

## JT&N's September, 2018 PRC Insurance News Alert

Welcome to the latest edition of the JT&N PRC Insurance News Alert, reporting recent regulatory developments affecting the PRC insurance sector. We welcome your comments, questions and feedback. The preceding JT&N PRC insurance News Alert was published in April 2018. To receive a back issue or to contact us, please visit our website (<http://www.jtnfa.com/CN/index.aspx>). Please note: Recipients who no longer wish to receive this News Alert may reply to [jtninsurance@jtnfa.com](mailto:jtninsurance@jtnfa.com) and request to be deleted from our distribution list.

Elizabeth Lan Lan

*Senior Advisor*

Beijing Office

Tel: (8610) 5706-8029

Email: [lanlan@jtnfa.com](mailto:lanlan@jtnfa.com)

Elsie Shi

*Senior Partner*

Beijing Office

Tel: (8610) 5706-8163

Email: [elsieshi@jtnfa.com](mailto:elsieshi@jtnfa.com)

George Yu

*Senior Partner*

Beijing Office

Tel: (8610) 5706-8168

Email: [georgeyu@jtnfa.com](mailto:georgeyu@jtnfa.com)

John Bolin

*Senior Int'l Counsel*

Beijing Office

Tel: (8610) 5706-8028

Email: [johnbolin@jtnfa.com](mailto:johnbolin@jtnfa.com)

### 1. Recent Regulatory Developments re Relaxation of Barriers to Foreign Investment in the PRC Insurance Industry

Governmental officials of the People's Republic of China (the "PRC") have recently unveiled a number of measures aimed towards relaxing barriers to foreign investment in the insurance industry. By way of background, on April 10, 2018, in the Boao Conference for Asia, President Xi Jinping announced that, among other industries, China would substantially ease insurance industry market access. In his remarks, President Xi emphasized that restrictions on the establishment of foreign-invested financial institutions would be relaxed, and that the permissible scope of foreign-invested financial institutions would be expanded. Later in the conference, Mr. Yi Gang, President of the People's Bank of China announced specific measures to be implemented in support of easing insurance market access in subsequent months. In addition, Mr. Yi announced that the requirement of establishing and maintaining a representative office as a prerequisite for the establishment of a foreign-invested insurance company would be eliminated by the end of 2018. Pursuant to these pronouncements, recent regulatory developments include the following:

- On June 28, 2018, the National Development and Reform Commission and the Ministry of Finance ("MOF") jointly promulgated the Special Administrative Measures for Foreign Investment Access 2018 (the "2018 Negative List"), effective on July 28, 2018. Among other things, the 2018 Negative List provides that the maximum aggregate shareholding of foreign investment in a life insurance company has been raised from 50 per cent to 51 per cent.
- On June 19, 2018, the China Banking and Insurance Regulatory Commission (the "CBIRC") promulgated the Circular re Allowing Foreign Investors to Conduct Insurance

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*Questions?*

*Contact our experts at*

*JTN Insurance:*

[\*jtninsurance@jtnfa.com\*](mailto:jtninsurance@jtnfa.com)

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Agency Business in China (the “Agency Circular”) and the Circular re Allowing Foreign Investors to Conduct Insurance Assessor Business in China (the “Assessor Circular”), effective on the same date. Pursuant to these circulars, the insurance agency and insurance assessor sectors are fully opened to foreign investment. For example, a foreign insurance company, insurance agency or insurance assessor that has at least three years of history conducting insurance agency or insurance assessor business now may control or even wholly own an insurance agency or insurance assessor subsidiary established in the PRC, and such subsidiary may conduct its China business without being subject to additional restrictions as compared with a domestic insurance agency or insurance assessor.

- On May 30, 2018, the CBIRC published the Draft Implementing Rules for the Administrative Regulations on Foreign-invested Insurance Companies (the “Draft Implementing Rules”) for public review, with a public comment period that closed on June 29, 2018. If implemented, the Draft Implementing Rules would, among other things, formalize the 51 per cent life insurance company foreign investment cap established in the 2018 Negative List, as well as ending the pre-existing requirement to establish and maintain a PRC representative office prior to applying for establishment of a PRC insurance company.
- On April 27, 2018, the CBIRC promulgated the Circular re Business Scope Expansion of Foreign-Invested Brokers (the “Broker Circular”), which became effective on the same date. Previously, a foreign-invested insurance broker would be subject to greater restrictions than a domestic broker. For example, in terms of business scope, a foreign-invested insurance broker was limited to conducting major business risk insurance brokerage, international transportation insurance brokerage and reinsurance brokerage. Pursuant to the Broker Circular, however, the permitted business scope for a foreign-invested insurance broker has been relaxed and, going forward, foreign-invested and domestic brokers are to be subject to equivalent restrictions.

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## 2. Draft Administrative Measures on Insurance Company Affiliate Transactions Released for Public Comment

On May 3, 2018, the CBIRC released the draft Administrative Measures on Insurance Company Affiliate Transactions (the “Draft Measures”), with a public comment period that closed on May 20, 2018. If promulgated, the Draft Measures would supersede the Interim Administrative Measures of Affiliate Transactions of Insurance Companies promulgated by the China Insurance Regulatory Commission (“CIRC”), the insurance regulatory authority which preceded the CBIRC, on April 6, 2007, as well as the Further Strengthening the Information Disclosure of Affiliate Transactions of Insurance Companies promulgated by CIRC on June 30, 2016, and other related affiliate transaction rules (collectively, the “Current Rules”). The Draft Measures directly apply to insurance companies, including insurance asset management companies and insurance shareholding groups registered in the PRC, but not self-insurance companies, and apply to mutual

insurance entities by reference.

Consonant with recent regulatory developments aimed at strengthening oversight of insurance company conduct, the Draft Measures would, among other things, expand the conceptual scope of both affiliated parties and, increase internal management obligations and strengthen reporting requirements, as briefly summarized below.

- Affiliated Transactions

The Draft Measures would expressly extend regulation to encompass any activity that would change the registered capital or equity interest holding status of the insurance company or a purchase of preferred shares, bonds or other securities issued by the insurance company. In addition, the Draft Measures would formally exempt a single transaction involving equal to or less than RMB300,000 (with an affiliated natural person) or equal to or less than RMB3,000,000 (with a related legal person); transactions of securities traded in cash; and reinsurance recoverable or reinsurance commission adjustments pursuant to the arrangements prescribed in the affiliate transaction contract.

- Affiliated Parties

Pursuant to the Current Rules, the term “affiliated party” encompasses entities and individuals which are controllers, managers, and others, including “close relatives,” with the capacity to exercise substantive influence over a regulated company. The emphasis of the CBIRC is one of “substance over form,” meaning that contractual arrangements may be scrutinized in order to discern the exercise of proscribed influence. The Draft Measures sustain this approach, but more clearly delineate the scope of affiliated relationships, including:

1. Directors, supervisors and senior management personnel (collectively, the “Key Persons”) of any branch;
2. Family members “with close relation” to any Key Person, expanding the current “close relatives” standard to encompass parents-in-law, the spouses of close relatives and other family members to whom there may be a transfer of interests;
3. Any legal person controlled by an affiliated natural person; provided that any subsidiary in which the insurance company holds an equity interest equal to or greater than 50% will be deemed as the insurance company itself when the transaction is between the subsidiary and an affiliate of the insurance company; and
4. Other parties e.g., company staff, a business entity involved with financial guarantees or loans, etc., may also be deemed to be an affiliated party if they are implicated in an unjust transfer of a regulated interest.

- Management and Reporting Obligations

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The Draft Measures require each insurance company to establish an affiliate transaction control committee with responsibilities for exercising internal oversight over affiliate transaction processes. In terms of affiliate transaction reporting, the Draft Measures propose the elimination of the existing affiliate transaction management system filing obligation, and establish the below requirements:

1. Any time an affiliate transaction is effected, a written transaction agreement must be concluded;
2. Any time a material transaction or uniform transaction agreement is entered into, it must be reported to the CBIRC, including a description of the transaction and a summary of internal review and approval procedures; and
3. Every six months, every insurance company must update and submit its file that records information regarding its affiliated parties to the CBIRC.

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### **3. “One Window, One Application Form” – Filing and Registration Reform Benefitting Foreign-Invested Companies**

On February 28, 2018, the Ministry of Commerce (“MOC”) and the State Administration for Market Regulation (“SAMR”) jointly promulgated the Circular re Matters about Having the MOC Record-filing and the SAMR Registration by Foreign-invested Enterprises Handled at One Window through One Form of Application Reform (the “Reform Circular”). Pursuant to the Reform Circular, commencing from June 30, 2018, any foreign-invested enterprise will be permitted to file a single online application to complete SAMR and MOC registrations. Hard copies of application documents are to be submitted to SAMR to complete SAMR and MOC document submission. However, as of this date, while the reform has been implemented in certain locations, such as Shanghai, it has not yet been fully implemented in certain other locations, including Beijing.

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### **4. Administrative Measures on Insurance Company Information Disclosure Promulgated**

On April 28, 2018, the CBIRC promulgated a revised version of the “Administrative Measures on Insurance Company Information Disclosure” (the “Disclosure Measures”), which took effect on July 1, 2018, superseding the pre-existing version promulgated by the CBIRC on May 12, 2010 and its implementing rules. The Disclosure Measures apply to insurance companies that are established in China, and apply by reference to insurance groups, reinsurance companies, insurance asset management companies, mutual insurance companies and branches of foreign insurance companies.

Significant changes included in the Disclosure Measures include the following:

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- Disclosure obligations expanded.

In addition to pre-existing requirements, the Disclosure Measures mandate that an insurance company now must also provide: (i) information concerning insurance liability reserves; (ii) identification of the company's actual controller; and (iii) certain information regarding the terms and conditions of its insurance products.

- Disclosure thresholds clarified.

The Disclosure Measures establish specific standards for "major matters" that will trigger a mandatory disclosure obligation, including: (i) "major litigation or arbitration," meaning a judgment or arbitration award in an amount greater than RMB50,000,000; (ii) "major claim," meaning an insurance claim in an amount greater than 5% of the insurance company's net assets as of the previous quarter; (iii) "major investment loss," meaning an investment loss in an amount greater than 5% of the insurance company's net assets as of the previous quarter; and (iv) "major strategic investment," meaning an investment in a separate entity whereby the insurance company will gain control of such entity.

## 5. Regulatory Developments re Tax-Deferred Commercial Endowment Insurance

On June 29, 2017, the General Office of the State Council promulgated the Opinions on Accelerating the Development of Commercial Endowment Insurance, which noted that a pilot program for tax-deferred commercial endowment insurance would commence by the end of 2017, whereby eligible insurance companies may offer a commercial insurance product through which private individuals may shelter a portion of their income from taxation until following retirement. Coordinated actions by relevant governmental authorities have established such pilot program to be implemented pursuant to the key governing regulations identified below.

- The Circular re Pilot Program of Tax-deferred Commercial Endowment Insurance (the "Pilot Program Circular"), jointly promulgated by MOF, the State Administration of Taxation (the "SAT"), the Ministry of Human Resource and Social Security (the "MOHRSS"), the CBIRC and the China Securities Regulation Commission (the "CSRC") on April 2, 2018, establishes the pilot program and authorizes qualified insurance companies to conduct tax-deferred commercial endowment insurance business in Shanghai, Fujian and Suzhou Industrial Zone.
- Pursuant to the Pilot Program Circular, the Guidelines on Product Development of Tax-deferred Commercial Endowment Insurance (the "Guidelines") were jointly promulgated by the CBIRC, MOF, the MOHRSS and the SAT on April 25, 2018, prescribing fundamental principles and requirements applicable to the designation of tax-deferred commercial endowment insurance products.

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- Pursuant to the Pilot Program Circular and the Guidelines, the Temporary Administrative Measures on Tax-deferred Commercial Endowment Insurance were promulgated by the CBIRC on May 16, 2018, establishing an overall regulatory structure for supervising the tax-deferred endowment insurance business line, including prerequisite insurance company qualification requirements, basic product categories, permitted charges and coverage, and sales management requirements. Among other things, in order to provide tax-deferred commercial endowment insurance coverage, an insurance company must apply for prior approvals from the CBIRC, both in respect of the company's qualification and for its product.
  - In order to facilitate and regulate the tax-deferred endowment insurance fund usage, the Temporary Administrative Measures on Tax-deferred Commercial Endowment Insurance Fund Usage were promulgated by the CBIRC on July 6, 2018, providing guidance with respect to insurance company management of its endowment insurance fund, including investment planning, allocation and reporting. While the general insurance fund usage requirements remain applicable, an insurance company providing tax-deferred commercial endowment insurance coverage is subject to special requirements regarding asset allocation planning, daily operational compliance, risk management and program supervision.
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## 6. CBIRC Strengthens On-Site Inspection Program

Pursuant to the 2018 Insurance Supervision On-Site Inspection Work Plan (the "2018 Plan") released by the CBIRC on April 17, 2018, the CBIRC has completed the first phase of its ongoing on-site inspection program for insurance companies and their branches, focusing on insurance products, sales channels and insurance funds usage. The second phase of the program, focusing on insurance company assets and liabilities management capability, was scheduled to be completed by August, and the third phase, which is also the final phase, of the program is scheduled to be conducted between August and October, and is expected to focus on insurance company funds usage. By way of background, the 2018 Plan follows the extensive program of onsite inspections of insurance companies that was conducted in 2017 by the former CIRC, primarily focusing on matters relating to corporate governance, including the shareholders and their shareholding, daily governance operations such as shareholder meetings and board meetings, internal control matters and affiliate transaction management.

In a work meeting held on May 14, 2018 and published on its official website at the following link: [2018 Plan Update](#), the CBIRC emphasized that it would continue to exert strong pressure on illegal activities in the insurance industry, including maintenance of strict accountability and punishment. For the seven-month period ended on July 31, 2018, the CBIRC has issued a total of forty-one regulatory letters to insurance industry representatives. In contrast, during the entirety of 2017, thirty-eight such letters were issued, reflecting an increasing degree of regulatory scrutiny. Among the 2018 regulatory letters, nearly half of them involved insurance product-

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related issues, while the balance involved various topics related to the daily operation of an insurance company including insurance products online sales, non-compliant insurance funds usage and non-compliant foreign investment practices.

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#### **7. Circular re Strengthening the Administration of “Social Media” Insurance Marketing Activities Promulgated**

On June 1, 2018, the CBIRC promulgated the Circular re Strengthening the Administration of Social Media Insurance Marketing Activities (the “Circular”), which is applicable to insurance companies, insurance intermediaries, and their employees. By way of background, the General Office of the State Council published the Guiding Opinions on Strengthening the Protection of Financial Consumer Rights and Interests on November 4, 2015 (the “Guiding Opinions”), which require all financial industries to standardize and guide the financial institutions provision of financial products and services, create a fair and equal market environment, and strengthen the protection of financial consumer rights and interests. Pursuant to the Guiding Opinions, the Circular provides implementing regulation aimed at a stricter regulation of online insurance related marketing activities (including insurance product advertising and publication of general insurance-related information), in order to deter fraudulent or misleading marketing activities relating to social media. For the purpose of the Circular, “social media” includes internet websites and mobile applications, such as WeChat official accounts, blogs and micro-blogs.

Pursuant to the Circular, any regulated entity must form and implement an overall social media marketing information and activities administration system (the “Social Media Management Program”), which covers information examination and control, supervision and inspection, emergency responses, evaluation and assessment. A regulated entity must also specifically designate a particular department to oversee the production, review and publication of information online. Prior to posting any self-produced or reposted information, any such material must be satisfactorily vetted pursuant to the entity’s Social Media Management Program.

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#### **8. Rules for the Compilation of Actuarial Reports of Life Insurance Companies Promulgated**

On June 4, 2018, the CBIRC promulgated the Circular re Compilation of Rules for Actuarial Reports of Life Insurance Companies (the “New Rules”), superseding the Circular on Releasing the Compiling Rules of the Actuarial Reports. The New Rules update methods and requirements governing compilation of actuarial reports, including the new requirement that a life insurer must submit its annual actuarial report to the CBIRC no later than April 30. Among other obligations, in the event that a life insurer is nominating an individual for the position of chief actuary and, if it is the first time that the individual has applied for the CBIRC approval of such appointment, the

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New Rules require that the life insurer must obtain and submit a performance appraisal report issued by the prior employer of the individual.

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#### **9. Draft Administrative Measures on “Real-Name” Registration for Insurance Business Released for Public Comment**

On June 4, 2018, the CBIRC released the draft Administrative Measures on Real-name Registration for Insurance Business (the “Draft Rules”), with a public comment period that closed on July 6, 2018. By way of background, CIRC promulgated the Circular on Authenticity of Life Insurance Customer Information (the “Authenticity Circular”) on November 4, 2013, aiming at strengthening life insurance customer information authenticity administration and improving customer service quality. Pursuant to the cross-industry trend of institutionalizing identification verification processes in various business contexts, the Draft Rules standardize identity verification for both life and non-life insurance businesses lines, and prescribe relevant data protection rules in accordance with the PRC Cyber Security Law (promulgated by Standing Committee of the National People’s Congress on November 7, 2016 and effective on June 1, 2017).

Pursuant to the Draft Rules, the CBIRC will establish a verification and registration platform (the “Platform”) to be utilized for registration and verification of insurance customer real-name information. Each insurance policyholder will be assigned a separate insurance account on this Platform for recording specified personal identification data, including their name, the beneficiary and insured parties, the type of personal identification certificate and its number, mobile phone number, and insurance purchase record. Every insurance company must record and verify customer real-name information for every policyholder. If an insurance policy is sold to an individual through a third party, such as an insurance intermediary or a third-party online platform, then such third-party must verify the real-name information and provide the real-name data to the insurance company for recording and verification.

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#### **10. Draft Regulations on the Graded Protection of Cybersecurity Released for Public Comment**

On June 27, 2018, the Ministry of Public Security (the “MPS”) released draft Regulations on the Graded Protection of Cybersecurity (the “Draft Regulations”), with a public comment period that closed on July 27, 2018, which aims to support implementation of the 2017 PRC Cybersecurity Law by establishing an improved network classification process and correlated protective measures. The Draft Regulations, if promulgated, will supersede the Administrative Measures for the Graded Protection of Information Security (promulgated on June 22, 2007, the “Current Measures”), and are intended to be supported by other recently published guidance, including the

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draft standard: Information Security – Guidelines for Drafting of Cybersecurity Multi-level Protection (published by the National Information Security Standardization Technical Committee, released for public comment on January 19, 2018).

Significant highlights of the Draft Regulations include the following:

- Establishment of a graded network classification system, illustrated as follows:

Interest	Harm	Serious Harm	Extreme Harm
The interest of an individual, legal person or other organization	Grade I	Grade II	Grade III
Public order and public interest	Grade II	Grade III	Grade IV
National security	Grade III	Grade IV	Grade V

- For all networks other than those that established for personal or family use, the network operators are assigned responsibility for constructing and implementing a comprehensive cybersecurity protection system; self-inspection; correction of flaws; implementing the cybersecurity graded protection system and providing timely reports to the MPS, including administrative and incident-related reporting.
- If a network operator classifies its network as Grade II or above, the network must satisfy a network expert review, with results to be provided to the industry regulator for approval. In addition, any Grade II and above network must be satisfactorily tested prior to use.
- Networks Grade III and above must satisfy additional specified measures, including provision of an annual report to the MPS and limitation of its maintenance work in the PRC.

Pursuant to the Draft Regulations, in addition to supervision by MPS, network operators in regulated industries are to be directly supervised by applicable authorities, such as the CBIRC, which may provide relevant industry-specific guidance, supervise the implementation of relevant precautions, respond to cybersecurity emergencies, and help to safeguard the cybersecurity of major activities.

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## 11. Circular on Practically Strengthening and Improving Insurance Services Promulgated

On July 18, 2018, the CBIRC promulgated the Circular on Practically Strengthening and Improving Insurance Services (the “Circular”), focusing on the improvement of insurance sales, claim settlement, online insurance and dispute resolution services. By way of background, the General Office of the State Council published the Guiding Opinions on Strengthening the Protection of Financial Consumer Rights and Interests on November 4, 2015, providing that all financial industries, including the insurance industry, must fully respect and protect the basic

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rights of financial consumers, such as the right to know, the right to choose, the right to make claims, and similar matters. The Circular implements the State Council's guidance with respect to insurance companies and intermediaries (each an "Insurance Service Provider").

Highlights of the Circular are listed below.

- Accurate and not misleading insurance product marketing: any insurance marketing material must be consistent with the relevant insurance contract; exaggerations or misleading explanations are impermissible.
- Convenient and efficient settlement services: consumer insurance claim access must be assured via publication of local offices and customer hotline support; special settlement solutions must be established to efficiently settle small and emergent claims.
- Stricter compliance requirements for online insurance business: bundled sales are to be avoided, compulsory or default choice sales features must be eliminated, and each Insurance Service Provider must bear responsibility for the performance of any associated third-party online platform.
- Diversified dispute resolution mechanisms: each Insurance Service Provider must timely communicate with customers to resolve disputes; dispute resolution via mediation is to be encouraged; and self-inspection with respect to dispute resolution services should be routinely performed in order to identify flaws and improve overall service quality.

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