

Abstract

Broker business has increasingly grown especially the bancassurance of which market share in this broker business is getting higher. Since the regulatory measure on insurance broker in Thailand is unclear and cannot efficiently enforce, there are problems from the practice of every type of brokers, natural person, juristic person and commercial bank.

From the study on foreign laws concerning regulatory measure on insurance broker, it finds that the law in England issued a clear detailed measure governing insurance broker. Moreover, the said measure can enforce in order to compensate for damage arisen from breach of insurance's duty. For instance, it prescribes professional indemnity insurance, sets up a fund with a specified minimum amount. In case of damage, the court can order a payment from the said insurance broker fund. However, England does not have any specific measure on bancassurance.

The United States provides a measure governing insurance broker as a model law for each state to comply. Moreover, it passed law to regulate bancassurance; therefore, the commercial banks can run an insurance broker business. It also issues a measure on duties of commercial banks as an insurance broker in full details. There is an establishment of the complaint committee for customers of the bank to submit a claim from a performance of a bank as an insurance broker.

Even though Thailand has a law mentioning regulations and details of a performance of general insurance brokers and of a performance of bancassurances, this law cannot solve problems from insurance brokers' performance, particularly the bancassurances' performance as expected. As a result, it may affect confidence on insurance business as well as impact on the development of insurance business subsequently. Additionally, in practice allowing commercial banks to be a bancassurance is like crossed broader transaction from commercial banking. However, there is neither a policy to regulate nor cooperation on regulation between the Bank of

Thailand (BOT) and the Office of Insurance Commission (OIC), responsible for monitoring commercial bank operating as insurance broker.

Hence, this author opines that it should pass measures to protect right of an insured and people who are injured by a performance of a general insurance broker and a bancassurance as follows.

1. Regarding measure on term and condition of insurance broker, this author renders an opinion that it should amend the Non-life Insurance Act and the Life Insurance Act of Thailand on the issue regarding controlling broker which is a juristic person. In order to make the Acts more unambiguous, preliminary criteria and qualification of broker, a juristic person, should be mentioned in both Acts.

2. There should be the following measures on protection the benefits of an insured or consumer.

2.1 Measure to mitigate damage from a performance of insurance broker should have an objective to establish a fund of insurance brokers. It may impose that the insured or injured person from the breach of the insurance broker will have priority in the amount of such fund other than other creditors. Besides, the court should be able to directly order compensation from the fund of insurance brokers. It should also oblige insurance broker to have professional indemnity insurance for his/her negligence so as to protect the insured from insurance broker's service.

2.2 Measure to advise or manage the insured to enter into the insurance contract should mention that the insurance broker has to advise or manage at least 2 insures for the insured to enter into the insurance contract. Therefore, the insured is entitle to select the suitable insure for himself/herself. The bancassurance may be excluded from this provision if it is an invitation to the customer of the bank to enter into an insurance contract, not an insurance policy, which is offered together with the financial service of the bank.

Furthermore, the detailed measure concerning invitation method to the customer of the bank to enter into an insurance contract should be elaborated clearer details. Such measure should be issued as a notification of the BOT and a notification of

the OIC so as to fill in a loophole on monitoring the bancassurance. An authority to receive a complaint from incorrect practice of commercial banks should be set up in order to protect people as well as to build confidence on the insurance broker business.

3. Measure to enhance legal enforceability, save for criminal penalty, should include an administrative punishment; hence, the process is faster. At present, a judgment which is taken long time cannot solve a problem immediately. In other words, it should introduce more administrative punishments so as to enforce and specify an appropriate punishment on a case by case basis.

4. In relation to measure on unfair operation between an insurance broker, a juristic person and a bancassurance, it should indicate that an insurance broker, a juristic person, can be both non-life and life insurance broker because at present, it has to divide into two companies. This measure will lead to the equal fairness as in the monitoring of the bancassurance.

5. Referring to measure to develop the supervision of insurance broker of Thailand, there should be a self-regulatory among insurance brokers in order to level up the knowledge and skill of insurance brokers to be close to the ones of foreign insurance brokers, who are considered as the actual insurance brokers.