

New OJK Circular on the Distribution of Insurance Products

Speedread

The OJK has provided greater clarity on the regulatory requirements for the marketing and sale of insurance products and their distribution through the use of digital platforms. Spurred by recent trends in non-bank and digital insurance distribution, the OJK has sought to address the question of how to regulate these activities. Key changes include: (i) insurers and their distribution partners register as electronic system operators and (ii) insurers obtain prior OJK approval to enter into digital distribution partnerships with non-bank entities.

New Guidelines on the Marketing of Insurance Products

On 2 October 2020, the Indonesian Financial Services Authority (**Otoritas Jasa Keuangan – OJK**) issued Circular Letter No. 19/SEOJK.05/2020 on the Distribution Channel of Insurance Products (the **Circular Letter**), which provides detailed guidelines for insurance companies, and counterparties, with respect to the marketing and distribution of insurance products.

Set out below are some of the key takeaways from the Circular Letter:

1. Active marketing activities are subject to licensing and registration with the OJK: Any business entity which employs insurance agents and actively markets insurance products for an insurance company must be registered with the OJK as a corporate insurance agency – such entity is prohibited from entering into a partnership with a second insurance company that has similar lines of business to the insurance company with which it has a partnership. On the other hand, any business entity which actively markets insurance products from two or more insurance companies which have similar lines of business must be licensed as an insurance broker company. The Circular Letter clarifies that “active” marketing constitutes any sales or marketing activities that are not within the scope of the referral model for distribution (as noted in paragraph 3 below).

2. The OJK’s prior approval is required for the entry into distribution partnerships with non-bank business entities involving electronic systems:

The Circular Letter requires insurance companies to obtain the OJK’s approval prior to entering into a distribution partnership to market insurance products with: (i) banks, by way of a **bancassurance** arrangement; (ii) branchless bank agents; and/or (iii) nonbank business entities, where the distribution is to be carried out electronically (meaning, among other things, distribution through websites, social media, digital applications, emails and/or short message services). A distribution partnership with: (i) insurance agents; or (ii) non-bank business entities where the distribution is not carried out by electronic means (ie at physical offices) is not subject to the OJK’s approval. Insurance companies, however, remain obliged to include any plan to enter into new distribution partnerships in its any business plans they submitted to the OJK.

3. A distribution partnership with a non-bank business entity may only be undertaken by way of a referral model:

The Circular Letter now clarifies that distribution of insurance products through nonbank entities may only be undertaken by way of a referral model. This means that non-bank entities may not conduct direct sales of insurance products through a direct or integrated model. Under a referral model, a non-bank business entity’s activities are limited to delivering or providing marketing kits and/or a summary of product information as provided or approved by the insurance company. A nonbank distribution partner is prohibited from providing

any explanation regarding the terms and benefits of the insurance products and may not assist in the underwriting process, premium payment or claim process. Furthermore, when referring an insurance product to a prospective customer, the nonbank distribution partner is required to:

- inform prospective policyholders that the products referred by the non-bank distribution partner are the insurance companies' products;
- forward any questions or complaints received regarding the products to the insurance company partner;
- if it is using an 'electronic system' to market the insurance products, provide a link in its electronic system that directs the applicants to the insurance company's electronic system for further information and/or insurance underwriting; and
- offer insurance products issued by at least two different insurance companies if the purchase of an insurance product is a condition to the customer purchasing another particular product offered by it. In this case, the distribution agreement entered into by the insurance company and the non-bank business entity may not contain an exclusivity provision or other restrictive covenant that prohibits the non-bank business entity from entering into a distribution partnership with another insurance company and vice versa.

The Circular Letter provides examples of distribution partnerships between an insurance company and a non-bank business entity being: (i) a partnership between an insurance company and a multi-finance company to market life insurance products to the multi-finance company's customers; (ii) a partnership between an insurance company and an airline service provider or an airline ticket seller to market travel insurance products; (iii) a partnership between an insurance company and an e-commerce platform to market goods delivery insurance products; and (iv) a partnership between an insurance company and an insurance aggregator.

4. Non-bank business entities must meet certain requirements set out by the OJK to act as distribution partners to an insurance company: Non-bank business entities must meet certain requirements, among others, as follows:

- **Licences** – Although the Circular Letter does not require non-bank business entities to obtain certain licences from the OJK in order to act as distribution partners to an insurance company by way of a referral model, they must be licensed to carry out their business activities by the relevant government authority supervising the activities of the relevant non-bank business entities;
- **Business activities** – The articles of association of the non-bank business entities must provide that they are allowed to carry out fee-based income activities or trading services;

– Dedicated team for insurance distribution –

The non-bank business entities must have a dedicated function within their organisations responsible for the management and evaluation of distribution activities; and

- **Facilities and infrastructures** – The non-bank business entity must have adequate facilities and infrastructure to support the distribution activities (although the Circular Letter does not specify what facilities and infrastructures are required, or deemed adequate, for this purpose).

5. Marketing insurance products through websites and/or digital applications: Insurance companies, insurance agents, banks and non-bank business entities which market insurance products through their own websites, a third party's website and/or digital applications must comply, or ensure that the third party complies, with the following requirements:

- They must be registered as an electronic system operator at the Ministry of Communication and Informatics (the **MOCI**). The registration with the MOCI must be done within six months of 2 October 2020 or within the timeline set out by the MOCI regulations, whichever is earlier;
- They must have in place and implement information technology risk management policies, standards and procedures;
- They must comply with all requirements set out by the OJK and other relevant authorities with respect to electronic system operations; and
- If their electronic systems are able to process insurance applications, insurance closures and/or payment of premiums, they must have a service centre operating 24/7 to handle complaints and questions.

6. Risk management policies and procedures:

Insurance companies must have in place and implement appropriate policies and procedures to address risk management in each of their distribution channels. These include, among others:

- **Data confidentiality** – The insurance companies and the distribution partners must ensure the confidentiality of customers' personal data, transaction data and financial data. The acquisition, the utilisation and/or disclosure of personal data, transaction data and financial data by insurance companies and/or distribution partners as a result of their marketing activities must be subject to the data owner's consent.
- **Insurer diligence** – The insurance companies must have and implement selection standards and accountability when choosing their distribution partners. The aim is to ensure that the distribution partners possess the required licences, have a good reputation and have in place internal control with respect to anti-churning, anti-pooling and anti-twisting. The insurance companies must also continuously supervise and

evaluate the marketing activities undertaken by their distribution partners. The OJK will require the insurance companies to submit any documents evidencing that they have undertaken the relevant diligence and assessment on their distribution partner candidates when they apply for the OJK approval.

Under the Circular Letter, the OJK is entitled to instruct insurance companies to terminate the partnership with their distribution partners if the marketing activities: (i) are not in line with the provisions agreed in the distribution agreements; (ii) are not in compliance with laws and regulations; (iii) have an adverse impact on the financial soundness and/or reputation of the insurance companies; and (iv) have an adverse impact on the policy holders, insured parties and/or beneficiaries of the marketed insurance products.

7. Requirements on the content of distribution agreements: Any distribution agreement concerning the marketing of insurance products must be in writing and in the Indonesian language, and, if it is bilingual, the Indonesian language should be the prevailing language of the agreement.

The Circular Letter provides mandatory provisions which must be included in a distribution agreement entered into with an agent and a non-bank business entity, including: (i) the specification of the insurance products to be distributed; (ii) a statement that the insurance company is responsible for any decisions with respect to the insurance underwriting and claims; (iii) the commission rates payable to the distribution partners; (iv) insurance closures, premium and claim payments procedures; and (v) the rights and obligations of the parties including with respect to data confidentiality, complaints handling and the implementation of the prevention of terrorism and anti-money laundering policies.

Please note that, specifically for **bancassurance** agreements, the minimum requirements set out in Circular Letter No. 32/SEOJK.05/2016 dated 1 September 2016 on Insurance Product Distribution Channel through Cooperation with Banks (**Bancassurance**) (the **OJK Circular Letter 32/2016**) remain applicable.

8. The obligation to report and/or submit the distribution and/or cooperation agreements to the OJK:

- The Circular Letter requires insurance companies to submit any draft cooperation agreement to be entered into with non-bank entities involving the use of electronic systems to the OJK concurrently with their application to obtain OJK approval for the distribution arrangement.
- As set out in OJK Circular Letter 32/2016, the draft **bancassurance** cooperation agreements must be submitted to the OJK for pre-approval. The New Circular Letter does not change this requirement and/or the current practice under which the insurers normally submit the individual product distribution agreements for OJK pre-approval alone without the master bancassurance agreements.

Please note that the Circular Letter does not specifically regulate the reporting and/or the submission of agency agreements to the OJK. Nonetheless, under OJK Regulation No. 69/POJK.05.2016 regarding Business Operations of Insurance Companies, Sharia Insurance, Reinsurance Companies and Sharia Reinsurance Companies, the cooperation agreements entered into between an insurance company and a corporate insurance agency must be reported to the OJK.

9. Application to existing distribution arrangements:

Insurance companies which have entered into distribution agreements prior to the issuance of the Circular Letter may continue to carry out such distribution arrangements without reference to the changes required by the Circular Letter. However, such insurance companies have one year from the issuance of the Circular Letter (ie until 2 October 2021) to modify their marketing activities or distribution arrangements to satisfy the requirements under the Circular Letter.



James Mythen
Partner – ASEAN – Singapore
Tel +65 6671 6077
james.mythen@allenoverly.com



Sugianto Osman
Partner – Jakarta
Tel +62 21 2995 1728
sugianto.osman@allenoverly.com



Widya Fricilia
Associate – Jakarta
Tel +62 21 2995 1726
widya.fricilia@allenoverly.com



Anthony Christianto
Associate – Jakarta
Tel +62 21 29951795
anthony.christianto@allenoverly.com