

## JT&N's July, 2017 PRC Insurance News Alert

Welcome to the latest edition of JT&N's PRC Insurance News Alert, reporting recent regulatory developments affecting the PRC insurance sector. We welcome your comments, questions and feedback. The preceding periodic JT&N PRC Insurance News Alert was published in April, 2017, and a "spot" report re "Regulatory Developments in Data Protection and Cybersecurity" was published on May 26, 2017. To receive a back issue or to contact us, please visit our [website](#). Additionally, our 2016 China Insurance Year in Review is available at this link: [2016 China Insurance Year in Review](#).

Lan Lan

Senior Partner

Beijing Office

Tel: (8610) 5706-8029

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

John Bolin

Senior International Counsel

Beijing Office

Tel: (8610) 5706-8028

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

George Yu

Partner

Beijing Office

Tel: (8610) 5706-8168

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

Elsie Shi

Partner

Beijing Office

Tel: (8610) 5706-8163

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

### 1. CIRC Strengthens Oversight of Insurance Institutions

Recently, the China Insurance Regulatory Commission ("CIRC") has devoted increased emphasis on the oversight of insurance institutions (encompassing insurance companies, reinsurance companies, and insurance intermediaries), including strengthened enforcement of regulations by means of inspections. By way of background, CIRC oversees a comprehensive assessment and classification program, comprised of periodic and supplemental company reporting and programmed and ad hoc inspections. Originally commenced in 2015, the annual inspection program is carried out by the CIRC Insurance Consumer Protection Bureau, and aims at combating activities which are deemed to be harmful to customers' legitimate interests. Recently, CIRC has placed increased emphasis on ad hoc inspections. For example, in early 2017, CIRC conducted ad hoc onsite inspections of insurance companies which focused on shareholder relationships, corporate governance and insurance company internal control. In the future, CIRC may continue using ad hoc inspections as a means of testing regulatory compliance with selected topics, e.g., capital investment, financial records keeping and compliance with C-ROSS requirements.

With respect to inspection focus, CIRC has recently provided additional guidance regarding specific topics of regulatory concern. Most recently, on April 28, 2017, CIRC promulgated the "Circular regarding Strengthening Insurance Regulation, Combating Illegal Activities, and Cleaning up Market Chaos" (the "**Strengthened Regulation Circular**"). Among other things, the Strengthened Regulation Circular mandates self-inspection by every insurance institution, to be supplemented by ad hoc inspections by CIRC and other relevant regulatory authorities. In particular, the Strengthened Regulation Circular emphasizes enforcement of regulation concerning eight specified categories of activity, i.e.:

- capital contributions by shareholders to insurance institutions which are not genuine, are not derived from the shareholder's own equity, or are otherwise illegitimate;
- inefficient decision-making mechanisms which adversely impact

#### Contact Us

Questions?

Contact our experts at

JTN Insurance:

[jtninsurance@itnfa.com](mailto:jtninsurance@itnfa.com).

#### About JT&N

JT&N is a top-tier  
law firm in China.

- company operations;
- illegal and/or high-risk investments;
- improper product innovation which may tend to undermine the security function of insurance products;
- misleading sales practices;
- insufficient responsiveness to policyholders' claims;
- fraudulent application for governmental subsidies, e.g., by falsifying invoices, falsifying staff information, etc.; and
- fabricating solvency data.

For more information,  
please click [here](#).

Additionally, in connection with the Strengthened Regulation Circular, CIRC recently promulgated a number of other supporting circulars, and additional supporting circulars may be promulgated by CIRC in the near future. These circulars respectively focus on detailed implementation (e.g., inspection types, timelines, contents and reports, etc.) for particular topics, i.e.: (i) investment of insurance funds; (ii) agricultural insurance and claims; (iii) activities which may harm customers' interests; (iv) sales management by life insurance companies; and (v) authenticity, compliance and completeness of solvency data.

---

## 2. CIRC Customer Complaint Report Calculations

In connection with the overall emphasis on strengthening its oversight of insurance institutions, on April 26, 2016, CIRC announced on its official website that it had adjusted the statistical methods and the content of its "Report regarding Insurance Customer Complaints." This report, which is published quarterly by CIRC, identifies the ten top property insurance companies and the ten top life insurance companies which have received the largest number of customer complaints within a certain period. A copy of the current report is available at this link: [CIRC Customer Complaint Report](#). This calculation change expands the calculation scope by taking into account all complaints received by CIRC and its bureaus, including those which have been withdrawn by customers.

---

## 3. Cyber Security Law and Related Guidance

Regulation of internet-related matters remains highly active. On November 7, 2016, the Standing Committee of the National People's Congress promulgated the new "PRC Cyber Security Law." Of note, while formally effective from June 1, 2017, the Cyberspace Administration of China ("CAC") has informally proposed a 19-month grace period for companies to localize personal information and important data. To support the implementation of the Cyber Security Law, CAC, among other things, has promulgated the draft "Measures for Evaluating the Security of Transmitting Personal Information and Important Data Overseas" and, most recently, on May 27, 2017, the PRC Standardization Administration published the draft "Information Security Technology - Guidelines for Data Cross-Border Transfer Security Assessment." Additional relevant rules and guidelines may be forthcoming.

---

## 4. Strengthened Oversight of the Design and Marketing of Life Insurance Products

Recently, CIRC promulgated two circulars which impose stricter regulation over the design and marketing of life insurance products, i.e., the May 11 "Circular on Regulating the Development and Design of Products by Life Insurance Companies" (the "**Insurance Products Design Circular**") and the May 17 "Circular on Further Strengthening Marketing Management of Life Insurance Companies" (the "**Marketing Management Circular**").

According to the Insurance Products Design Circular, CIRC encourages life

**JT&N's Insurance  
Practice**  
*JT&N has one of  
the most highly  
regarded insurance  
law practices in China.*

insurance companies to develop four types of products, namely: term life insurance products and whole life insurance products; long-term annuity insurance products; health insurance products; and insurance products for particular groups of people. This Circular also sets out requirements on the design of five different types of life insurance products, namely: endowment insurance products and annuity insurance products; universal life insurance products and unit-linked insurance products; long-term care insurance products; disability income insurance; and group medical insurance. In addition, the Insurance Products Design Circular prohibits life insurance companies from using expressions such as “financing” or “investment plans” when advertising insurance products. It also requires life insurance companies to expressly notify customers if the products are sold in combination.

Pursuant to the Marketing Management Circular, life insurance companies are required to conduct self-inspections regarding sales management compliance (e.g., sales promotion, information disclosure, complaint management, etc.), identify and correct inappropriate activities, and were required to provide reports to CIRC or local CIRC bureaus not later than June 30, 2017. CIRC will conduct comprehensive reviews of company conduct of self-inspection, and assign differing levels of punishment depending on the inspection and rectification results. Separately, local CIRC bureaus will conduct onsite inspections of life insurance companies’ marketing activities, and penalize companies for illegal or harmful activities, such as false or misleading advertising.

---

## **5. Guidance on Articles of Association for Insurance Companies**

On April 24, 2017, CIRC promulgated the “Guidance on Articles of Association for Insurance Companies” (the “**AOA Guidance**”), which applies to joint-stock insurance group (holding) companies, insurance companies and insurance asset management companies. For other organizational forms, the AOA Guidance applies by reference. The AOA Guidance provides detailed instructions regarding the content of insurance company articles of association, and specifies mandatory content, e.g.: (i) shareholder rights and obligations and (ii) the scope of authority respectively allocated to the general meeting of shareholders, board of directors and independent directors, and procedures governing the general meeting of shareholders, among other essential provisions. An insurance company may make adjustments to the wording and the order of provisions specified in the AOA Guidance, and include additional content in the AOA which is consistent with related laws and regulations; provided, however, that a written explanation regarding such amendment or addition must be provided to CIRC.

---

## **6. Circular regarding the Regulation of Insurance Adjustors**

On June 30, 2017, CIRC promulgated the “Circular regarding Effectively Implementing the Record-filing and Regulation of Business Conducted by Insurance Adjustors.” This Circular establishes minimum capital requirements applicable to an insurance adjustor. Specifically, the Circular requires that any nation-wide insurance adjustor must possess a minimum operating fund of RMB2 million, and any regional insurance adjustor must possess a minimum operating fund of RMB1 million.

The Circular further requires that all such funds must be entrusted to an eligible bank and may only be used for specified purposes, i.e.: (i) investing in large contracted deposits and fixed-time deposits; (ii) purchasing real estate; (iii) fund transfers to the insurance adjustor’s basic account in order to pay for operational expenses; and (iv) other eligible purposes. In addition, the Circular establishes filing procedures in connection with the establishment of an insurance adjustor enterprise. If an insurance adjustor is nation-wide, or is regional but organized as a partnership, it must file with

### **Our Offices**

*JTN has offices in  
Beijing, Shanghai,  
Shenzhen, Chengdu,  
Hefei, Jinan, Shenyang  
and Xi’an.*

central CIRC. Otherwise, it must file with the relevant local CIRC bureau.

---

## **7. Insurance Intermediary Shareholder Qualification Requirements**

On May 8, 2017, CIRC promulgated the “Circular on Implementing Relevant Matters Specified in the Document Bao Jian Fa [2016] No.82” (the “**Implementing Circular**”). Document Bao Jian Fa [2016] No.82 refers to the “Circular on Issuing Business Licenses to Professional Insurance Intermediaries” (effective on September 29, 2016). The Implementing Circular clarifies requirements regarding (i) shareholder capital contributions to an insurance intermediary and (ii) registered capital escrow accounts, as further described below.

- With respect to shareholder capital contributions to an insurance intermediary, in order to demonstrate that the paid-in capital is legitimately derived from the shareholder’s own equity, the Implementing Circular specifies that an insurance intermediary company, when applying for its business license, must furnish shareholders’ bank account statements for the contribution month and each of the three preceding months, a financial accounting report for the preceding month (only applicable to shareholders who are legal persons), and any other materials as required by CIRC. Additionally, for any shareholder who is a legal person, the Implementing Circular mandates that such shareholder’s net assets and monetary funds each must be greater than such shareholder’s paid-in capital contribution, tested as at the last day of the month preceding the capital contribution.
- With respect to registered capital escrow accounts, the Implementing Circular mandates that any applicant for an insurance agency or insurance brokerage business license must open both a basic account in order to pay for operational expenses, and a separate escrow account in order to hold required registered capital.

---

## **8. Circular Emphasizing Report of Data to the Information Platform**

On May 15, 2017, the General Office of CIRC promulgated the “Circular on Strengthening the Insurance Sector’s Data Reporting and Data Quality Management on the Insurance Policy Registration Management Information Platform (the “**Information Platform**”),” which applies to life insurance companies, property insurance companies and China Insurance Information Technology Management Co., Ltd. (“**CIITC**”). Among other things, the Circular requires that, whenever an insurance company conducts relevant business, it must report required data to the Information Platform. If, for any reason, an insurance company must suspend data reporting, it must submit a written application to the CIRC Policy Registration Leading Group Office, explaining the reasons for suspension and the expected duration. A newly established insurance company must apply to CIITC to connect to the Information Platform in a timely manner and complete its connection according to the Information Platform’s rules and standards.

---

## **9. Circular regarding Information Disclosure by Mutual Insurance Organizations**

On March 28, 2017, CIRC promulgated the “Circular regarding Strengthening Matters relating to Information Disclosure by Mutual Insurance Organizations” (effective on May 1 2017). According to the Circular, a mutual insurance organization is required to conduct two types of information disclosure via its website:

regular disclosure, including (i) information regarding the organization's governance (e.g. membership, management team and articles of association), and (ii) information regarding the organization's operation and management (e.g. board of directors reports, financial accounting reports and plans for distributing earnings); and

- event-based disclosure, including, among other things, change of critical business information such as initial operating funds, domicile, name and business scope, occurrence of significant loss or debt, and decrease of capital.

---

#### **10. Due Diligence on Tax-Related Information of Financial Accounts of Non-Residents**

On May 9, 2017, the State Administration of Taxation, together with five other Chinese governmental authorities (including CIRC), promulgated the “Administrative Measures regarding Due Diligence on Tax-Related Information of Financial Accounts Owned by Non-Residents” (effective on July 1, 2017). The Measures require that any financial institution established in the PRC (including depository institutions, custodial institutions, investment institutions and insurance institutions which conduct insurance or annuity business with cash value) must conduct due diligence with respect to the tax-related information of financial accounts owned by non-residents. “Non-residents” refer to individuals or institutions which are not tax residents as defined by the PRC tax laws, but exclude governmental organizations, international organizations, central banks, financial institutions, and publicly-listed companies and their affiliated institutions. With respect to existing accounts, a financial institution is required to retrieve existing information provided by the account holder and identify whether the account holder is a non-resident. With respect to new accounts, a financial institution must obtain a “Tax-resident Identification Declaration” from the account holder and verify that the information in the declaration is consistent with the information provided in account application documents.

---

#### **11. Second-stage of C-ROSS**

On May 5, 2017, CIRC promulgated the “Circular on Strengthening Regulatory Areas of Weakness and Building a Thorough and Effective Insurance Regulatory System,” in which CIRC announced that it is planning the second stage of C-ROSS implementation. According to the Circular, the second stage of C-ROSS implementation will focus on: (i) strengthening regulation on insurance groups and mutual insurance institutions; (ii) revising technical standards such as investment asset risk factors; and (iii) strengthening cooperation with other regulatory authorities.

Subsequently, on May 16, 2017, CIRC promulgated the “Circular regarding Research on the C-ROSS and Its Implementation,” seeking opinions from the insurance sector regarding perceived weaknesses in C-ROSS rules and its implementation, and soliciting suggestions regarding future development of C-ROSS that would better enable it to serve as an effective risk-control system.

---

#### **12. Draft Measures regarding Compulsory Environmental Pollution Liability Insurance**

On June 7, 2017, CIRC and the Ministry of Environmental Protection jointly promulgated the draft “Administrative Measures on Compulsory Environmental Pollution Liability Insurance” for public comment. The Measures require a company which engages in business with a high degree of environmental risk (e.g. oil exploitation, copper smelting, and tailing pond construction) to purchase compulsory environmental pollution liability insurance. The proposed scope of mandatory insurance responsibility encompasses (i) personal injury to a third-party caused by environmental

incidents; (ii) property damage to a third-party caused by environmental incidents; (iii) ecological damage to the environment; and (iv) fees arising from emergency management and decontamination. If such a company fails to purchase the compulsory insurance according to the Measures, it would be urged to do so and may be fined up to a maximum of RMB30,000 by the local environmental protection authority.

---

### **13. Interpretation re Application of Criminal Law in Cases involving Infringement of Personal Information**

On May 8, 2017, the Supreme People's Court and the Supreme People's Procuratorate jointly promulgated the "Interpretation on Several Issues regarding Application of Law in Criminal Cases involving Infringement of Citizen's Personal Information," (the "**Interpretation**") which became effective on June 1, 2017. Within the PRC legal system, such interpretations provide authoritative guidance regarding the application of particular laws, with binding effect on lower courts and procuratorates. The Interpretation pertains to issues arising in the criminal prosecution of incidents of the infringement on the personally identifiable information ("**PII**") of PRC citizens. Among other things, the Interpretation: (i) prescribes a definition for "citizens' personal information" to be applied in criminal proceedings and (ii) clarifies standards for conviction and for sentencing in connection with crimes involving infringement on the PII of PRC citizens, as well as addressing some other related matters.

With respect to the definition of PII, the Interpretation functionally defines it as meaning "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 PRC citizen's geographic position and prior movement, or "track" which, accordingly, includes but is not limited to a citizen's name, identification number, contact information, home address, bank or other account password, and track of movements." Inclusion of "track of movements" information within the listing of potential PII is a new development, reflecting increased recognition and concerns over the potential sensitivity of locational tracking. With respect to conviction and sentencing standards, the Interpretation provides criteria to be applied in assessing severity of a case involving PII infringement. According to the Interpretation, a prosecutor or a judge will consider criteria such as the perpetrator's work history and prior criminal record, the nature and quantity of PII, the amount of illegal income derived from the PII infringement, and the particular usage of the infringed PII.

---

Please note: Recipients who no longer wish to receive this News Alert may reply to this email and request to be deleted from our distribution list.

*This information is offered only for general informational and educational purposes. It is not offered as and does not constitute legal advice or legal opinion. This material is intended, but not promised or guaranteed to be current, complete or up-to-date. Communication of the information is not intended to create, and the receipt does not constitute, an attorney-client relationship. You should not act or rely on any information contained in this material without first seeking the advice of a qualified attorney.*

Copyright © 2017 JT&N