

INSIGHT

New Rules for Banks conducting Bancassurance Business in Cambodia



On 30 March 2021, the National Bank of Cambodia (the “NBC”) issued Prakas No. B7-021-105 on the Conditions for Bancassurance Business of Banks and Financial Institutions (the “Bancassurance Prakas”). This Insight sets out the main provisions of the Bancassurance Prakas and considers the impact that they have on banks and financial institutions in Cambodia and, more generally, the development of bancassurance business in Cambodia.

1. What is Bancassurance?

“Bancassurance” is a relatively new term coined in the 1980s to refer to the process by which an insurance company sells its insurance products on the premises of a bank. It is important to note that the term does not refer to a new type of insurance product and that banks are simply offering a platform for insurance companies to market and sell their existing insurance products. As such, this Insight is concerned with Bancassurance from the perspective of banks in Cambodia though some general remarks are made about the bancassurance business in the conclusion.

Of course, there will need to be an agreement between the bank and the insurance company regarding the terms of the co-operation. In addition to dealing with how the revenue is to be split between the bank and the insurance company (or how other benefits will accrue), the agreement will also need to set out the respective roles and responsibilities of the bank and the insurance company. Generally speaking, these roles and responsibilities may vary from the bank being a mere platform for the insurance company to market its own products at one end of the spectrum to the bank selling an insurance company’s products as its agent.

2. Why Banks and Insurance Companies engage in Bancassurance business

Bancassurance creates a win-win situation for both banks and the insurance companies. The main benefits that accrue to banks and insurance companies by engaging in bancassurance business are set out in the table below.

Bank	Insurance Company
<ul style="list-style-type: none"> Diversification of products 	<ul style="list-style-type: none"> Larger network to distribute its products
<ul style="list-style-type: none"> Increased fee-based revenue 	<ul style="list-style-type: none"> Establish market presence rapidly
<ul style="list-style-type: none"> Able to offer a “one-stop” service 	<ul style="list-style-type: none"> Less need to rely on agents
<ul style="list-style-type: none"> Increased customer loyalty 	

3. The Bancassurance Prakas

The Bancassurance Prakas is a relatively brief regulation and sets out provisions regarding:

- its application;
- eligibility of “Institutions” (defined below) to conduct bancassurance business;
- fees;
- operations;
- consumer protection;
- reporting to the NBC; and
- penalties.

Each of the above aspects is discussed below.

(a) Application

The Bancassurance Prakas applies only to banks and other financial institutions that fall under the supervision of the NBC (“Institutions”). While this is explicitly stated in Article 2 to be the case, it is important to note, as a preliminary matter, that:

- Institutions are prohibited by the Law on Banks and Financial Institutions (1999, the “LBFI”) from providing insurance services¹; and
- The supervisory authority for insurance companies is the Insurance Regulator of Cambodia established by the Non-Banking Financial Services Authority Law (2021).²

In light of the above, it is interesting to note that the objective of the Bancassurance Prakas is stated in Article 1 to be “enhancing financial inclusion by increasing access to insurance services by the public and strengthening consumer protection.”

With regards to increasing access to insurance services, this can be seen as an objective that can be achieved without overlapping the role of the IRC as Institutions may merely offer space to insurance companies to sell its products. However, with regards to the consumer protection provisions of the Bancassurance Prakas, it is possible that there may be some overlap between those provisions and any regulations issued by the IRC in the future. This is discussed further below.

(b) Eligibility

An Institution that “intends” to engage in bancassurance business, is required pursuant to Article 4 of the Bancassurance Prakas to:

- (i) obtain the approval of the NBC to do so in the form of a “no objection letter”;
- (ii) maintain good financial condition and strong corporate governance as rated by the NBC for at least the previous three consecutive years; and
- (iii) fully comply with prudential regulations of the NBC.

It is notable that items (ii) and (iii) above would appear to be the considerations that the NBC might likely take into account in determining whether or not to grant an approval to an Institution, which raises the question of whether their being listed separately from item (i) makes them ongoing requirements. Given that they apply to Institutions that “intend” to engage in bancassurance business, it is arguable that they are not intended to constitute ongoing obligations. In any event, Institutions are required to meet the requirements specified in these items pursuant to applicable banking laws.

In terms of the application made to the NBC, Article 5 of the Bancassurance Prakas requires that an application form³ be submitted together with the following documents:

- (i) a board resolution approving the conduct of bancassurance business which clearly identifies the selected model - referral model or corporate agency model;
- (ii) a feasibility study and risk assessments on business, including mitigation and conduct of bancassurance business operations in a prudent manner;
- (iii) a bancassurance business plan;
- (iv) a bancassurance agreement between the Institution and an insurance company;
- (v) a bancassurance policy, business management policy and internal procedures including customer complaint handling procedures and operational guidelines;
- (vi) audited annual report, solvency report and liquidity report of the insurance company; and
- (vii) any other information the NBC deem necessary.

With regards to item (i), this is the only operative provision of the Bancassurance Prakas relating to the form of cooperation between the Institution and the relevant insurance company. The two models referred to are defined in Article 3 of the Bancassurance Prakas as follows:

Corporate Agency Model – the Institution uses its own sales force to market and sell insurance products.

Referral Model – the Institution refers its customers to an insurance company without being involved in the sale of the insurance company’s products

With regards to the rest of the items a few general observations may be made:

¹ Article 3(1) of the LBFI.

² Previously, this role was fulfilled by the Insurance and Pensions Division of the Ministry of Economy and Finance.

³ It would appear that a form of the application is not yet available.

- As noted above, bancassurance is a process used for insurance companies to gain access to a wider customer base. The relevant bank or financial institution is typically no more than a platform from which the insurance company may conduct its business and those responsible for its management would not profess to possess expertise in insurance. While the approach of the NBC regarding the level and substance of information it requires remains to be seen, the completion of the documentation referred to in items (ii) and (iii) may require the investment of significant amounts of time and money by an insurance to provide its expert views to an Institution that it intends to cooperate with company (with no guarantee that doing so will lead to the Institution’s application being successful). This would appear particularly likely in the case of item (ii) as the feasibility of, and risks attached to, bancassurance business would not appear to be capable of being divorced from a consideration of the insurance market as a whole. It is also notable that the Institution is required to take no risk on claims made by customers which further militates against the idea that the general risks of the insurance market are relevant considerations.
- In addition to the time and cost that is involved in preparing application documents, item (iii) requires that the relevant bancassurance agreement be submitted to the NBC. This is not an unusual requirement and such a bancassurance agreement can be entered into subject to the condition precedent that the NBC issues a no-objection letter. However, what is not clear is whether the Institution needs to submit *all* of the bancassurance agreements it intends to enter into (including in the future) at the time of applying for a no-objection letter. This is due to the fact that the Bancassurance Prakas provides that an Institution may enter into bancassurance agreements with up to three insurance companies (discussed further below) but is silent on the issue of whether approval of the NBC is required where such agreements are entered into after obtaining the initial no-objection letter.
- With regards to the customer complaint “handling procedures” referred to in item (v), it is suggested that the only appropriate handling mechanism would be to refer to the customer to the insurance company for further action as the Institution is not in a position to discuss the terms of an insurance policy between the insurance company and the customer.
- It is unclear why the Institution should be required to provide (or an insurance company would be comfortable to release) audited annual, solvency and liquidity reports to the NBC. Further, it should be noted that:
 - as discussed above, the Institution is required to take no risk on claims made by customers thus ensuring that the Institution’s financial condition is not affected by claims being made on the insurance company or issues with the insurance company’s financial condition;
 - the appropriateness of an insurance company to conduct insurance business would appear to be an assessment that might be more appropriately (and is) made by the IRC; and
 - in the context of the solvency and liquidity reports, insurance companies are required under Article 49 of the Insurance Law (2014) to provide only audited annual reports to the Ministry of Economy and Finance. The Bancassurance Prakas is silent with regards to the contents of the solvency and liquidity reports and the negotiation of the same is likely to involve the investment of significant time and costs for both the Institution and the insurance company.

With regards to the bancassurance agreement itself, Article 6 of the Bancassurance Prakas provides that it must:

- (i) Impose reciprocal obligations on the Institution and the insurance company especially with regards to training;
- (ii) Provide for the provision of customer information and arrangements for the collection and payment of insurance premiums;
- (iii) Provide details of remuneration/commission (including rate and structure);
- (iv) Claims handling and customer complaint procedures; and
- (v) Contain a statement of non-linkage between the banking business of the Institution and the insurance business of the insurance company.

With regards to item (i), it is not clear what would constitute a “reciprocal” obligation. It is unlikely that it is intended to require an Institution to train an insurance company’s staff in banking business. Further, an Institution will not have the expertise to train staff with regards to insurance products. However, it is of course possible for the Institution to train staff with regards to the procedures to be adopted in conducting the bancassurance business.

With regards to the handling of complaints, this has been discussed above. The consumer protection aspects are discussed further in paragraph (e) below.

Pursuant to Article 7 of the Bancassurance Prakas, the NBC is required to issue its decision on whether to grant its approval within three months of receiving the completed application. Such approval will be valid for a period of three years and an application for renewal must be submitted no later than three months prior to the end of such three-year period.

(c) Fees

Pursuant to Article 8 of the Bancassurance Prakas, annual fees are payable to the NBC by an Institution only if it acts as a corporate agent (as compared to a mere referrer).⁴ Interestingly, while most banking laws in Cambodia require the payment of an “application fee”, the Bancassurance Prakas does not do so. As such, an Institution that applies the referral model would not appear to be required to pay a fee to the NBC regardless of whether its application is successful or not.

The annual fees payable are:

- in respect of the Institution’s headquarters – KHR4,000,000 (approximately US\$1,000); and
- in respect of “each branch” of the Institution – KHR2,000,000 (approximately US\$500).

It is not clear whether the reference to “each branch” is intended to mean each branch of the Institution or whether it is intended to cover only those branches which engage in bancassurance business. Given that some Institutions that currently provide bancassurance services have hundreds of branches, clarification from the NBC on this point may provide those Institutions with an option to limit the number of branches that provide the bancassurance services to reduce its costs (which it will likely seek to share with the relevant insurance company).

Fees are required to be paid annually before 15 January of the relevant year and are pro-rated to reflect the relevant number of quarters that it covers such that the percentage payable will be.

- 100% in respect of Quarter 1;
- 75% in respect of Quarter 2;
- 50% in respect of Quarter 3; and
- 25% in respect of Quarter 4.

Given that quarters are specified they would seem to refer to particular periods (i.e. January to March, April to June, July to September and October to December). It is not clear what fee would be payable by Institutions in respect of the year in which they need to renew. For example, an Institution that received a no-objection letter on 30 April 2021 would need to submit an application for renewal on or before 30 January 2024 and would learn of its fate (which could be a rejection of the application) on or before 30 April 2024. However, it would appear that on or before 14 January 2024, it will need to pay 100% of the annual fee in respect of 2024. The Bancassurance Prakas does not contain any provision for the reimbursement of a part of the annual fee so paid or to account for differences in the dates on which no-objection letters are issued to applicants. As these fees may be quite substantial, some clarification on this issue would be helpful.

(d) Operations

Article 9 of the Bancassurance Prakas sets out the operational requirements for conducting bancassurance business as follows:

- (i) staff are well-trained and capable of explaining clearly the key attributes of the insurance products to consumers;
- (ii) consumers shall not be coerced or persuaded to buy any insurance products;
- (iii) premium is not directly debited from the consumer’s bank account without prior consent or written agreement from the customer;
- (iv) the Institution shall clearly inform the consumer that the Institution does not underwrite the risk or act as an insurer. The insurance product and payment of claims shall wholly be the insurer's responsibility; and
- (v) the Institution shall implement a separate complaint resolution and consumer protection mechanism;
- (vi) In the case of Institutions implementing the Corporate Agency Model only:

⁴ These terms are discussed below.

- (a) Designate a qualified officer and adequate staff to handle all operations and deal with all issues arising from the bancassurance business;
- (b) Implement a separate system and “Chinese wall” for its bancassurance business; and
- (c) inform customers about the premium payable.

The requirements regarding customer complaints have been covered above and the consumer protection requirements are set out below.

(e) Consumer Protection

The consumer protection provisions are set out in Article 10 of the Bancassurance Prakas and provide that the Institution must ensure that:

- (i) it does prevent a consumer from using another Bancassurance agent or from dealing with an insurance company directly;
- (ii) it does not commit any misrepresentation or make any misleading statements to consumers regarding the benefits available under the relevant insurance policy;
- (iii) all data and information regarding the consumers are kept confidential;
- (iv) it does not impose any arbitrary charges or terms other than those imposed by the insurance company;
- (v) it does not use any mark or logo that could lead consumers to believe that the Institution and the insurance company are the same entity.

There is nothing that appears controversial regarding the above, although as discussed above, consumer protection measures may be implemented by the IRC (which may be in conjunction with the NBC).

However, of more interest is the provision regarding data privacy referred to item (iii) above. There are several provisions of law regarding data privacy, notably Article 47 of the LBFI, that apply to an Institution and/or its staff. Bancassurance, by its nature, involves the sharing of information between the bank and the insurance company. Without any form of exemption from the various provisions of Cambodian law regarding data privacy, it is questionable how this sharing of information could occur.

(f) Reporting Obligations

Pursuant to Article 11 of the Bancassurance Prakas, an Institution that conducts bancassurance business is required to submit quarterly reports on or before the 15th day of the first month of each quarter. Notably, such reports are required to contain a “financial report, solvency report and liquidity report” of the insurance company. The Bancassurance Prakas is silent regarding the contents of such reports. Further, as noted above, insurance companies are required under Article 49 of the Insurance Law to provide only audited annual reports to the Ministry of Economy and Finance. As they will need to provide the Institution with information that they may not have previously compiled, this requirement may further add to the time and financial costs for the Institution and the insurance company.

In addition to Article 11, Article 12 requires the Institution to inform the NBC immediately if there is any renewal, amendment or termination of a bancassurance agreement to which it is a party.

(g) Penalties

Article 13 of the Bancassurance Prakas provides that an Institution that does not comply with a provision thereof may be penalized in accordance with Articles 52 and 55 of the LBFI.

Article 52 of the LBFI provides a wide range of measures which include:

- caution;
- reprimand;
- prohibition/restriction on conducting certain types of business;
- suspension/termination of executives;
- provisional administration;
- revocation of banking license; and/or
- imposition of a fine not to exceed the minimum capital of the Institution.

It is notable that with regards to fines, the Bancassurance Prakas goes on in Article 14 to provide that the NBC may impose additional fines of:

- KHR1,000,000 (approximately US\$250) per day on Institutions that fail to comply with Article 11 (which deals with reporting obligations); and
- KHR3,000,000 (approximately US\$750) per day on an Institution for any breach of the Bancassurance Prakas “from the date on which the NBC required the Institution to take corrective action”.

As the Bancassurance Prakas is subordinate to the LBFI, the requirement in Article 52 of the LBFI that any fine not exceed the minimum capital of the Institution will continue to apply.

Finally, Article 55 of the LBFI provides a wide range of circumstances in which the NBC may impose additional penalties on an Institution. Of those situations, the relevant ones appear to be the circumstances specified in Article 55(3) which provides that a person who does not provide information to the NBC when requested, provides false information to the NBC, or hinders an investigation by the NBC, may be imprisoned for a term of between one to five years and/or be fined an amount of between HHR\$1,000,000 (approximately US\$250) to KHR10,000,000 (approximately US\$2,500).

4. Conclusions

The development of the insurance sector in Cambodia has been relatively slow. In the past five years, bancassurance has been enthusiastically discussed as a means for spurring that growth on. That enthusiasm is indeed justifiable. Insurance companies can access a much wider customer base through the banks and the associated digital technology that they employ.

It remains to be seen what the impact of the Bancassurance Prakas will be on bancassurance business in Cambodia. However, when one bears in mind that bancassurance involves two entities from different sectors - each controlled by a separate regulator - the potential for over-regulation arises and the additional investment of time and money in complying with such regulations may outweigh the benefits of engaging in bancassurance business for both the bank and the insurance company. In this regard, it is fair to say that the applicable laws relating to insurance companies and the distribution of its products are not completely adaptable to bancassurance business.

It is undeniable that facilitating the conduct of bancassurance business will assist in the aim of increasing financial inclusiveness stated in Article 1 of the Bancassurance Prakas and it is hoped that this aim will be achieved through more consultation between the relevant supervisory authorities and the market participants.

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