection includes the right to do the following:

Ask for a shareholders' meeting.

Lodge a claim if there are allegations of negligence or mistakes.

Request an examination of the company by the district court if there are suspicions that the company or members of the boards of directors and/or commissioners have committed acts contrary to law that caused losses to the company or the shareholders or a third party.

Submit to the GMS a request for the dissolution of the company.

Otherwise, specific voting requirements are 66 2/3% to change the articles of association and 75% for matters such as winding up, bankruptcy, merger, consolidation or acquisitions, or securing or selling more than 50% of the company's net assets.

## Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

For expatriates, a work permit is required for a specific job in a specific company. For board members, there are limitations on the number of board positions that can be held (generally speaking, a director can only be a commissioner of an insurance company in another insurance business line or a commissioner in a subsidiary and a commissioner as a commissioner in one other company). Other employees are not so restricted.

## Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

There are no restrictions or regulatory approvals to enter into a service contract with the affiliated company. For private companies, there are no connected transaction requirements (although do note that directors/commissioners should declare any conflict of interest).

The insurer would need to get internal investment committee approval.

Note that all contracts entered by the insurer will be subject to OJK audit, so enquiries may be raised by the OJK on the basis of the business justification test set out above.

## Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

From an insurance regulatory perspective, there are no disclosure requirements for related-party transactions assuming the insurer is not a listed company.

## To what extent can the insurer provide operational support to the insurtech start-up?

As a general rule, an insurer must be a single-purpose entity and is prohibited from performing non-insurance related activities.What this means is that there could be enquiries from the OJK on whether the insurer has overstepped its permitted activities by providing support to the start-up company. Indonesia also has very strict rules on outsourcing (whether of work or sourcing of labor) and what is considered core and non-core activities is defined by industry associations, and if permitted, then agreements need to be registered with the Ministry of Manpower (the default being that employees could claim to be employees of the start-up company). Even then, regulators will require certain matters to be handled by the start-up depending on its activities.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

Please see our explanation in question 11 above. If permitted, all arrangements should be at an arm’s-length basis. Profit sharing of itself would not necessarily be restricted. Any revenues received by the insurer will also be subject to the business justification test. The insurer is also prohibited from receiving non-premium revenues that count to 25% or more of the insurer's annual gross written premiums.

## How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights are generally transferred through an assignment agreement. The start-up must also ensure that its employees assign the rights to the start-up (unlike other countries, employees retain rights to matters developed even during their employment unless otherwise agreed). If an intellectual property in question is a registered intellectual property, such as trademarks or patents, an assignment agreement must also be recorded with the competent registrar. Start-ups would be able to license intellectual property rights, although usually, royalties are payable.

From an insurance regulatory perspective in general, the business justification test will apply as well - as to why an insurer holds intellectual property rights of a non-insurance related technology. This can be addressed by stating that the acquired intellectual property rights supports the insurer's insurance business (e.g., enhancing the insurer's digital distribution capabilities).

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

Any use (very broadly defined, and includes collection, storage, transfer and disclosure) of personal data is subject to the data owner's prior written consent. Data privacy is an evolving area in Indonesia and specific advice should be sought.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

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

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

There is a maximum foreign ownership of 80%, calculated directly and indirectly. The maximum foreign ownership does not apply to listed insurance companies.

Law No. 40 of 2014 on Insurance (Insurance Law), which was enacted on 17 October 2014, provides that foreign individuals can only have shares in listed insurance companies.

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (a matter of law). Further, the operation of *takaful* insurance activities must be undertaken by a separate entity/business unit (i.e.,separate from the conventional insurance business).

The Insurance Law provides a 10-year transitional period for conventional insurance companies to divest or spin off their existing *syariah* units (or otherwise once *syariah* funds exceed more than 50% of all insurance funds held). All insurance companies that have *syariah* business must submit in 2020 their respective action plans to comply with the 10-year transitional period - the spin off must be completed by October 2024.

## Are there other conditions imposed by the regulator in doing an M&A transaction?

**Foreign investor’s criteria**

Foreign insurers must meet certain conditions, including:

Be either an insurance/reinsurance company that engages in the same line of insurance/reinsurance business as the target company, or a holding company with at least one subsidiary engaging in the same line of insurance/reinsurance business as the target company

Have a minimum of A rating or equivalent from an internationally recognized rating institution

Have equity of a minimum of five times its capital participation in the local insurance company

Must have had audited financial statements for the last two full years reflecting financial soundess

Submit, among other items, a cooperation agreement between the Indonesian party and the foreign party in Indonesia

A foreign shareholder (a), which holds shares in a listed insurance company, or (b), which holds shares in an Indonesian listed company that holds shares in a non-listed insurance company is not subject to the above requirements, provided that in scenario (a), the foreign shareholder is not the listed insurance company's controlling shareholder.

**Controlling shareholder's fit and proper test**

Shareholders that own 25% or more, or own less than 25% but control, (e.g., control being asserted through a strong shareholders' agreement) the insurance company ("Controlling Shareholder") must pass a controlling shareholder's fit and proper test by the OJK.

**Controller**

The Insurance Law defines a controller as a party that directly or indirectly has the ability to determine the management of an insurance company and/or to influence the action of the management of an insurance company.

An insurance/reinsurance company is required to identify at least one controller. The OJK can designate another controller based on its own assessment.

**Time period to complete a transaction**

Once approval is given by the OJK, the transaction must be completed generally within 60 days (as approvals require).

## Is dispensation given for fulfillment of these conditions and in what circumstances?

Generally no, except for the A rating requirement where the OJK is willing to give a dispensation on a case-by-case basis.

However, it is usually only in the case of a holding company that does not of itself have a rating, but other members of the foreign insurer group have an A rating or an equivalent from an internationally recognized rating institution (this is policy).

The OJK is firm about each of the other requirements for the foreign shareholder, even if this will be disruptive to a regional organization, as two full years of accounts may not be available for the holding company.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

Yes.

The Insurance Law prohibits a party from being a controlling shareholder in more than one life insurance company; more than one general insurance company; more than one reinsurance company; more than one *syariah* life insurance company; more than one *syariah* general insurance company; and more than one *syariah* reinsurance company.

The OJK may give a dispensation on a case-by-case basis in an acquisition scenario that there is a strong justification why a dispensation could be given (e.g., there is a robust compliance action plan to move to a single presence) and whether the transaction assists consolidation in the insurance sector.

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

**Share deal**

The approval of the OJK is required for a share deal, even if there is only one share transferred, and controlling shareholders must pass a fit and proper test as the insurance company's new controlling shareholder. This includes any acquisition involving a controlling stake in a listed insurance company.

Approval for the share acquisition itself is not required if a non-controlling stake is taken in a listed public company.

The process under the Company Law for a change in control of a company, including public announcements, waiting periods and settlement of creditor claims, and announcement to employees, would also apply. In addition, note that under the Labor Law, employees can demand to be terminated and paid out if there is "change in ownership."

**Asset deal**

The transfer of an insurance portfolio requires prior approval from OJK and announcements to the company's policyholders need to be made.

The transferee/purchaser of an insurance business must, prior to completion of the acquisition, be duly licensed as an insurer and must have the same line of business as the transferor (life to life, or general to general).

As it currently stands, the OJK is only issuing new licenses on a selective basis. In any event, the OJK will not issue an insurance license to an entity that is not incorporated in Indonesia.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

Much will depend on circumstances and how the OJK is approached. In many transactions, the OJK is briefed prior to an application being submitted and the transaction is outlined. OJK's approval (whether for a share transfer or a transfer of an insurance portfolio) can take up around eight to 12 weeks (including the fit and proper test, which can be processed in parallel), depending on circumstances (longer if the target company is under OJK monitoring or if the foreign acquirer is not known to the OJK).

No distinction is made between share and assets deals, but generally an asset deal takes longer as the OJK is concerned about how policy holders are dealt with and the OJK conducts an audit before it declares that an asset deal is complete to ensure that there are no outstanding liabilities/claims (particularly long-tail liabilities) left with the transferor.

## How open is the regulator to private equity participation in an insurer?

There is no statutory prohibition but generally, private equity players will not meet the foreign shareholder criteria set out above (unless they have made other insurance investments and use one of those entities).

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

There is no FHC concept for insurance companies.

The OJK has issued a draft regulation on FHC where it would formalize the concept of FHCs. Most of the draft provisions appear to follow an OJK regulation on Financial Conglomeration Good Corporate Governance Regulation, which regulates a financial services group and introduces the definition of Main Entity (being the parent financial services institution of a financial conglomerate or a financial services institution assigned as a main entity by the controlling shareholder of the financial conglomerate), which will be subject to OJK monitoring and a fit and proper test).

It remains to be seen how the final regulation would regulate FHCs and its impact on any FHC's insurance subsidiary.

## What are the typical modes of distribution for insurance companies?

Agency force, bancassurance, brokers, non-bank distribution channels and telemarketing

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution.

OJK insurance and OJK banking prior approvals are required before entering into a bancassurance arrangement.

The salient terms are:

The scope of partnership (exclusive, strategic partnership, etc.)

Remuneration (upfront fees, commissions, marketing allowances, etc.)

Term and renewal

Products (including overlap products)

The bank's distribution channels' growth

Claw-back or penalty

Termination of partnership

Business plan and sales targets

Mining of the bank's customer data and use of common customer data

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

Availability of quality target companies and valuation gap on pricing of deals

Quality of offered distribution channels (if the deal involves a strategic distribution partnership with the selling shareholder's group)

Approval from OJK

If the seller is a bank, regulatory approval

The 80% cap on foreign shareholding and identifying a local joint venture partner

**Asset deal**

Approval from OJK

Transfer of insurance portfolios

Transfer of employees

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

There is no specific data privacy regulator in Indonesia. Multiple government agencies are involved, depending on the applicable laws and regulations. While the Ministry of Communications and Informatics has overall responsibility for data privacy, the government authority for financial institutions, including insurance companies, is the Financial Services Authority (OJK).

## What is the main legislation on the protection of personal data privacy?

The main regulation is the Ministry of Communication Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems (Regulation 20), as are the provisions under Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law) and its implementing regulation, that is, Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions (GR 82).

For insurance companies the regulations issued by the OJK are OJK Circular Letter No 14/SEOJK.07/2014 on Confidentiality and Security of Consumers' Private Information and/or Data (Circular 14), OJK Regulation No 69/SEOJK.05/2016 on Business Implementation of  
Insurance Companies (Regulation 69) and the Financial Services Authority Regulation No. 1/Pojk.07/2013 on Protection for Financial Sector Consumers (Consumer Protection Regulation).

# Regulatory Landscape and Issues in Bancassurance

## 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.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## 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.).

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

No. The sale of insurance through online platforms is still subject to the Indonesian Financial Services Authority ("**OJK**") Regulation No. 23 of 2015 on Marketing of Insurance Products which still assumes that the sale of insurance will be performed on an offline basis. This regulation permits sale of insurance products through any means deemed appropriate by the insurer, except that any closing of the sale of investment-linked products to be accompanied with customers' wet signatures.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

Currently the sale of insurance through mobile applications as well as online sale is subject to OJK Regulation No. 23 of 2015 on Marketing of Insurance Products (see question 1). The sale must observe the requirements set out in the regulation, e.g., the insurer must ensure that customers are fully aware of the terms and benefits of the offered insurance products.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

Currently the sale of insurance through mobile applications as well as online sales are subject to OJK Regulation No. 23 of 2015 on Marketing of Insurance Products. The regulation provides several key regulatory requirements: (i) the insurer must ensure that customers are fully aware of the terms and benefits of the offered insurance products, (ii) the products sold through any distribution channels must be registered with, or approved by, the OJK, (iii) any closing of the sale of investment-linked products must be accompanied with customers' wet signatures, and (iv) the insurer will be liable fully for any mis-selling conducted by its distribution partners, brokers, or agents. Consequently these issues are not easily satisfied using an online distribution model, without extensive follow-up.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

There is no specific insurance regulation governing e-KYC at the moment. In practice, insurers would have to ensure that their e-KYC process meets all KYC requirements prescribed under OJK Regulation No. 12 of 2017 on Anti Money Laundering and Anti Terrorism Financing Programs in the Financial Services Sector including ensuring that the first level of customer due diligence will capture the information regarding customers (e.g., full identity, a confirmation of whether a customer acts on behalf another person or on behalf of himself/herself, registered address, nationality, source of funds, income profile, etc).

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

OJK Regulation No. 23 of 2015 on Marketing of Insurance Products recognizes the existence of e-policy, however (a) the e-signature must meet all requirements under the laws on electronic transactions, and (b) the e-policy concept is not feasible for investment-linked products at the moment given OJK Regulation No. 23 of 2015 on Marketing of Insurance Products still requires any closing of the sale of investment-linked products to be accompanied with customers' wet signatures.

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

No. Advertising of insurance products through online platforms is subject to the same regulation (OJK Regulation No. 23 of 2015 on Marketing of Insurance Products) and OJK Regulation No. 69 of 2016 on Business Implementation of Insurance Companies, as advertising through other means. As an example, OJK Regulation No. 69 of 2016 on Business Implementation of Insurance Companies requires the insurer to ensure that its advertising and marketing materials are not misleading, there is no mis-selling etc. Otherwise general regulations and codes of conduct on appropriate marketing and advertising apply.

## Are there any customer service requirements if the insurers sell their products online?

No. The customer service requirements for online sales are subject to the same regulation (i.e., OJK Regulation No. 69 of 2016 on Business Implementation of Insurance Companies), as customer service activities through other distribution channels. As an example, the regulation requires the insurer to (a) have a customer complaint mechanism on its website, (b) deliver the hard copy of the agreed/signed policy documents to the policyholder within 10 business days after the (first) premium is paid, and (c) provide a cooling off period to customers to cancel policies within 14 days after the customers' receipt of the policy documents.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There are no such obligations as yet. Any amendments to policies will be done through the means specified in the relevant policies. If a policy provides that any amendment to the policy can be done online this could be done, however (a) the insurers must ensure that the e-signature must meet all requirements under the laws on electronic transactions (currently not that easy), and (b) the insurer needs to be comfortable if the amendments, if done online, are reliable to address any potential disputes in the future (e.g., providing an assurance that the individual who signs the amendment electronically is the correct policy owner).

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

Not at the moment given there is no specific regulation on online sales, so insurers can perform online sales based on their current business license.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

Not at the moment given there is no specific regulation on online sales. Insurance intermediaries can perform online sales based on their current business license.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

No. There is no difference on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

It is still unclear from an Indonesian perspective given there is no specific regulation on online sales. However, if the online sales activity is benchmarked against the current regulation, i.e., OJK Regulation No. 23 of 2015 on Marketing of Insurance Products, the insurers would be deemed as offering or selling insurance products online (as one of their distribution channels) given the regulation assumes that insurance intermediaries act on behalf of the insurers as regards distribution activities from an insurers perspective (noting that insurance intermediaries can also act on behalf of customers). The same regulation also provides that  the insurers will be liable fully for any mis-selling conducted by their distribution partners, brokers, or agents.

©Copyright © 2024 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.