

JT&N's April, 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 January 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 and request to be deleted from our distribution list.

Elizabeth Lan Lan

Senior Advisor

Beijing Office

Tel: (8610) 5706-8029

Email: lanlan@jtnfa.com

Elsie Shi

Senior Partner

Beijing Office

Tel: (8610) 5706-8163

Email: elsieshi@jtnfa.com

George Yu

Senior Partner

Beijing Office

Tel: (8610) 5706-8168

Email: georgeyu@jtnfa.com

John Bolin

Senior Int'l Counsel

Beijing Office

Tel: (8610) 5706-8028

Email: johnbolin@jtnfa.com

1. Future Easing of Insurance Industry Market Access Announced at Boao Forum

On April 10, 2018, during the keynote speech at the opening ceremony of the annual Boao Forum for Asia 2018 (the “Forum”), President Xi Jinping announced that China will continue to “open-up,” including substantially easing market access with respect to the financial sector, including the insurance industry. The Boao Forum for Asia is an annual conference aiming to build Asian consensus, promote regional cooperation and advance the continent's influence on the world stage.

By way of background, on November 10, 2017, Vice Finance Minister Zhu Guangyao had announced that foreign ownership limits in life insurance companies will increase from 50% to 51% in three years' time, and 100% foreign ownership will be permitted in five years' time. In his remarks at the Forum, President Xi emphasized that implementing measures would be launched to realize Minister Zhu's earlier announcement that “opening up” of the insurance industry would be accelerated, 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.

On the second day of the Forum, expanding on President Xi's comments, Mr. Yi Gang, President of the People's Bank of China announced specific measures to be implemented in support of easing insurance market access within the next few months, eg:

- foreign ownership limits in life insurance companies will increase from 50% to 51%, and 100% foreign ownership will be permitted in three years;
- qualifying foreign investors will be permitted to operate insurance agency and insurance adjustor businesses in China; and

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jtninsurance@jtnfa.com

- the permitted business scope of foreign-invested insurance brokerage companies will be expanded to be equivalent with that of domestic insurance brokerage companies.

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 will be eliminated by the end of 2018.

2. China Banking and Insurance Regulators Consolidated into the China Banking and Insurance Regulatory Commission

Pursuant to the “Plan for Deepening Institutional Reform of the People’s Republic of China and the Communist Party of China” (the “Reform Plan”), promulgated by the Central Committee of the Communist Party of China on March 21, 2018, the China Insurance Regulatory Commission (“CIRC”) and the China Banking Regulatory Commission (the “CBRC”) are to be consolidated into China Banking and Insurance Regulatory Commission (the “CBIRC”).

The CBIRC held its first official meeting on March 21, 2018, where it was announced that Guo Shuqing, Chairman of the CBRC, has assumed the post of CBIRC Chairman, and that the Vice Chairmen of CIRC and CBRC have assumed posts as CBIRC Vice Chairmen. For an interim period until the CBIRC is fully functional, original departments under CIRC and the CBRC will continue to function. As of this date, no department-level merger timeline has been published. However, the CBIRC has formed working groups in order to develop and implement a transition plan.

The CBIRC will primarily focus on preventing the incidence of systematic financial risks. Pursuant to the Reform Plan, the CBIRC will uniformly regulate the banking and insurance industries in accordance with the laws, rules and regulations of the People’s Republic of China (the “PRC”), protect the legitimate interests of financial product customers, and maintain legal and dependable business operations within the banking and insurance industries. The CBIRC will be supported by the People’s Bank of China, which will exercise responsibility for drafting important laws and regulations and fundamental prudential regulatory regimes pertaining to the banking and insurance industries.

Establishment of the CBIRC is intended to constitute a significant step towards the institution of an effective, powerful, and modern regulatory structure that meets the evolving demands of the financial industry. According to the Reform Plan, reasons for the merger include: (i) deepening the reform of financial regulatory regime; (ii) resolving problems associated with unclear division of regulatory responsibilities, overlapping regulation, and regulatory deficits; (iii) enhancing comprehensive regulation; (iv) optimizing regulatory resources and (v) achieving better coordination of regulation over “systemically important financial institutions.”

3. New Administrative Measures for the Equity of Insurance Companies Promulgated

About

JT&N:

JT&N is a leading full-service PRC law firm, top-ranked by Chambers & Partners, Legal 500, and IFLR1000, among others.

On March 3, 2018, CIRC promulgated the new “Administrative Measures for the Equity of Insurance Companies” (the “New Measures”), which took effect on April 10, 2018, superseding: the old “Administrative Measures for the Equity of Insurance Companies” (the “Old Measures”), promulgated by CIRC on May 4, 2010; the “Administrative Measures for Mergers and Acquisitions of Insurance Companies,” promulgated by CIRC on March 21, 2014; and certain other rules. Published against the backdrop of the Chinese government’s increasing efforts to tighten financial regulation and combat financial risks, the New Measures directly apply to “PRC domestic insurance companies,” referring to insurance companies registered in China other than those whose percentage of foreign ownership exceeds 25%, and apply “by reference” to foreign invested insurance companies.

Among other significant changes, the New Measures prescribe a relatively more detailed system for categorizing insurance company shareholders, outlined as follows:

Shareholder Category	Insurance Company Equity Ownership
“Financial Type I”	Less than 5%
“Financial Type II”	Equal to or greater than 5%, but less than 15%
“Strategic Shareholder”	Equal to or greater than 15%, but less than 1/3, or whose equity interest entitles them to such voting power as would have a significant influence on the resolutions of a shareholders meeting
“Controlling Shareholder”	Equal to or greater than 1/3, or whose equity interest entitles them to such voting power as would have a controlling influence on the resolutions of a shareholders meeting

In addition to revising the categorization system, the New Measures establish stricter regulatory standards in connection with shareholder qualifications, shareholding limitations, shareholder’s activities, and other related criteria. Highlights of these changes include the following:

Insurance company shareholder qualification standards revised

The Old Measures classified a shareholder according to (i) whether or not it is a domestic company and (ii) whether or not a shareholder holds 15% or more equity interest of an insurance company. The New Measures also consider the jurisdiction and shareholding percentage as factors, and additionally incorporate organizational structure as a factor. For example, a foreign financial institution must have at least USD2 billion total assets in the previous year to become an insurance company shareholder, while a domestic shareholder is not subject to such requirement; a Financial Type II shareholder needs to have minimum net assets of RMB200 million, while a Financial Type I shareholder has no minimum net asset requirement; and a domestic limited partnership may only acquire the equity interest or shares of an existing insurance company to become a shareholder

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rather than establishing an insurance company.

The New Measures identify certain conditions that would disqualify an investor from becoming an insurance company shareholder or a Controlling shareholder. For example, a potential investor may not become an insurance company shareholder if it has been “blacklisted” by relevant governmental authorities for serious dishonest conduct. Likewise, a potential investor may not become a Controlling shareholder if it has accumulated adverse records due to poor investment behavior in the public markets.

New shareholding caps, shareholding restrictions and share lock-up periods implemented

The Old Measures mandated that no single insurance company shareholder may hold an equity interest in an insurance company of greater than 20%, but such cap could be relaxed to 51% upon CIRC approval. In comparison, though with some exceptions, the New Measures provide a more nuanced, fact-specific analysis of shareholding eligibility, as outlined below:

- No single insurance company shareholder may hold an equity interest in an insurance company of greater than 1/3; provided however, that such 1/3 restriction will not, in principle, be applied retroactively.
- No individual given investor, considered together with its affiliates and persons “acting in concert” (as described below), may control two or more insurance companies that conduct the same category of insurance business, nor are they permitted to become Strategic or Controlling shareholders of more than two insurance companies.
- No Controlling shareholder of more than two insurance companies may become a Strategic shareholder of another insurance company. An insurance company shareholder will be subject to a regulatory lock-up period if the acquisition changes its shareholder category. The lock-up period is calculated from the relevant date of acquisition, and the shareholder may not transfer the equity interest it holds (including the previous equity interest it holds) within the periods as specified below:
- An insurance company shareholder will be subject to a regulatory lock-up period if the acquisition changes its shareholder category. The lock-up period is calculated from the relevant date of acquisition, and the shareholder may not transfer the equity interest it holds (including the previous equity interest it holds) within the periods as specified below:

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Shareholder Category	Regulatory Lock-up Period
“Financial Type I”	1 year
“Financial Type II”	2 years
“Strategic Shareholder”	3 years
“Controlling Shareholder”	5 years

“Acting in concert” concept defined and incorporated

With respect to calculating the equity interest held by a single shareholder, the Old Measures provided that the shareholding percentages of shareholders and their affiliates would be aggregated. The New Measures now incorporate “persons acting in concert” into the calculation standard, meaning that when calculating shareholder equity interests, the equity interests held by affiliates and any persons “acting in concert” with it must be aggregated. “Acting in concert” refers to an act or fact whereby an investor expands its voting power through contractual or other arrangements with another investor. A rebuttable presumption of “acting in concert” would arise if:

- i. an investor’s director(s), supervisor(s) or key officer(s) were to simultaneously serve as the director(s), supervisor(s) or officer(s) of another investor;
- ii. an investor obtains its financing (for the present investment) from another investor (other than a bank);
- iii. partnership, cooperation, alliance or such other relationship among two or more investors create economic benefits;
- iv. or other circumstances specified by CIRC

Sources of capital contribution tightened

The Old Measures simply required that an investor may only use its legally self-owned funds to invest in an insurance company, and that other funds, such as bank loans, would be prohibited from such use. The New Measures now provide that:

- an investor may only use self-owned funds generated from permitted sources to acquire equity interests of an insurance company, and such self-owned funds must be limited to an investor’s net assets;
- an investor may not evade the self-funding requirement by adopting a disguised form such as establishing equity-holding institutions or transferring the right to expected earnings from its equity interest;
- several kinds of funds are explicitly prohibited from use, such as (i) loans relating to the insurance company; (ii) capital obtained by using deposits or other assets of the insurance company as guarantees; and (iii) capital obtained by improperly using the financial influence of the insurance company or by virtue of improper affiliate relationship with the insurance company.

4. Administrative Measures for the Use of Insurance Funds Promulgated

On January 24, 2018, CIRC promulgated the “Administrative Measures for the Use of Insurance Funds” (the “Measures”), which took effect on April 1, 2018, superseding the “Interim Administrative Measures for the Use of Insurance Funds” (the “Interim Measures”) promulgated by CIRC on July 16, 2012. By way of background, the Interim Measures consolidated and

strengthened the rules governing the investment of “Insurance Funds,” encompassing the capital, provident funds, undistributed profits, reserves and other money held by an insurance group holding company, or an insurance company. The new Measures apply to insurance companies and insurance groups established in China.

Among the significant changes in the new Measures, highlights include the following:

Restrictions with respect to Insurance Fund investment targets relaxed

The New Measures expand the scope of investment targets to include asset-backed securities, private funds including venture capital funds, and also permit an insurance company, as a form of investment activity, to establish a professional insurance asset management company, pursuant to the “Tentative Provisions on the Administration of Insurance Asset Management Companies,” released by CIRC on April 21, 2004).

Insurance Funds sources restricted

Only self-owned funds may be used for investment in real estate for self-use, for acquisition of a publicly-listed company, or for acquisition of “control” of any company.

Eligibility requirements for Insurance Funds investment managers relaxed

A securities company, securities asset management company, or securities investment fund management company may be appointed as an Insurance Funds investment manager.

Investment management activities tightened

An investment manager must actively manage and invest received Insurance Funds, and is expressly prohibited from allocating any of such funds to a third party for such third party to make independent investments of any kind.

Utilization of a CIRC-approved asset registration and exchange platform

An insurance asset management company must conduct Insurance Funds-related activities, including investment registration and the disclosure of its Insurance Fund-related activities, via a CIRC-approved asset registration and exchange platform. Any investment activities undertaken other than the management of the Insurance Funds must also be disclosed on this platform.

5. Circular re Regulatory Rules for Insurance Asset Liability Management Promulgated

On March 1, 2018, CIRC promulgated the “Circular re Promulgation and Trial Run of the Regulatory Rules for Insurance Asset Liability Management (No. 1 to No. 5)” (the “Circular”),

superseding the “Circular re Prudential Regulation on Insurance Company Asset Allocation” promulgated by CIRC on December 3, 2015. The scope of the respective regulatory rules is summarized below:

- Rules No. 1 and 2 prescribe requirements in connection with capability and quantification testing of asset liability management for P&C insurance companies;
- Rules No. 3 and 4 prescribe requirements in connection with the capability and the quantification testing of life insurance companies; and
- Rule No. 5 prescribes requirements in connection with the compilation of insurance company asset liability management reports.

By way of background, as reported by CIRC on its official website, (<http://bxjg.circ.gov.cn/web/site0/tab7926/info4101187.htm>), in 2017, CIRC commenced establishment of the “Insurance Asset Liability Management Regulatory Regime” (the “Regulatory Regime”) in order to monitor and guide the asset liability management of insurance companies. The five regulatory rules promulgated by the Circular (the “Regulatory Rules”) provisionally implement rules that were earlier released for public comment in the “Regulatory Measures for Insurance Asset Liability Management” (the “Regulatory Measures”) released by CIRC on December 15, 2017. When finally promulgated, the Regulatory Measures are intended to serve as the “general provisions” of the Regulatory Regime. By means of the Circular, CIRC will provide the China insurance industry with an indefinite period of provisional exposure to the Regulatory Regime and Rules and obtain feedback.

Pursuant to the Circular, effective immediately, each insurance company must conduct an asset liability management “capability test” and report corresponding results to CIRC no later than August 31, 2018. Capability tests focus on the functioning and improvement of an insurance company’s internal asset liability management regime and associated compliance status. In contrast, “quantification tests,” noted below, focus on asset liability management statistical indicators.

Aside from the immediate capability testing and reporting requirements, the Circular mandates that each insurance company implement a comprehensive asset liability management regime, including the following key components:

- establish an internal asset liability management system;
- appoint the company’s chairman of the board or general manager as the “responsible person” for asset liability management;
- conduct insurance asset liability management training for relevant personnel;
- conduct quarterly insurance asset liability and management capability and quantification tests; and
- prepare and submit quarterly and annual asset liability management reports.

Based on the results of capability and quantification testing and other evaluative factors, CIRC will assign each insurance company a letter grade of “A,” “B,” “C,” or “D,” where “A” is the highest grade and “D” is the lowest. Pursuant to the draft Regulatory Measures, CIRC may impose regulatory measures intended to be rectification on “C-rated” companies and penalties and sanctions on “D-rated” companies. However, CIRC has advised that no such regulatory sanctions will be implemented for the duration of the “trial run” period.

6. Plan for Preventing and Resolving Major Risks in the Insurance Industry Promulgated

On January 17, 2018, CIRC promulgated the “Overall Plan for Combatting Major Risks in the Insurance Industry” (the “Plan”). By way of background, at multiple occasions, including the 2017 Central Economic Working Conference and the 19th National Congress of the Communist Party of China, “preventing and resolving major risks in the financial industry” was highlighted as one of the three most significant and prioritized “tough battles” facing the China Communist Party and the PRC government in the next three-year phase. As the PRC insurance industry regulator, CIRC promulgated the Plan in order to specify overall targets, guiding principles, specific tasks and other matters pertaining to winning the “tough battle” vis-à-vis the insurance industry, and identifies guiding principles, including (i) focusing on protection of the legitimate interests of insurance customers, (ii) treating both “symptoms” and “intrinsic causes” of risks in the insurance industry, (iii) monitoring the overall situation and principal problems of the insurance industry and (iv) adhering to working disciplines promulgated by CIRC.

The Plan proposes five overall targets, i.e.:

- effective control of systematic risks in the insurance industry;
- constant remediation of insurance industry regulatory regime shortcomings;
- remarkable improvement of insurance market order;
- comprehensive improvement of the degree of satisfaction of insurance consumers; and
- enhancement of the capability of the insurance industry to serve the China real economy.

In order to achieve the overall targets, the Plan identifies, assigns and prioritizes a number of specific tasks to CIRC departments, grouped into three topical categories:

- Category I: appropriately preventing and disposing critical risks in the insurance industry, including the prevention, control and disposition of risks associated with certain problematic insurance companies, insurance company corporate governance ineffectiveness, insurance funds usage, and insurance business operations;
- Category II: combatting illegal insurance business operation activities, including capital contributions to insurance companies or insurance equities transactions which violate laws, rules or relevant CIRC rules; insurance company investments which violate laws, rules or relevant CIRC rules; illegal fund-raising activities; and falsified data related to insurance company solvency ratios or other regulatory indicators;

- Category III: strengthening weaknesses in the regulatory regime, including reforms pertaining to insurance market admittance, insurance company corporate governance, insurance products, insurance funds usage, onsite inspections by CIRC, insurance groups, online insurance business, and insurance company solvency ratios.

7. Revised Regulatory Rules for Insurance Brokers Promulgated

On February 9, 2018, CIRC promulgated the Regulatory Rules for Insurance Brokers (the “Broker Rules”), superseding the existing “Regulatory Measures on Insurance Brokerage Institutions” (the “Old Measures”), promulgated by CIRC on September 25, 2009 and provisions pertaining to insurance brokerage practitioners in the “Regulatory Measures on Insurance Brokerage and Insurance Adjusters Practitioners,” promulgated by CIRC on January 15, 2013. The Broker Rules directly apply to (i) insurance brokerage companies and their branches and (ii) insurance brokerage practitioners.

Compared with the Old Measures, the Broker Rules provide more detailed guidance on procedures for establishing an insurance brokerage company, i.e., (i) obtaining a business license from the State Administration of Industry and Commerce (the “SAIC”); (ii) applying for a CIRC insurance brokerage business permit (a “Permit”) and (iii) commencing insurance brokerage business operations after obtaining a Permit. Such Permits will be effective for three years and must be renewed by CIRC. In its discretion, CIRC may cancel a permit or elect to deny an application for renewal if, for example, an insurance brokerage is determined to have seriously violated relevant CIRC rules or is insolvent. Within fifteen days of Permit cancellation, the affected insurance brokerage company must report to the local SAIC bureau in writing, cease operating any insurance brokerage business, and file a change to its SAIC registration in order to remove “insurance brokerage” from its corporate name. In addition, sources of registered capital of an insurance brokerage company must be shareholders’ own funds. Registered capital of an insurance brokerage company must be escrowed pursuant to corresponding CIRC requirements.

Compared with the Old Measures, pursuant to which all insurance brokerages were subject to identical qualification standards and operating rules, the Broker Rules set out different qualification standards and business operating rules based on an insurance brokerage’s geographic span of operations, as briefly summarized below.

- Provincial insurance brokerage: In order to operate its business within the provincial-level administrative region where it has registered with SAIC, an insurance brokerage must possess registered capital of not less than RMB10 million.
- Nationwide insurance brokerage
 - In order to operate its business nationwide, an insurance brokerage must possess registered capital of not less than RMB50 million;

- Prior to dispatching an insurance brokerage practitioner to another provincial-level administrative region to provide insurance brokerage services to a natural person policy holder or insured, a nationwide insurance brokerage must first establish a branch within such provincial-level administrative region.
- Additional requirements for establishment of new branches, including: establishment of a sophisticated internal branch management system; absence of mass petitions by more than thirty people or mass policy surrender by more than one hundred people within the preceding one-year period; and absence, within the preceding two-year period, any instance of the closure of a branch that had been established for less than a single year.

As compared with the Old Measures, the Broker Rules revise the qualification requirements pertaining to an insurance brokerage's "Senior Management" positions, meaning: (i) the general manager, (ii) the vice-general manager, (iii) any provincial-level branch "Responsible Person," (meaning the individual who is assigned overall responsibility for operation of the branch), or (iv) any other designated officer assigned comparably important duties. For example:

- In addition to other qualification standards, including CIRC approval, any individual nominated to fill an insurance brokerage company Senior Management position, must participate in a CIRC qualification examination;
- The position of "Sub-Provincial Branch Responsible Person," meaning a Responsible Person with cognizance over a branch office that has been established at a level below that of the provincial-level, e.g., city-level or district-level, is deemed not to constitute a Senior Management position and, accordingly, will be subject to lesser qualification standards.
- Any individual filling a Senior Management position, and any Sub-Provincial Branch Responsible Person, is prohibited from concurrently serving as Responsible Person with respect to two or more branches of any level;
- Any Senior Management or Sub-Provincial Branch Responsible Person will be dismissed, and their CIRC qualification approval rescinded, under any of the following circumstances:
 - resignation from the post;
 - failure to be appointed to the post more than two months after obtaining CIRC approval;
 - determination of significant indebtedness; or
 - record of having conducted any of the specified economic-related misdeeds listed in the Broker Rules.
- An interim Responsible Person may be temporarily appointed by an insurance brokerage company or a branch in the event that the original Responsible Person:
 - resigns;
 - is dismissed;
 - experiences illness, accident, or other similar impediment.

In addition, unlike the Old Measures, no provision in the Broker Rules specifies qualification or other requirements pertaining to a chairman of board or executive director of an insurance brokerage company.

In order to clarify regulatory issues which broadly pertain to insurance brokerage operations, the Broker Rules also establish the following new requirements.

- An insurance brokerage company that operates a reinsurance brokerage business must maintain reinsurance business files, establish a specialized reinsurance department and isolate reinsurance brokerage business management from other sectors;
- An insurance brokerage company that purchases professional liability insurance must purchase a policy that is constantly effective with per accident insurance coverage of not less than RMB1 million;
- An insurance brokerage company that purchases a professional liability policy with a one-year term must purchase a policy with an aggregated indemnity limitation of not less than the greater of RMB10 million and the amount of revenue generated from the company's principal business;
- An insurance brokerage company that provides brokerage services must provide every customer with a standardized customer disclosure document including the company's basic information, describing the composition of the company's revenue, identification of any affiliated relation with other insurance intermediary companies, and other similar matters.

In addition to the above revisions, the Broker Rules establish a new management system governing insurance brokerage practitioners. Specifically, in order work as an insurance brokerage practitioner, an individual must complete the following steps:

- register with one insurance brokerage company;
- possess a commensurate level of professional capability and
- have no record of having conducted any of the specified economic-related misdeeds listed in the Broker Rules.

In addition, with respect to professional capability, the Broker Rules encourage insurance brokerage practitioners to receive corresponding training from the company that they are registered with, or from an insurance brokerage self-regulation organization. The Broker Rules further require an insurance brokerage to maintain integrated training files for its insurance brokerage practitioners.

8. Insurance Adjusters Regulations Promulgated

On February 1, 2018, CIRC promulgated the "Regulations on Insurance Adjusters" (the "New Regulations"), which will take effect on May 1, 2018, superseding the "Regulations on Insurance Adjuster Institutions" (most recently amended by CIRC as of October 10, 2015) and the "Measures

for Supervision and Administration of Insurance Brokerage Practitioners and Insurance Adjuster Practitioners” (promulgated by CIRC on July 1, 2013). Two significant changes in the New Regulations pertain to “insurance adjusters” and “insurance adjuster practitioners.” An insurance adjuster (an “Adjuster”) refers to a company or its branch that conducts insurance loss-adjuster activities such as investigation, appraisal, loss assessment, claims settlement and related risk assessment. An insurance adjuster practitioner (a “Practitioner”) refers to a natural person who is employed by an Adjuster and conducts the above activities.

Adjusters

An Adjuster no longer must first apply for CIRC approval prior to conducting business. Instead, an Adjuster must only make a record filing within 30 days after its business license is granted. However, an Adjuster will be subject to stricter rules governing its business organization and business activities. CIRC will also assess the qualifications of the shareholders of the Adjuster when it makes the record filing.

Some other noteworthy changes include:

- Every Adjuster must have a minimum paid-in capital of RMB1 million, and any Adjuster wishing to conduct a nationwide insurance assessment business must have a minimum paid-in capital of RMB2 million or more;
- Every Adjuster intending to establish a branch must satisfy additional qualification standards however, CIRC no longer restricts the maximum number of an Adjuster’s branches or mandates associated minimum paid-in capital;
- Every Adjuster must satisfy additional reporting requirements, including: (i) filing annual reports with CIRC and (ii) reporting a change of the chairman of the board or senior management.
- Every Adjuster must establish and maintain Practitioner training records, must enter into labor contracts with senior management; and must establish a separate account to receive business revenues.

Practitioners

Pursuant to CIRC’s Circular Concerning the Administration of Insurance Intermediary Practitioners (promulgated by CIRC on August 3, 2015), a Practitioner no longer need to undertake and satisfy a CIRC qualification exam prior to conducting assessment activities. However, prior to employment, the Adjuster must verify that the Practitioner meets minimum qualification standards established in the New Regulations.

9. Draft Independent Director Rules Released for Public Comment

On December 26, 2017, CIRC released the “Draft Administrative Measures on Insurance Institution Independent Directors” (the “Draft Measures”) for public review, with a comment period that closed on December 31, 2017. If promulgated, the Draft Measures would supersede the

“Temporary Administrative Measures on Insurance Company Independent Directors,” (the “Temporary Measures”), promulgated by CIRC on April 17, 2007. The Draft Measures directly apply to insurance group (holding) companies, insurance companies, insurance asset management companies and mutual insurance associations (collectively “Insurance Institutions”), and apply to foreign-invested insurance companies by reference.

Significant changes proposed in the Draft Measures include: (i) establishment of new requirements governing the appointment of independent directors; (ii) strengthening the power of independent directors; and (iii) clarification of certain other regulatory matters pertaining to independent directors.

Appointment of Independent Directors

The Draft Measures introduce a number of changes with respect to the appointment of independent directors, including:

- For any Insurance Institution with a total asset value less than RMB5 billion, at least 1/3 of the board must be comprised of independent directors.
- For any Insurance Institution with a “controlling shareholder” (defined as a shareholder holding an equity interest in the Insurance Institution of not less than 50%), at least 1/2 of the board must be comprised of independent directors; provided however, such requirement may be relaxed if the Insurance Institution either: (i) is controlled by an insurance shareholding group company or an insurance company or (ii) subject to CIRC approval, earns a CIRC corporate governance rating of “outstanding” for three consecutive years.
- Under the board of directors, with respect to any audit, or nomination and remuneration committee, at least 1/3 of such committee must be comprised of independent directors, the chief of each such committee must be an independent director, and at least one of such independent directors must have corresponding prior working experience.

Power of Independent Directors Expanded

The Draft Measures endow independent directors with expanded authority in the following respects:

- Any independent director may directly communicate opinions at meetings of the shareholders, or engage an external auditor or consulting companies;
- Together, two or more independent directors may jointly require the board of directors to reconsider a proposal pertaining to a material affiliated transaction, or jointly convene a meeting of board of directors;

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- possess registered capital of not less than RMB500 million;
 - be equipped with an information management system capable of supporting the life settlement business operation and docking with the information systems and the policy registration management information platforms of insurance companies;
 - adopt an adequate online information security management system, a corresponding business management regime and an operating protocol;
 - establish a sound customer information management system and procedures; and
 - meet other relevant requirements as prescribed by CIRC from time to time.

A Life Settlement Provider is required to operate and manage life settlement business uniformly and centrally via a uniform online platform, and must adopt a uniform business operating protocol. In addition, a Life Settlement Provider may conduct professional consultant service, evaluate cash value of policies, pay cash sums in advance, provide supportive services, track policies and provide other professional services with respect to life settlement business.

The Draft Rules further provide the following requirements pertaining to life settlement business operations:

- a policy investor must use its own funds to invest in life settlement business during the pilot phase;
- a policy holder may terminate a life settlement contract within thirty days upon the execution of the contract, or within fifteen days upon his or her receipt of the cash sum;
- a Life Settlement Provider must deposit its registered capital in a designated escrow account at a nationwide commercial bank with escrow business experience; and
- a Life Settlement Provider must abide by information disclosure and reporting requirements established by CIRC.

11. Implementing Measures for Work Safety Liability Insurance Promulgated

On December 12, 2017, CIRC, the State Administration of Work Safety, and the PRC Ministry of Finance jointly promulgated the “Implementing Measures for Work Safety Liability Insurance” (the “Measures”), which took effect on January 1, 2018. The Measures regulate the work safety liability insurance business, require an enterprise that specializes in dangerous industrial production (such as mining, dangerous chemical production, firework production and construction) to acquire work safety liability insurance, and encourage any enterprise engaging in industrial production (an “Enterprise”) to acquire work safety liability insurance.

Noteworthy topics included in the New Measures are summarized below.

- Work safety liability insurance must cover every worker, including anyone seconded to the Enterprise, with a minimum indemnity of RMB 300,000 per person in the event of accidental death. With respect to other accidental injuries, the compensation will be stipulated in the policy.
- Any participating insurer must establish a service system to take precautions against production safety accidents, and assist insured Enterprises with matters relating to accident prevention and work safety. In addition, work safety liability insurance contracts must specifically specify such services and their respective frequency.
- Work safety liability insurance coverage will be used as a material supporting condition in connection with application for a work safety license (a prerequisite for conducting business activity in certain industry sectors, including mining, dangerous chemical production, fireworks production, construction, etc.), and is necessary for other administrative evaluation processes.
- Any Enterprise which has purchased work safety liability insurance will be accorded certain priority from relevant governmental authorities when applying for work safety-related financial aid, arranging credit financing, initiating projects, joining an industrial park, or applying for related industry support policies. Joint incentives will also be provided to Insurers which settle related claims in a timely manner and otherwise achieve notable results with respect to accident prevention.

12. Anti-Insurance Fraud Guidance Promulgated

On February 23, 2017, CIRC promulgated the “Guidance on Anti-Insurance Fraud” (the “Guidance”), which provides general guidelines with respect to insurance company anti-insurance fraud internal management, as well as describing the correlating responsibilities of CIRC, the Insurance Association of China (the “IAC”) and the China Insurance Information Technology Co., Ltd. (the “CIITC”), pursuant to which CIRC will assume the leading role and the IAC and CIITC, respectively, will perform supporting duties as directed by CIRC. The Guidance is mandatorily and directly applicable to insurance group (holding) companies, insurance companies and their branches, and applies by reference to insurance professional intermediaries, reinsurance companies, and other relevant institutions.

Pursuant to the Guidance, an insurance company must establish an insurance fraud risk management system. Such systems are required to incorporate certain key functions, features, and components including:

- effective supervision and regulation by the board of directors, the board of supervisors, and senior management personnel;
- organizational structure and internal control processes for insurance fraud risk management;

- clear division of responsibilities and authority; and
- identification, calculation, assessment, supervision, and disposal of fraud risks, and other similar features.

Ultimate responsibility for fraud risk management is entrusted to the insurance company's board of directors, while senior management personnel are to exercise responsibility for fraud risk management implementation.

13. Decision re Amending Four Regulations Promulgated

On February 23, 2018, CIRC promulgated the "Decision re Amending "Implementation Rules of the Administrative Regulations of the Foreign-Invested Insurance Companies and Three Other Regulations" (the "Decision"). The four regulations amended by the Decision are:

- "Implementation Rules of the Administrative Regulations of the Foreign-Invested Insurance Companies;"
- "Administrative Measures for the Representative Agencies of Foreign Insurance Institutions in China;"
- "Administration Measures for the Subordinated Term Debts of Insurance Companies;" and
- "Provisions on Administration of Qualifications of Directors, Supervisors and Senior Management Personnel of Insurance Companies."

According to an announcement by CIRC on its official website (<http://www.circ.gov.cn/web/site0/tab5207/info4099684.htm>), the Decision confirms the cancellation of the below-listed procedures in connection with applications for CIRC administrative approvals:

- notarization by a notary established under the law of the country or region where the foreign applicant is located in respect of: (i) CIRC approvals on establishment of foreign-invested insurance companies; (ii) establishment of a representative office of a foreign insurance company (a "Representative Office"); or (iii) Representative Office change of material matters;
- notarization by a notary established under the law of PRC for the Chinese translation of application materials for CIRC qualification approvals with respect to directors, supervisors and senior management personnel of insurance companies;
- submission of a legal opinion by a qualified Chinese law firm for CIRC approval of the issuance of subordinated debt by an insurance company.

In addition, CIRC has streamlined application procedures by cancelling the below-listed administrative requirements:

- certification by a PRC embassy or consulate application materials in respect of an application for CIRC approval for the establishment of a foreign-invested insurance

company, establishment of a Representative Office, or Representative Office change of material matters; and

- submission of audited financial reports for an insurance company for the preceding three years, solvency reports for the preceding three years, and the financial report and the solvency report for the previous quarter in respect of an application for CIRC approval for issuance of subordinated debt.

14. Circular governing Establishment of Equity Investment Plans by Insurance Funds Promulgated

On January 5, 2018, CIRC promulgated the “Circular on Establishment of Equity Investment Plans by Insurance Funds” (the “Circular”). The Circular applies to insurance asset management companies (pursuant to the “Tentative Provisions on the Administration of Insurance Assets Management Companies” release by CIRC on April 21, 2004). An equity investment plan (a “Plan”) refers to an investment plan that is used by an insurance asset management company (an “Asset Manager”) to invest the funds deposited by investors in equity interest of privately-held enterprises, whether such investment is direct or indirect.

Highlights of the Circular include the following.

An Asset Manager may not use a fixed return equity investment Plan:

A “fixed return equity investment” includes any equity investment that provides either: (i) for payment of a fixed amount in respect of a given equity investment; or (ii) for compulsory redemption by the invested party (or an affiliate) upon a Plan expiration

Strict standards are to be applied to investment activities and investment targets:

- an Asset Manager must actively manage and invest investment funds, and is expressly prohibited from allocating any of such funds to a third party for such third party to make independent investments of any kind;
- an Asset Manager may not invest in private equity investment funds that invest in other asset management products provided by the same Asset Manager; and
- the maximum amount invested in any private equity investment fund may not exceed 80% of the total amount solicited by such private equity investment fund.

Any Plan must be registered with CIRC:

The Circular provides that the Plan must be registered with CIRC prior to the commencement of corresponding investment activities. CIRC, in its discretion, will register certain types of equity

investment plans relatively more quickly, including those designed for the development of non-financial industry sectors.

15. PRC Personal Information Protection Standard Promulgated

On January 24, 2018, the PRC National Information Security Standardization Technical Committee (the “NISSTC”) promulgated the “Personal Information Security Specification” (GB/T 35273-2017) (the “Specification”), with effectiveness from May 1, 2018. The Specification is a non-mandatory, national-level technical standard governing personal information processing activities of an individual or organization which oversees PI administration (a “PI Controller”), and which may be relied upon by any Chinese governmental authority when evaluating the preparedness and performance of a PI Controller or related party. With respect to the definition of PI Controller, the Specification defines PI Controller as meaning “organization or individual who has the power to decide the purpose and manner and other similar matters pertaining to PI processing.”

Personal and Sensitive Information Categories

The Specification defines personal information (“PI”) as “information which is recorded electronically or by other means and which, by itself, or together with other information, could be used to identify a PRC citizen and/or reflect a natural person’s prior activities, including but not limited to a natural person’s name, identification number, contact information, home address, bank or other account password, and track of movements, personal biological identifiable information, communication record and corresponding contents, accounts and passwords, asset information, credit information, hotel-check in records, health and physical information and transactional records.” Additionally, the Specification establishes the subcategory of “Sensitive PI,” applicable to any PI where the leakage, illegal usage or abuse would highly likely be detrimental to the reputation, physical or mental health of a PRC citizen, or cause discriminatory treatment to a PRC citizen. Specification Appendices A and B, respectively, provide PI and Sensitive PI examples and identification guidance.

PI Processing

In order to enhance protection of individual PRC citizens identified by relevant PI (“PI Subjects”), the Specification establishes heightened requirements with respect to the collection, preservation, usage, disposition and other related PI-processing activities as outlined below.

- PI Collection: All PI collection activities must meet standards of “legality” and “minimization”
 - The standard of “legality” prohibits activities which (i) are contrary to the PI Subject’s will, (ii) employ illegal channels, (iii) fail to disclose the purpose of collection or (iv) contravene PRC law.

- The standard of “minimization” requires that activities must be: (i) limited to PI which is indispensable for realization of disclosed services or products; (ii) conducted with the lowest frequency to the extent that is sufficient for realization of authorized services or products; and (iii) conducted in a manner such that the amount of the collected PI is no greater than the minimum required to realize authorized services or products.
- As a general rule, prior to any PI collection, a PI Controller must obtain the consent of any PI Subject and disclose (i) PI category; (ii) the manner, purpose and frequency of collection; (iii) storage location and (iv) other similar matters. This consent requirement may be waived on the basis of national security, public security, or criminal investigation. In contrast, prior to any Sensitive PI collection, a PI Controller must first obtain the “explicit consent” of any PI Subject, defined as “active behavior for purpose of confirmation which are conducted by PI Subjects to explicitly authorize PI Controllers to conduct specific processing activities to his or her PI.” Specification Appendix C furnishes examples of explicit consent.
- Preservation: Immediately following collection, PI Controllers must “de-identify” PI, meaning: “a process of technically processing PI, through which, without combining with other PI, such PI could not be used to identify PI Subjects.” In addition, PI Controllers must limit the time period of PI preservation to the minimum period that is sufficient for accomplishment of the authorized service or product. Sensitive PI must be encrypted, or otherwise secured, when being preserved.
- Usage: PI Controllers are prohibited from violating the lawful rights of PI Subjects.
- Transfer: Prior to any transfer of Sensitive PI to a third party, such PI (i) must be secured by encryption or comparable technical means, (ii) the PI Subject must be informed with respect to the technological capability of the PI receiver and other relevant matters, and (iii) the PI Subject must provide explicit consent. Any cross-border transfer of any PI must comply with relevant PRC law.
- Disposition: In the case of a PI Controller ceasing operation of its services or products, the PI Controller must (i) timely cease PI collection, (ii) inform any affected PI Subject and (iii) delete or “anonymize” collected PI, meaning “an irrevocable technical disposition process of PI through which relevant PI Subjects may not be identified.”

PI Subject Rights:

PI Subject rights include the following:

- receipt of a copy of collected PI;
- correction and/or deletion of collected PI;
- revocation of consent; and
- cancellation of relevant service or product account.

Other Requirements:

In addition to the above requirements, PI Controllers must satisfy the requirements listed below:

- establish appropriate PI-processing and PI-protection internal governance departments;
- periodically conduct a comprehensive PI-protection evaluation;
- ensure sufficient technical capability with respect to PI-protection;
- conduct PI-protection training for employees;
- establish procedures for auditing PI-protection; and
- adopt an emergency protocol with respect to data breaches and other emergency incidents involving PI-processing.

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