

JT&N's April, 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 JT&N PRC Insurance News Alert was published in January, 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](#).

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1. General Provisions of the PRC Civil Law Promulgated

On March 15, 2017, the National People's Congress promulgated the "General Provisions of the Civil Law," which will become effective on October 1, 2017. The General Provisions would be the opening chapter of the proposed PRC Civil Code, and are intended to lay down guiding principles for each chapter of the forthcoming Code. With respect to matters relating to commercial activities, one of the most significant changes embedded in the General Provisions is an extension of the standard statute of limitations for civil actions from two years to three years. This means that, unless otherwise prescribed, a civil action would not be barred if it is first filed within such three-year period.

2. Draft Measures for Outbound Data Transfer Security Assessment

Pursuant to the PRC Cyber Security Law, which was promulgated by the Standing Committee of the National People's Congress on November 7, 2016, and which will take effect on June 1, 2017, the Cyberspace Administration of China recently released for public comment the draft "Measures for the Security Assessment of Outbound Transfer of Personal Information and Important Data," with a public comment period that will close on May 11, 2017. If promulgated, the draft Measures would govern outbound data transfer, encompassing personal information and important data that is generated in the course of business operation in the PRC and transferred to overseas institutions, organizations and individuals.

Aiming to provide implementing guidance for certain key aspects of the newly promulgated PRC Cyber Security Law, the draft Measures re-emphasize existing themes while also introducing new requirements and procedures. Certain aspects of the PRC Cyber Security Law and the draft Measures are unclear and subject to further clarification by relevant authorities. But the evident trend of regulation will likely impact many foreign and Chinese enterprises, whose business activities entail cross-border data transfers. In particular, while in many respect consonant with principles of data protection and cyber security established in other jurisdictions, the draft Measures and PRC Cyber Security Law are noteworthy for the strong emphasis which they place on an evaluation of the data content and State security interests, which may complicate procedural implementation and entail increased compliance costs and risks.

Conceptually, the draft Measures take cognizance of two broad classes of data: (i) that which may relate to State security and (ii) other data. Data which

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potentially may relate to State security is accorded the strictest degree of protection, and institutions involved with such information would be required to request and complete a governmental cyber security assessment prior to transferring such information to a foreign destination. Other institutions would be required to undertake cyber security self-assessments prior to transferring information to a foreign destination. Certain data thresholds have been established to guide categorization; however, the application methodology is not clear. With respect to the personal information of PRC citizens, the draft Measures formally prohibit overseas transmission of unconsented personal information, or personal information, the transfer of which would likely infringe upon the interests of the relevant individuals.

3. Draft Revisions to the “Anti-unfair Competition Law” Published for Public Comment

On February 26, 2017, the State Council Legislative Affairs Office published for public comment draft revisions to the PRC Anti-Unfair Competition Law, originally promulgated by the Standing Committee of the National People’s Congress on September 2, 1993 and effective December 1, 1993. The public comment period ended on March 25, 2017. These draft Revisions are a noteworthy milestone, representing the first amendment since the law was originally promulgated more than two decades before. The draft Revisions introduce a number of changes, including new definitions, strengthened enforcement measures and tougher sanctions to deter unfairly competitive conduct, including commercial bribery and infringement against trade secrets.

4. Circular regarding Collateral Posted by Offshore Reinsurers

On February 23, 2017, the China Insurance Regulatory Commission (“CIRC”) promulgated the “Circular regarding Collateral Posted by Offshore Reinsurers.” Chinese law does not require a reinsurer to post collateral in a reinsurance transaction. However, according to CIRC’s requirements under C-ROSS, the “China Risk Oriented Solvency System,” when business is ceded by a Chinese insurance company to an overseas reinsurer which is not licensed in China then, unless collateral is first posted by the overseas reinsurer, the Chinese insurance company will receive less solvency credit than it would otherwise have received if the same business were ceded to a China licensed reinsurer. Accordingly, a Chinese insurance company may require an overseas reinsurer to post collateral.

Pursuant to the Circular, an overseas reinsurer may provide a bank deposit or a standby letter of credit (“SLOC”) as collateral to guarantee the correlating reinsurance premiums receivable and/or reinsurance reserves receivable. With respect to bank deposit collateral, the funds must be deposited in an eligible Chinese commercial bank and must be available at the disposal of the ceding company. The funds cannot be returned to the reinsurer’s bank account within one quarter of the date of deposit unless the underlying reinsurance contract has previously been settled. With respect to SLOC collateral, the SLOC must be issued by a bank meeting certain criteria specified by CIRC, or confirmed by such bank (meaning that the confirmation bank undertakes to honor or negotiate the SLOC supplemental to the undertakings of the issuing bank). The Circular provides detailed requirements for SLOCs and confirmation letters.

5. CIRC Strengthens Regulations on Stock Investment by Insurers

On January 24, 2017, CIRC promulgated the “Circular on Further Strengthening Stock Investment by Insurance Funds,” superseding the provisions regarding stock investment in the “Circular on Enhancing and Improving Insurance Fund Investment Ratio-based Supervision.” The Circular imposes more stringent requirements on insurance institutions (including insurance companies, insurance holding companies and insurance asset management companies) holding greater equity and/or exercising greater

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control over companies publicly listed in mainland China. Pursuant to the Circular, CIRC classifies investment in mainland China publicly-listed companies into three categories, namely normal investment, material investment and company acquisition, according to (i) equity interest to be held in the listed company (aggregated together with individuals or companies acting in concert that are not subject to regulations by CIRC) and (ii) influence on the listed company. More specifically,

- “Normal Investment,” meaning that, after completion of the acquisition, the investing insurance institution will hold an equity interest in such publicly-listed company that is less than 20%, but will not hold controlling power over such company;
- “Material Investment,” meaning that, after completion of the acquisition, the investing insurance institution will hold an equity interest in such publicly-listed company that is equal to or greater than 20%, but will not hold controlling power over such company; and
- “Company Acquisition,” meaning that, after completion of the acquisition, the investing insurance institution will hold controlling power over such publicly-listed company. For the purposes of this analysis, “controlling power” may be acquired via stock acquisition, agreement, or other arrangement.

With respect to Company Acquisition, among other requirements, an insurance institution may only invest in the following targets: (i) companies in the PRC insurance sector, (ii) companies in other PRC financial sectors, and (iii) companies in insurance-related sectors which are likely to generate stable cash flows and satisfy relevant industrial policies. An insurance institution may only use funds derived from its equity to acquire publicly-listed companies. In addition, an insurance institution is prohibited from acquiring a publicly-listed company in concert with any other individuals or companies not subject to regulation by CIRC, or from financing its acquisition by using its publicly-listed stock assets as collateral.

6. Amended CIRC Administrative Penalty Procedures

On January 25, 2017, CIRC promulgated the amended “Provisions for the Procedures of Administrative Penalty,” which became effective on March 31, 2017. Pursuant to the Amended Provisions, jurisdiction over a telemarketing center’s alleged misconduct will be determined pursuant to the following principles:

- If the suspected misconduct is discovered during a routine inspection, then the CIRC bureau with geographic responsibility over the telemarketing center (the “General Regulator”) would have jurisdiction;
- If the suspected misconduct is discovered via a third-party complaint, then the CIRC bureau with geographic responsibility over the origin location of the complaint or the relevant policyholder domicile would have jurisdiction (the “Incident Regulator”). However, the General Regulator may retain jurisdiction by agreement of the Incident and General Regulators.

7. CIRC Penalizes Life Insurers for Irregular Stock Investment

Recently, several life insurance companies, including Foresea Life Insurance Co., Ltd. (“Foresea”) and Evergrand Life Assurance Co., Ltd., (“Evergrand”) have been criticized for pursuing aggressive stock investment strategies and for the initiation of high-profile hostile takeover attempts of publicly-listed companies. Some additional information about the Foresea and Evergrand penalizations is provided below.

Our Offices

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

- Foresea: on February 24, 2017, CIRC penalized Foresea for violating rules governing insurance fund investment (e.g., excessive investment in non-blue chip stock) and for filing false materials with CIRC in connection with the company's prior capital increase. CIRC fined Foresea RMB800,000.
- Evergrand: on February 25, 2017, CIRC penalized Evergrand for overly speculative, frequent, and high-volume trading on the stock market. CIRC (i) prohibited the company from stock investment for a one-year period, (ii) reduced the permissible ceiling for its equity investments for an indefinite period, and (iii) ordered the company to remove certain specified officers and to rectify relevant issues.

8. CIRC On-site Inspection of Insurance Companies

On February 17, 2016, CIRC published on its website (<http://www.cbrc.gov.cn/chinese/newIndex.html>) a news release regarding a plan for ad hoc on-site inspections of insurance companies. According to the news release, such inspections will focus on the following matters:

- Shareholder activities, including the relationships among shareholders, shareholders' investment in the company, equity transfers and shareholder conduct;
- Corporate governance, including the shareholders' meeting, board of directors, board of supervisors and executives; and
- Internal controls, including risk management and the company's systems for internal control and compliance, internal audit and accountability, and incentives.

9. Insurance Company Public Inquiry Mechanism

On March 9, 2017, CIRC promulgated the "Circular on Establishing Public Supervisory Inquiry Scheme." Pursuant to the Circular, if an insurance company has any prescribed event, CIRC may, on its own initiative, publish an inquiry letter on its official website and demand a written answer from the relevant parties (e.g. the company's shareholders, investors, the actual controller, and persons acting in concert, or the company's directors, supervisors or senior officers). In addition, CIRC will directly send the inquiry letter to the insurance company, which will have the responsibility to deliver the letter to the designated parties. With respect to the subject matter, the inquiry letter would mainly pertain to topics regarding corporate governance, business activities, investment activities and other matters of regulatory concern. The named parties must prepare an accurate, precise, clear and complete answer in writing and provide it to CIRC within the time period as prescribed in the inquiry letter. Additionally, this response must be published on the relevant insurance company's website as required by relevant disclosure rules. However, if the disclosure involves state secrets or trade secrets, the subject party may apply to CIRC for a waiver of the disclosure requirements.

Since its promulgation, there have not been any direct applications of the Circular. However, prior to its promulgation, on February 17 of this year, CIRC published an inquiry letter on its official website, which ordered Kunlun Health Insurance Co., Ltd. ("Kunlun"): (i) to confirm whether its shareholder had any relationship with Kaisa Group, a real estate company, and the Kaisa Group controller, Guo Chengying, (ii) to provide information on its equity structure, and (iii) to identify Kunlun's actual controller. On February 27, CIRC published Kunlun's answer on its website, together with a second CIRC inquiry letter, ordering Kunlun to provide further information regarding its equity structure, which was due by March 6, 2017. As of this date Kunlun's second answer has not been published.

10. Foreign Exchange Circular on Trade and Investment Facilitation

On January 26, 2017, the State Administration of Foreign Exchange promulgated the “Circular on Further Advancing the Foreign Exchange Reform and Authenticity and Compliance Review.” The Circular proposes to relax certain foreign exchange restrictions in order to facilitate trade and investment. For example, with respect to offshore loans which are guaranteed by domestic companies, the new Circular now permits the proceeds from such loans to be brought onshore to China via loans or equity investments.

11. Revised Discount Rate Curve Introduced

On March 15, 2017, CIRC promulgated the “Circular on Optimizing Discount Rate Curve in Liability Assessment of Insurance Contracts,” superseding the relevant provisions on discount rate curves in the “Circular on Implementation of ‘Enterprise Accounting Principle Interpretation No. 2,’” which was promulgated by CIRC on January 25, 2010. The revised discount rate applies to insurance contracts whose benefits do not depend on underlying assets (i.e., long-term protection-type products). Commencing from January 1, 2017, an insurance company must apply the revised discount rate curve in calculating the company’s liabilities under such contracts.

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