

ENHANCING STATE MANAGEMENT OF INSURANCE AGENCY ACTIVITIES OF COMMERCIAL BANKS

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Abstract: *Under current legal regulations, insurance agency activities are permitted for Vietnamese commercial banks. These activities not only diversify business operations to mitigate risks but also significantly contribute to increasing banks' income, particularly during the COVID-19 pandemic, which led to a decline in income from credit operations. To facilitate this, the legal system and the inspection and supervision work of state management agencies have been continuously improved. However, issues such as dishonest consultation and coercing customers into buying insurance, which have arisen recently from the insurance agency activities of Vietnamese commercial banks, reveal gaps in state management efforts. This reality necessitates further enhancement of state management for these activities to increase profit opportunities for commercial banks while maintaining risk control and operational safety.*

• Keywords: state management; commercial banks; insurance agency; legal regulations; inspection and supervision.

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1. Current state of state management for insurance agency activities of commercial banks

From a legal perspective, besides investing capital, purchasing shares to establish or acquire subsidiaries and affiliates, or contributing capital and purchasing shares of businesses in the insurance sector, Vietnamese commercial banks are also allowed to “delegate, receive delegation, and act as agents in areas related to banking, insurance business, and asset management as stipulated by the State Bank” (Article 106, Delegation and Agency Transactions - Law on Credit Institutions No. 47/2010/QH12).

On July 2, 2014, the Ministry of Finance (MOF) and the State Bank of Vietnam issued Joint Circular No. 86/2014/TTLT-BTC-NHNN, which regulates the content of insurance agency activities of credit institutions and foreign bank branches for life insurance enterprises, conditions for conducting these activities, rights and obligations of credit institutions and foreign bank branches, and the responsibilities of life insurance enterprises in training employees of credit institutions and foreign bank branches to perform insurance agency activities.

On December 31, 2019, the State Bank issued Circular No. 37/2019/TT-NHNN of the State Bank of Vietnam, guiding the insurance agency activities of credit institutions and foreign bank branches for insurance enterprises. According to Article 4 of Circular 37/2019/TT-NHNN, the insurance agency activities of commercial banks for insurance enterprises include the following:

- Introducing customers.
- Selling insurance.
- Arranging insurance contracts.
- Collecting insurance fees.

- Handling claims and payouts in case of insurance events.

- Other related activities.

Additionally, Article 6 of Circular 37/2019/TT-NHNN outlines the rights and obligations of credit institutions in insurance agency activities:

1. Credit institutions have the rights of insurance agents as stipulated by insurance business laws.

2. Credit institutions have the obligations of insurance agents as stipulated by insurance business laws and the following specific obligations:

a) Explain to customers that insurance products distributed through credit institutions are not products of the credit institution.

b) Manage and store lists of employees within the credit institution directly involved in insurance agency activities for insurance enterprises as per the agreements in the insurance agency contract.

c) Provide complete and accurate information to insurance enterprises about collected insurance fees, paid insurance benefits, and other payments as agreed in the insurance agency contract.

d) Fully transfer collected insurance fees to insurance enterprises after deducting agency commissions, paid insurance benefits, and other payments as agreed in the insurance agency contract.

đ) Provide complete and accurate information and reconcile necessary customer data that the credit institution is obligated to collect as stipulated in Article 7 of this Circular.

Alongside establishing subsidiaries to engage in insurance business activities, the distribution of insurance products through banks has developed rapidly,

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contributing significantly to the total revenue of Vietnam's insurance market.

Undeniably, the role of commercial banks as insurance agents has significantly increased the revenue of insurance companies during 2020-2022 and provided substantial fee income contributing to the overall profit of commercial banks. However, the rapid growth of bancassurance has led to challenges in managing and supervising the quality of insurance sales through banks. These issues contributed to the decline in the life insurance industry's performance in 2023, with profits from bancassurance fees for banks also experiencing a sharp decrease from 2023 onward.

To address this situation, under the decisive direction of the government, the Ministry of Finance has promptly improved mechanisms and policies and intensified inspection and supervision efforts. The Law on Insurance Business No. 08/2022/QH15 added several provisions to enhance the quality of insurance distribution through banks and included conditions for organizational agents (Article 125).

To clarify the provisions of the Law on Insurance Business and its guiding decree, on November 2, 2023, the Ministry of Finance issued Circular No. 67/2023/TT-BTC, *guiding certain provisions of the Law on Insurance Business and Decree No. 46/2023/ND-CP dated July 1, 2023, which provides detailed regulations on the implementation of certain articles of the Law on Insurance Business*. This circular added several provisions to further enhance enterprises' responsibilities in monitoring and controlling the quality of bancassurance activities.

A notable regulation states: "Credit institutions must not advise, introduce, sell, or arrange the conclusion of investment-linked insurance contracts for customers within 60 days before and 60 days after the full disbursement of loans."

Particularly, Clause 5, Article 15 of the Law on Credit Institutions No. 32/2024/QH15.

In addition to regulations on the conditions and scope of insurance agency activities, legal provisions also clearly define the inspection and supervision functions of state management agencies. Article 9 (*Responsibilities of the Banking Inspection and Supervision Agency and the State Bank's Branches in Provinces and Centrally Run Cities*) of Circular No. 37/2019/TT-NHNN.

Under the provisions of the Law on Insurance Business 2022, the Ministry of Finance - represented by the Insurance Supervisory and Administration Department - is only authorized to oversee the agency activities of banks through insurance companies in cases where banks sign agency contracts with insurance companies, and the scope is limited to insurance agency activities at those banks.

Thus, under these regulations, the State Bank of Vietnam (*Banking Inspection and Supervision Agency*) and the Ministry of Finance (*Insurance Supervisory and Administration Department*) have the functions of inspecting, auditing, and supervising the insurance

agency activities of credit institutions. These tasks may be performed independently or in coordination with other functional agencies to enhance effectiveness.

After the robust development of life insurance and bancassurance channels, numerous issues have arisen, affecting customer trust in life insurance enterprises and many commercial banks. As a result, the government has directed relevant agencies to strengthen state management of these activities.

In 2022 and 2023, alongside studying and submitting for higher authority approval and issuing additional legal regulations, the Ministry of Finance conducted inspections of 10 out of 17 life insurance enterprises that distribute insurance through credit institutions and foreign bank branches. These inspected enterprises accounted for 96.83% of total premium revenue generated via bancassurance in the life insurance market. The inspections revealed violations in bancassurance operations, such as improper issuance of processes and regulations, non-compliance with product pricing schedules, and agents failing to adhere to company and legal requirements. The Ministry of Finance's inspection agency recommended financial sanctions totaling 21 trillion VND, including removing nearly 1.956 trillion VND from tax-deductible expenses when determining corporate income tax for 2021-2022. Additionally, the agency temporarily suspended new insurance contract signings through credit institutions and foreign bank branches and required the rectification of violations.

The State Bank has also intensified its inspection and supervision of insurance business and agency activities at commercial banks, incorporating these tasks into its annual inspection plans. Furthermore, based on the provisions of the 2022 Law on Insurance Business, the State Bank collaborates with the Ministry of Finance to improve related legal regulations, inspections, and supervision of insurance activities conducted through banks.

State Bank has also established hotlines to handle feedback and petitions from citizens, organizations, and enterprises regarding insurance agency activities of commercial banks. It closely cooperates with the Ministry of Finance during inspections of insurance enterprises and banks with significant feedback and petitions concerning insurance agency operations to promptly address and rectify legal violations.

Simultaneously, the Banking Inspection and Supervision Agency collaborates with the Insurance Supervisory and Administration Department to inspect and address violations in the insurance agency activities of commercial banks.

2. Limitations and causes of limitations in state management of insurance agency activities of commercial banks

2.1. Limitations

Firstly, the legal provisions ensuring the safety of insurance agency activities conducted by commercial

banks are slowly issued and lack a proactive approach to preventing potential risks.

During 2020-2023, numerous decrees, decisions, and circulars were issued to regulate the principles and conditions for insurance agency activities conducted by commercial banks. While the issued legal documents are considered relatively stringent in controlling emerging risks, in reality, many of these legal provisions were enacted after violations had already been identified. This delay has reduced the ability to identify and prevent arising losses. In other words, the continuous issuance of legal provisions reflects a reactive approach aimed at addressing violations rather than proactively guiding commercial banks toward safe and efficient operations.

Secondly, the legal provisions on insurance agency activities contain many loopholes that undermine the effectiveness of the regulatory framework in identifying, preventing, and controlling violations and risks associated with these activities by commercial banks.

Thirdly, the effectiveness of inspection and supervision of insurance agency activities by state management agencies for commercial banks remains limited.

In recent years, many banks linked with insurance companies to sell their products have been found to commit numerous violations. For instance, numerous savings customers were misled into signing life insurance contracts. Upon discovering the deception, affected customers filed complaints with the State Bank of Vietnam. However, the State Bank merely received and forwarded the complaints while advising individuals to contact the insurance companies for resolution, without initiating inspections to uncover the banks' wrongdoings.

Moreover, the Ministry of Finance's supervision of insurance sales at banks through insurance companies alone is insufficient to ensure compliance by banks in conducting insurance agency activities. According to the Law on Insurance Business, the Ministry of Finance has the authority to oversee insurance sales through banks via insurance companies but lacks the mandate to inspect or audit banks directly, as banks are merely agents. This responsibility falls under the jurisdiction of the State Bank of Vietnam. In 2023, many cases were reported to the Insurance Supervisory and Administration Department involving dishonest practices by bank employees when selling insurance through banks. However, these cases were not thoroughly resolved, as the department claimed that such matters were "beyond its jurisdiction".

2.2. Causes of limitations

Firstly, regulatory agencies have not fully assessed the potential risks when formulating legal provisions related to the insurance agency activities of commercial banks.

Secondly, state management agencies face difficulties addressing violations arising from overlapping functions among different regulatory bodies.

Thirdly, the technology used to collect and process information for remote supervision is outdated.

Fourthly, the organizational model of Vietnamese commercial banks, which primarily follows an administrative network structure, poses challenges for regulatory agencies in conducting inspections and audits of insurance agency activities at these banks.

Fifthly, penalties for violations of legal regulations regarding insurance agency activities are insufficient to deter violations by insurance businesses, securities firms, and commercial banks.

Currently, the punitive measures imposed by regulatory agencies under existing regulations lack sufficient deterrence for violating organizations. The benefits gained from violating legal provisions often far exceed the penalties imposed. As a result, many insurance companies and commercial banks intentionally disregard relevant legal regulations, even neglecting the ethical values of the profession by providing misleading advice, enticing, or supporting non-professional investors to enter the market, solely to attract cash flow.

3. Recommendations to enhance state management of insurance agency activities in the future

Improving legal regulations related to insurance agency activities of commercial banks

- Review and improve laws such as the Law on Insurance Business and the Law on Credit Institutions to include provisions aimed at preventing risks arising from insurance agency activities.

- Specify insurance agency activities, the legal basis for their regulation, and compliance requirements with insurance business laws and other related laws in the provisions governing commercial bank operations under the Law on Credit Institutions. Clearly include these provisions in the business licenses issued by the State Bank for commercial banks.

- Legislate violations by commercial banks and their employees regarding coercion or forcing customers to purchase non-compulsory insurance products as a condition for using banking services under the Law on Credit Institutions.

- Refer to international experiences in building a legal framework for insurance agency activities and services related to corporate bonds of commercial banks, adapting these to Vietnam's practical conditions.

Strengthening Inspection, Examination, and Supervision of Violations in Insurance Agency Activities of Commercial Banks

Although violations in insurance agency activities have been partially controlled thanks to improvements in legal regulations and the inspection and supervision efforts of specialized regulatory agencies, further measures are needed to enhance risk management. Inspection, examination, and supervision efforts should focus on the following:

1. Banking Inspection and Supervision Agencies and provincial branches of the State Bank should intensify

inspections, examinations, and supervision of insurance agency activities.

2. Develop and refine processes to strictly monitor compliance with legal regulations in the insurance sector in general and in the insurance agency activities of commercial banks in particular. Proactively detect and address shortcomings and violations during the provision of services by commercial banks, minimizing adverse impacts on customer rights.

3. Clearly define the responsibilities of units, branches of the State Bank, banking inspection and supervision agencies, and the Insurance Supervisory and Administration Department in managing insurance agency activities. Specifically:

- For State Bank units: Upon receiving (via hotlines) feedback or complaints from individuals and businesses related to insurance agency activities, classify, handle, and forward these to the Banking Inspection and Supervision Agency or the relevant provincial branches of the State Bank for resolution in accordance with regulations.

- Provincial branches of the State Bank: Receive and verify information provided by individuals and businesses through feedback or complaints. If violations are detected, provincial branches of the State Bank should issue administrative violation records and forward the violation dossiers to the Banking Inspection and Supervision Agency. Periodically compile and report on resolution results to the Banking Inspection and Supervision Agency for monitoring and follow-up.

- Banking Inspection and Supervision Agencies: Coordinate with the Insurance Supervisory and Administration Department (Ministry of Finance) to handle violations in accordance with legal regulations. Regularly compile information on violations related to insurance agency activities of commercial banks to report to competent authorities.

Enhancing the state bank's directives to commercial banks for compliance with legal regulations on insurance agency activities

To prevent violations in insurance agency activities of commercial banks, the State Bank should strengthen its directives to commercial banks on the following:

- The State Bank should direct commercial banks to only provide insurance agency services as per their business licenses issued by the State Bank and in compliance with relevant legal regulations.

- Require commercial banks to enhance internal inspection and control of insurance agency activities to promptly detect, prevent, and strictly handle cases of providing incomplete, unclear, or inaccurate information that leads to customer misunderstandings about insurance products; dishonest consultation that confuses customers between purchasing life insurance and depositing money into the bank; failure to comply with internal regulations,

operational procedures, directives from the State Bank, and relevant laws; or pressuring or "forcing" customers to purchase life insurance.

- Prohibit commercial banks from placing pressure on employees or business units to introduce or provide information to customers about life insurance products to meet performance evaluation targets (KPIs). Commercial banks must ensure the confidentiality of customer information and protect customer rights.

Strictly handling violations in insurance agency activities of commercial banks

To improve warning mechanisms and prevent violations by commercial banks in insurance agency activities, in addition to strengthening inspection and supervision, stricter sanctions are necessary for violations by commercial banks, specifically:

- The government should take decisive actions, including criminal prosecution, for violations related to insurance agency activities.

- Penalties for violations by commercial banks in insurance agency activities should be revised to enhance deterrence. Instead of fixed administrative fines, authorities should impose penalties based on the revenue generated from the violating activities of commercial banks. Depending on the severity of the violation, a percentage of revenue generated from the activity could be fined, with a maximum of 100% of the revenue.

Strengthening collaboration between the state bank, the ministry of finance, and related agencies in managing insurance agency activities of commercial banks

To further enhance state management efficiency in insurance agency activities of commercial banks, continued close cooperation is required between the two specialized regulatory agencies, the Ministry of Finance and the State Bank. Additionally, collaboration with the Ministry of Public Security and the judiciary is necessary to strengthen sanctions and enforce laws on insurance agencies and commercial banks.

Conclusion: The trend of promoting non-credit services in general and insurance agency activities of Vietnamese commercial banks in particular is inevitable. Therefore, state management of these activities by commercial banks must be continuously strengthened. Improving the legal framework and enhancing the effectiveness of inspection and supervision of insurance agency activities of commercial banks are key solutions to improving state management efficiency.

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