

# Insurance & Reinsurance

*Contributing editors*

William D Torchiana, Mark F Rosenberg and Marion Leydier



2018

GETTING THE  
DEAL THROUGH

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William D Torchiana, Mark F Rosenberg and Marion Leydier  
Sullivan & Cromwell LLP

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This article was first published in June 2018  
For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

Publisher  
Tom Barnes  
[tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

Subscriptions  
James Spearing  
[subscriptions@gettingthedealthrough.com](mailto:subscriptions@gettingthedealthrough.com)

Senior business development managers  
Adam Sargent  
[adam.sargent@gettingthedealthrough.com](mailto:adam.sargent@gettingthedealthrough.com)

Dan White  
[dan.white@gettingthedealthrough.com](mailto:dan.white@gettingthedealthrough.com)



Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3780 4147  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018  
No photocopying without a CLA licence.  
First published 2008  
Eleventh edition  
ISBN 978-1-78915-032-2

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Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



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# Preface

## Insurance & Reinsurance 2018

Eleventh edition

**Getting the Deal Through** is delighted to publish the eleventh edition of *Insurance and Reinsurance*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes Israel and Zambia.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, William D Torchiana, Mark F Rosenberg and Marion Leydier, of Sullivan & Cromwell LLP, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
May 2018

# China

Elizabeth Lan Lan, Elsie Shi, George Hualiang Yu, John Bolin and Celia Luan

Jincheng Tongda & Neal

## Regulation

### 1 Regulatory agencies

#### Identify the regulatory agencies responsible for regulating insurance and reinsurance companies.

In early 2018, the People's Republic of China (PRC) launched a governmental authority reorganisation reform involving 40 central departments, including the China Insurance Regulatory Commission (the CIRC), the insurance industry regulator. Pursuant to this reform, CIRC merged with the China Banking Regulatory Commission (the CBRC), the banking industry regulator, together forming a new central regulator, the China Banking and Insurance Regulatory Commission (the CBIRC), which is a ministerial-level agency of the central government of the PRC. The CBIRC is supported by the People's Bank of China, which will exercise responsibility for formulating major laws and regulations and basic prudential regulations for the banking and insurance industries. For an interim period until the CBIRC is fully functional, which is expected to occur in late 2018, the original departments under the CIRC and the CBRC will continue to function. The CBIRC is charged with:

- uniform regulation and supervision of the PRC banking and insurance industries;
- protecting financial consumers' legitimate rights;
- maintaining the operation of the banking and insurance industries in a legal and stable manner;
- forestalling and defusing financial risks; and
- maintaining financial stability.

In November 2017, China established the Financial Stability and Development Committee under the State Council, focusing on the deliberation and coordination of major issues concerning financial stability and related reform and development across the different financial industries.

### 2 Formation and licensing

#### What are the requirements for formation and licensing of new insurance and reinsurance companies?

The requirements for formation and licensing of new insurance and reinsurance companies are similar and principally grouped into four general categories:

- shareholding percentage restrictions;
- shareholder qualifications;
- paid-in capital requirements; and
- CBIRC approval.

#### Shareholding percentage restrictions

For any 'domestic' Chinese insurance or reinsurance company (ie, a company wherein the equity interest held by domestic investors is greater than 75 per cent), the following restrictions apply:

- a single shareholder may not hold an equity interest in excess of one-third (unless derived through the establishment or acquisition of another insurance company for the purpose of business innovation, or specialised or group operation);

- in the case of a limited partnership (LP), no single LP may acquire an equity interest in excess of 5 per cent, and the aggregate equity interest held by multiple LPs may not exceed 15 per cent;
- in the case of a public institution or social group, unless otherwise authorised by the PRC State Council, no such entity may acquire an equity interest that is equal to or greater than 5 per cent; and
- in the case of a natural person, unless otherwise authorised by the CBIRC, no such individual may acquire an equity interest in a publicly-listed entity that is equal to or greater than 5 per cent.

For any 'foreign invested' insurance or reinsurance company (ie, a company wherein the equity interest held by foreign investors is not less than 25 per cent), see question 13 for a description of restrictions on foreign ownership. However, the above-described shareholding percentage restrictions on any 'domestic' Chinese insurance or reinsurance company may apply to domestic investors of a 'foreign invested' insurance or reinsurance company by reference.

#### Shareholder qualifications

It should be noted that foreign and domestic investors are subject to differing shareholder qualification requirements. (See question 13 for qualification requirements applicable to a foreign investor.) In order to qualify to invest in a 'domestic' Chinese insurance or reinsurance company, such an investor must satisfy additional conditions depending on shareholding categorisation as being either a 'Financial Type I' shareholder, a 'Financial Type II' shareholder, a 'Strategic' shareholder or a 'Controlling' shareholder (Shareholding Category), as further described below. The following shareholder qualifications for a 'domestic' Chinese insurance or reinsurance company may also apply to the domestic investors of a 'foreign invested' insurance or reinsurance company by reference.

#### Financial I shareholder

A 'Financial I' shareholder (meaning an investor holding an equity interest of less than 5 per cent) must satisfy the following criteria:

- be in good operational condition and possess a reasonable amount of business revenue;
- have sound financial status and have made profits during the preceding fiscal year;
- have a good tax payment record, without any record of tax evasion during the preceding three-year period;
- have a good credit record, without any record of major dishonest behaviour during the preceding three-year period; and
- have a good compliance status, without any record of major illegality or irregularity during the preceding three-year period.

#### Financial II shareholder

A 'Financial II' shareholder (meaning an investor holding an equity interest equal to or greater than 5 per cent, but less than 15 per cent) must satisfy the above criteria (i) up to and including (v) and, additionally, must satisfy the following criteria:

- have a good reputation, stable investment behaviour and prominent core business;
- have the capability to make continuous capital contributions and have made profits during the preceding two consecutive fiscal years; and

(viii) have a relatively strong capital position with net assets of not less than 200 million yuan.

#### **Strategic shareholder**

A 'Strategic' shareholder (meaning an investor which either: (x) holds an equity interest equal to or greater than 15 per cent, but less than one-third; or (y) whose voting power, based on its equity interest, is sufficient to have material influence over resolutions of shareholders meetings) must satisfy the above criteria (i) up to and including (viii) and, additionally, must satisfy the following criteria:

- (ix) have the capacity to make continuous capital contributions and have made profits during the preceding three accounting years;
- (x) have net assets of not less than 1 billion yuan; and
- (xi) have a balance of equity investments not exceeding its net assets.

#### **Controlling shareholder**

A 'Controlling' shareholder (meaning an investor which either: (x) holds an equity interest equal to or greater than one-third; or (y) whose voting power, based on its capital contribution or equity interest, is sufficient to have controlling influence over resolutions of shareholders meetings) must satisfy the above criteria (i) up to and including (xi) and, additionally, must satisfy the following criteria:

- (xii) have total assets of not less than 10 billion yuan; and
- (xiii) have net assets equal to or greater than the value of 30 per cent of such shareholder's total assets as at the end of the preceding year.

#### **Other circumstances**

An investor that is a domestic LP must satisfy the above criteria (i) up to and including (viii) and, additionally, must satisfy the following criteria:

- any general partner of the LP must have a good credit record;
- any general partner of the LP must have a good compliance record, without any record of major illegality or irregularity during the preceding three-year period;
- where a duration is set, the LP must transfer its equity of the insurance company prior to expiry of such duration;
- the LP must possess a simple hierarchy and clear structure; and
- the LP may not serve as a promoter to establish an insurance company.

An investor that is either a domestic public institution or social organisation must satisfy the above criteria (i) up to and including (v) and, additionally, must, among other things, satisfy the following criteria:

- the main business or major matters of involvement of the public institution or social organisation must be related to the insurance industry; and
- the investment transaction must be approved by its competent superior authority.

An investor that is a domestic financial institution must satisfy the respective criteria pertinent to such entity's Shareholding Category listed above, as well as satisfying all relevant laws and regulatory requirements of applicable financial regulatory authorities.

An insurance company that serves as a promoter to establish an insurance company, or becomes a Controlling shareholder, must satisfy the respective criteria pertinent to such entity's Shareholding Category listed above, as well as satisfying the following criteria:

- have a record of more than three years of continuous business operations;
- possess good corporate governance and a system of sound internal controls;
- have made profits during the preceding fiscal year;
- the headquarters thereof must have good compliance status, without any record of major illegality or irregularity during the preceding year;
- have a good credit record, without any record of major dishonest behaviour during the preceding three-year period;
- have net assets not less than 3 billion yuan;
- have a core solvency ratio not less than 75 per cent, a comprehensive solvency ratio not less than 150 per cent, and a comprehensive risk rating not less than Grade 'B' during the preceding four quarters; and

- other requirements specified by the CBIRC.

#### **Paid-in capital requirements**

Paid-in capital requirements are determined according to the company's scope of business. (See question 5 for capital and surplus requirements for insurance and reinsurance companies.)

#### **CBIRC approval**

The CBIRC employs a two-stage approval system with respect to the formation and licensing of a new insurance or reinsurance company. In the first stage, an application may be submitted to the CBIRC to obtain preliminary approval for establishment of a company. After the first-stage approval is obtained, a company must complete the preparation for establishment within a period of one year, during which time the company may not engage in any insurance business, and may conduct activities relating only to preparation for the future commencement of business operations. After completion of preparation for establishment, a company must obtain the second-stage approval from the CBIRC prior to commencing business operations.

### **3 Other licences, authorisations and qualifications**

#### **What licences, authorisations or qualifications are required for insurance and reinsurance companies to conduct business?**

Insurance and reinsurance companies are licensed to conduct insurance business both at the legal entity-level and at the branch level. The central office of the CBIRC has cognisance over administration of legal entity-level and provincial branch-level licensing, and the relevant local CBIRC branch has cognisance over administration of lower branch or municipal-level licensing.

With respect to insurance companies, life and non-life insurance business lines are classified into 'basic' and 'extended' categories. Companies newly established after 2 May 2013 (other than an insurance holding company, captive property insurance company, mutual insurance company or specialised insurance company) initially are only approved by the CBIRC to conduct one or more specified basic lines of business, and are required to obtain further approval from the CBIRC in order to operate a new basic line of business or to expand into any extended line or lines of business.

In addition to CBIRC licensing, insurance and reinsurance companies must also register with the State Administration for Market Regulation (SAMR) (formerly known as the State Administration of Industry and Commerce (SAIC)) or its local bureaus to obtain a business licence before engaging in insurance business. Generally speaking, SAMR registration is procedural in nature and, once CBIRC licensing is obtained, an enterprise typically would not encounter any significant obstacles in obtaining a SAMR business licence.

### **4 Officers and directors**

#### **What are the minimum qualification requirements for officers and directors of insurance and reinsurance companies?**

Any prospective member of the board of directors or board of supervisors, or prospective senior officer (including any general manager, deputy general manager, assistant general manager, secretary of the board of directors, chief compliance officer, chief actuary, chief financial officer or chief audit officer) of an insurance company must first satisfy a qualification test and apply to the CBIRC for approval of their qualifications for such position. Generally speaking, any such candidate must:

- be familiar with insurance laws and regulations;
- hold a bachelor's degree (or a two- or three-year college degree under certain limited circumstances);
- possess good character; and
- have necessary management capabilities and prescribed years of related work experience.

Additional particular qualification criteria may be applicable according to the specific position. Additionally, any candidate would be disqualified from a position as a senior officer or director of an insurance or reinsurance company if the candidate:

- is a minor, incompetent or otherwise lacks full civil capacity;

- received specified criminal or administrative penalties (including penalties imposed by Chinese authorities or authorities of other jurisdictions) within a certain period prior to the application;
- is under investigation by the CBIRC for serious unlawful conduct;
- received a warning or monetary fine from the CBIRC during the year prior to the application;
- served as a director or senior officer for another company and is directly responsible for the failure of such company (including bankruptcy, revocation of business licence or closure by a governmental agency) within a certain period prior to the application;
- served as a director or senior officer for another insurance company, is directly responsible for the distress of such insurance company and such insurance company is under administrative supervision or in receivership;
- is financially troubled; or
- falls under other situations as prescribed by the CBIRC.

It should be noted that the CBIRC is considering revision of officer and director qualification requirements, as well as the institution of increased restrictions on concurrent positions, for example, prohibiting an insurance or reinsurance company board chairman from concurrently serving as the general manager of the company.

## 5 Capital and surplus requirements

### What are the capital and surplus requirements for insurance and reinsurance companies?

With respect to an insurance company, the minimum paid-in capital is 200 million yuan. An insurance company (other than an insurance holding company, captive insurance company, mutual insurance company or specialised insurance company) with registered capital of 200 million yuan may only conduct one basic line of property and casualty (P&C) business or one basic line of life business, and is required to increase its paid-in capital in order to expand its business scope. However, a company established prior to 2 May 2013 with registered capital of 200 million yuan may be permitted by the CBIRC to conduct a full scope of business.

With respect to a reinsurance company that conducts only life or non-life reinsurance business, the minimum paid-in capital (or, in the case of a Chinese branch of a foreign reinsurance company, the minimum operating fund) is 200 million yuan. For a reinsurance company that conducts both life and non-life reinsurance business, the minimum paid-in capital (or, in the case of a Chinese branch of a foreign reinsurance company, the minimum operating fund) is 300 million yuan.

## 6 Reserves

### What are the requirements with respect to reserves maintained by insurance and reinsurance companies?

The PRC Insurance Law requires insurance companies to set aside liability reserves necessary to protect customers' interests, and the CBIRC has promulgated detailed rules with regard to the calculation of minimum reserves. Insurance and reinsurance companies are also required to calculate solvency in accordance with standards prescribed under China's Risk Oriented Solvency System (C-ROSS). If such a company has a solvency ratio of less than 100 per cent, then the CBIRC may elect to:

- order a capital increase or restrict dividend payment;
- restrict compensation of directors and officers;
- restrict advertising;
- restrict new branch establishment, limit business scope, suspend new business or order policy transfer or cession;
- order asset auction or restrict asset acquisition;
- limit fund usage;
- remove officers;
- take over the company; or
- other measures deemed necessary by the CBIRC.

For insurance and reinsurance companies with a solvency ratio between 100 per cent and 150 per cent, the CBIRC may require the companies to submit and implement a plan for the prevention of inadequate solvency.

It should be noted that the CBIRC is considering revision of the system of insurance company solvency regulation, including the establishment of a new regulatory index as 'core solvency ratio', with responsibility for daily supervision and examination of insurance company solvency delegated to local CBIRC bureaus.

## 7 Product regulation

### What are the regulatory requirements with respect to insurance products offered for sale? Are some products regulated by multiple agencies?

With respect to P&C products, the CBIRC requires that certain types be registered for approval by the CBIRC prior to being offered for sale, while remaining types are permitted to be immediately offered for sale, as long as they are properly filed with the CBIRC within 10 days of the offering date. Products prescribed by the CBIRC as requiring approval include auto insurance, non-life investment-oriented insurance, bond insurance and credit insurance with a term longer than one year and any mandatory insurance or other insurance concerning the public interest. Products that have been previously approved by the CBIRC must again be approved by the CBIRC if the product's insurance clause or premium is amended. Products that have been previously registered with the CBIRC must again be filed with the CBIRC if the insurance coverage or premium is amended. With respect to life insurance products, CBIRC requirements generally follow the same approval or registration procedure as for P&C products. The following life insurance products have been prescribed by the CBIRC as requiring approval: life or annuity insurance products other than ordinary, participating, universal and investment-linked products and certain group participating life and annuity products.

## 8 Regulatory examinations

### What are the frequency, types and scope of financial, market conduct or other periodic examinations of insurance and reinsurance companies?

With respect to insurance companies, the CBIRC carries out a comprehensive assessment and classification examination quarterly and will, accordingly, determine applicable regulatory measures, if any. In addition, the CBIRC also mandates a system of supplemental periodic reporting, including actuarial reports, financial reports, solvency reports, assets/liabilities management reports, affiliated transaction reports, insurance fraud risk reports and compliance reports, each of which must respectively be provided to the CBIRC within the relevant prescribed time frame. In addition to periodic reports, insurance companies are also obligated to submit a variety of event-based reports. The CBIRC also carries out a system of programmed and ad hoc inspections. Commencing from 2015, an annual inspection programme has been carried out by the CBIRC Insurance Consumer Protection Bureau, aimed at combatting activities that are deemed to be harmful to customers' legitimate interests. Recently, the CBIRC has placed increased emphasis on ad hoc inspections. For example, commencing from 2016, as required by C-ROSS, the CBIRC has conducted ad hoc SARMRA (Solvency Aligned Risk Management Requirements and Assessment) evaluations. In addition, the CBIRC routinely scrutinises insurance and reinsurance company shareholding structure and capital security. In 2017, the CBIRC conducted ad hoc onsite inspections of insurance companies that focus on shareholder relationships, corporate governance and insurance company internal control. In the future, the CBIRC may be expected to continue using ad hoc inspections as a means of testing regulatory compliance with selected topics (eg, shareholder relationships, corporate governance and insurance company internal control, capital investment, financial records keeping and adherence to C-ROSS requirements).

## 9 Investments

### What are the rules on the kinds and amounts of investments that insurance and reinsurance companies may make?

For the purposes of supervision, the CBIRC classifies permissible investment assets into five categories and imposes certain restrictions with respect to the relative proportions of different assets. In terms of classification, the principal asset categories comprise:

- (i) current assets;
- (ii) fixed-income assets;
- (iii) equity assets;
- (iv) real estate assets; and
- (v) other financial assets.

In terms of investment restrictions, the CBIRC requires insurance and reinsurance companies to diversify investment in accordance with specified relative proportions. Generally speaking, the total book balance of investment in items (iii), (iv) and (v) may not exceed 30 per cent, 30 per cent and 25 per cent, respectively, of the total assets of the company as at the end of the preceding quarter. In addition, aggregate outbound investment may not exceed 15 per cent of the total assets of the company as at the end of the preceding quarter. Subject to certain limitations, the total book balance of a single investment in items (ii), (iii), (iv) and (v) may not exceed 5 per cent of the total assets of the company as at the end of the preceding quarter. In addition, subject to certain limitations, the total book balance of investments in a single legal entity may not exceed 20 per cent of the total assets of the company as at the end of the preceding quarter.

With respect to company acquisition, among other requirements, a company may only use funds derived from its own equity to acquire a publicly listed company, and is prohibited either from acquiring such company in concert with any other individual or company not subject to regulation by the CBIRC, or from financing such acquisition using publicly listed stock assets as collateral.

## 10 Change of control

### What are the regulatory requirements on a change of control of insurance and reinsurance companies? Are officers, directors and controlling persons of the acquirer subject to background investigations?

Any change of investor whose equity interest is equal to or greater than 5 per cent is subject to CBIRC review and approval. In the event of such a transfer, the affected company must apply for approval within three months following the execution of the relevant equity transfer agreement.

In the case of a new investor that is not already a shareholder of the target company, such investor must submit, among other things, information regarding its shareholders or controlling persons, and a statement describing relationships among its shareholders or controlling persons and other investors in the target company. The CBIRC may, additionally, conduct background investigations of the officers, directors and controlling persons, and may further require such investor to provide supplemental documents and/or explanations regarding its shareholding structure.

If a shareholder owns equity of an insurance or reinsurance company, the value of which is equal to or greater than one half of the total assets of such shareholder and, if the actual controller of such shareholder should be changed, then the new actual controller itself must also satisfy the applicable shareholder qualification criteria and, additionally, must provide relevant materials to the insurance company, to be filed with the CBIRC within 20 working days prior to the change. (See question 2 for qualification requirements applicable to a domestic investor; see question 13 for qualification requirements applicable to a foreign investor.)

## 11 Financing of an acquisition

### What are the requirements and restrictions regarding financing of the acquisition of an insurance or reinsurance company?

Generally speaking, an investor in an insurance or reinsurance company may only invest using cash derived from its own equity, and may not use debt to finance its investment. Unless otherwise permitted by the CBIRC, such funds must be self-owned, limited to an investor's net assets, and generated from permitted sources. Establishment of an equity-holding institution or assigning rights to expected earnings from the equity interest to circumvent this requirement are expressly prohibited. More specifically, an investor may not directly or indirectly acquire the equity of an insurance or reinsurance company using capital from any of the following sources:

- loans relating to the target company;
- capital obtained by using deposits or other assets of the target company as guarantees;
- capital obtained by improperly using the financial influence of the target company or by virtue of an improper affiliate relationship with the target company; or
- capital obtained by other means prohibited by the CBIRC.

An investor that is an insurance or reinsurance company may not use its registered capital to make repeated capital contributions to subsidiaries at different levels of its organisational hierarchy. The use of capital obtained by an insurance company from its investment in trust plans, private funds, equity investment, and other matters of a similar nature for the purpose of making a circulatory investment is strictly prohibited.

## 12 Minority interest

### What are the regulatory requirements and restrictions on investors acquiring a minority interest in an insurance or reinsurance company?

Any change of investor whose equity interest is equal to or greater than 5 per cent is subject to CBIRC review and approval. In the event of such a transfer, the affected company must apply for approval within three months following the execution of the relevant equity transfer agreement. Additionally, in the case of a privately-held insurance or reinsurance company, any change of investor whose equity interest is less than 5 per cent must be reported to the CBIRC within three months following the execution of the relevant equity transfer agreement, and must be publicly disclosed on the insurance company's official website and other locations designated by the CBIRC. It should also be noted that different shareholding requirements could be triggered by a minority acquisition depending on the identity of the acquirer and the nature of the target. For example, a domestic company could be converted into a foreign invested company as a consequence of a minority acquisition by a foreign investor.

## 13 Foreign ownership

### What are the regulatory requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens, companies or governments?

If the aggregate of foreign ownership interest in an insurance or reinsurance company is equal to or greater than 25 per cent, such company will be classified as a 'foreign invested' company. (See question 12 for potential implications of a minority investment triggering foreign invested classification.) Foreign investment in such a company is subject to specific requirements which are principally grouped into the following general categories:

- shareholding percentage restrictions;
- shareholder qualifications; and
- CBIRC approval.

### Shareholding percentage restrictions

For a life insurance company, aggregate foreign investment is not permitted to exceed an equity interest of 50 per cent. It should be noted that the PRC government has announced that such ownership cap will be raised to 51 per cent in 2018, and that the ownership cap will be abolished within three years. For a P&C insurance company or a reinsurance company, no maximum shareholding limitation has been established.

### Shareholder qualifications

It should be noted that foreign and domestic investors are subject to differing shareholder qualification requirements. (See question 2 for qualification requirements applicable to a domestic investor.)

A foreign shareholder holding an equity interest in a foreign invested insurance or reinsurance company (ie, a company wherein the equity interest held by domestic investors is not greater than 75 per cent) must satisfy the following criteria:

- have 30 or more years of relevant experience in a World Trade Organization (WTO) member;
- have maintained a qualifying representative office in China for more than two years (it should be noted that the PRC government has announced that this requirement will be abolished in 2018);

- have total assets of greater than US\$5 billion as at the end of the year prior to application;
- be subject to the effective regulation of the competent authorities of its home jurisdiction, which employs a sound insurance regulatory system;
- satisfy the solvency requirements of its home jurisdiction;
- receive consent to the application from competent home jurisdiction regulatory authorities; and
- other conditions as prescribed by the CBIRC.

A foreign investor of a 'domestic' Chinese insurance or reinsurance company that is a financial institution must satisfy the respective criteria pertinent to such entity's Shareholding Category. (See question 2 for listings of investor qualification requirements according to Shareholding Category.) In addition, such investor must satisfy the following criteria:

- have made profits during the preceding three consecutive fiscal years;
- have total assets of not less than US\$2 billion as at the end of the preceding year;
- have a long-term credit rating issued by an international rating agency greater than 'A' (or its equivalent) for the three consecutive years preceding its application; and
- satisfy regulatory requirements of local financial regulatory authorities.

#### CBIRC approval

Any change of investor whose equity interest is equal to or greater than 5 per cent is subject to CBIRC review and approval. In the event of such a transfer, the affected company must apply for approval within three months following the execution of the relevant equity transfer agreement. Additionally, in the case of a privately-held insurance or reinsurance company, any change of investor whose equity interest is less than 5 per cent must be reported to the CBIRC within three months following the execution of the relevant equity transfer agreement, and must be publicly disclosed on the insurance company's official website and other locations designated by the CBIRC. (In the case of formation of a new 'foreign invested' insurance or reinsurance company, see question 2 for a description of the CBIRC's two-stage approval system.)

#### 14 Group supervision and capital requirements

**What is the supervisory framework for groups of companies containing an insurer or reinsurer in a holding company system? What are the enterprise risk assessment and reporting requirements for an insurer or reinsurer and its holding company? What holding company or group capital requirements exist in addition to individual legal entity capital requirements for insurers and reinsurers?**

An insurance holding company may be established in order to exercise control over multiple insurance and reinsurance companies, non-insurance financial institutions and non-financial companies that operate insurance-related business within the same group. The relationship between an insurance holding company and its subsidiaries is governed by the CBIRC's Insurance Holding Company Administration Measures (For Trial Implementation), which specify limitations on stock pyramiding, cross shareholding, senior officers holding concurrent positions in different entities within the same group, related transactions and other matters of a similar nature. An insurance holding company is required to closely monitor its subsidiaries with respect to various matters, including human resources, accounting and risk management, and file periodic and event-based reports with the CBIRC. An insurance holding company as well as its insurance company subsidiaries must also satisfy the applicable solvency requirements.

#### 15 Reinsurance agreements

**What are the regulatory requirements with respect to reinsurance agreements between insurance and reinsurance companies domiciled in your jurisdiction?**

Generally speaking, Chinese law does not regulate the terms included in reinsurance contracts. However, some mandatory restrictions

exist with respect to the risk ratios that a reinsurance company may accept under certain types of reinsurance contracts. (See question 16 for a description of the requirements and restrictions concerning the amount of ceded reinsurance and retention of risk by insurers.)

As opposed to regulation of reinsurance contracts, the CBIRC focuses particular attention on the qualifications of the reinsurance companies themselves. The CBIRC imposes different qualification requirements, including solvency, rating, financial strength and similar criteria, on reinsurance treaty leaders, reinsurance treaty followers and facultative reinsurers, with the strictest standards being imposed on reinsurance treaty leaders. In addition, any reinsurance company engaging in reinsurance transactions with a Chinese insurance company (domestic or foreign invested) must first register in a specialised system sponsored and maintained by the CBIRC, providing required information with regard to solvency, credit rating, financial strength and other relevant matters, whereupon each reinsurance company will be classified according to its assessed qualifications (eg, treaty leader, treaty follower or facultative business).

#### 16 Ceded reinsurance and retention of risk

**What requirements and restrictions govern the amount of ceded reinsurance and retention of risk by insurers?**

Each insurer is obliged to retain risk within parameters that are commensurate with its financial strength and business volume. The PRC Insurance Law requires that the maximum insured amount for each risk unit that is to be retained by the insurer may not exceed 10 per cent of the total of its actual capital and its capital reserves, and any liabilities exceeding this threshold must be ceded to reinsurers. In addition, the PRC Insurance Law and CBIRC rules require that the total insurance premiums retained by a P&C insurer for all of its business may not exceed a value that is equal to four times the total of its actual capital and its capital reserves.

In addition, the Administrative Measures on Reinsurance Business require that, other than insurance involving nuclear, aviation, petroleum or credit insurance, in the case of proportional reinsurance, the proportion for each risk unit ceded out by the direct insurer to a single reinsurer must not exceed 80 per cent of the insured amount or covered liabilities assumed by the insurer. In the case of facultative reinsurance to affiliates, the ratio ceded out by one insurer to its affiliates may not exceed 20 per cent of the insured amount or covered liabilities amount encompassed by each such facultative reinsurance contract.

#### 17 Collateral

**What are the collateral requirements for reinsurers in a reinsurance transaction?**

Chinese law does not require a reinsurer to post collateral in a reinsurance transaction. However, according to the requirements under C-ROSS, if business is ceded by a Chinese insurer to an overseas reinsurer that is not licensed in China, the insurer in China will receive solvency credit less than such credit it may otherwise receive if its business were ceded to a reinsurer licensed in China, unless collateral is posted by the overseas reinsurer. An overseas reinsurer may provide a bank deposit or a standby letter of credit (SLOC) as collateral to guarantee the correlating reinsurance premiums receivable or reinsurance reserves receivable on the request of the insurer. 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 the CBIRC, or confirmed by such bank (meaning that the confirmation bank undertakes to honour or negotiate the SLOC supplemental to the undertakings of the issuing bank).

**18 Credit for reinsurance****What are the regulatory requirements for cedents to obtain credit for reinsurance on their financial statements?**

Cedents must adhere to generally accepted accounting principles in connection with reinsurance business as well as the requirements under C-ROSS to classify assets and liabilities in its financial statements. The PRC Accounting Standards for Enterprises No. 26 – Reinsurance Contracts set out the rules governing accounting for reinsurance contracts.

**19 Insolvent and financially troubled companies****What laws govern insolvent or financially troubled insurance and reinsurance companies?**

An insolvent insurance or reinsurance company is subject to the PRC Bankruptcy Law as well as the PRC Insurance Law. According to the PRC Insurance Law, when an insurance company or reinsurance company becomes insolvent, such company or any of its creditors may, on the CBIRC's approval, apply to a competent court for restructuring, reconciliation or bankruptcy liquidation of the company. Alternatively, the CBIRC may apply to a competent court for restructuring or bankruptcy liquidation of the company. However, as of the date hereof, no Chinese insurance or reinsurance company has ever been subject to a formal bankruptcy proceeding as described by the PRC Bankruptcy Law and the PRC Insurance Law, and, accordingly, the rule has not yet been tested. In order to minimise the risk of insolvency, the CBIRC may impose a series of supervisory measures on any financially troubled insurance or reinsurance company. (See question 6 for a description of the actions which may be taken by the CBIRC if an insurance or reinsurance company is determined to have a solvency ratio of less than 100 per cent.)

**20 Claim priority in insolvency****What is the priority of claims (insurance and otherwise) against an insurance or reinsurance company in an insolvency proceeding?**

According to the PRC Insurance Law, when an insurance company is declared bankrupt, after the payment of administrative expenses and debts incurred for the common benefit of the creditors, the remaining assets of the company will be applied in the following order:

- (i) wages and salaries, as well as certain prescribed employee benefits;
- (ii) indemnity or payment of insurance benefits;
- (iii) social insurance fees other than those prescribed in item (i) and unpaid taxes; and
- (iv) claims of general creditors.

A class of creditors will not be paid unless all of the creditors of higher priority classes have been paid in full. In the case where the remaining assets are insufficient to pay a certain class of creditors in full, those assets will be distributed on a pro rata basis to the members of that class. Claims against an insurance or reinsurance company are typically classified as the claims of general creditors.

**21 Intermediaries****What are the licensing requirements for intermediaries representing insurance and reinsurance companies?**

Insurance intermediaries in China comprise the following:

- insurance agency companies (including professional insurance agency companies and part-time insurance agency companies);
- insurance brokerage companies; and
- insurance adjustors.

Pursuant to CBIRC regulations, an insurance intermediary may be granted a licence for a fixed period of three years, which is renewable for additional three-year terms, subject to CBIRC approval. In addition, a broker engaging in reinsurance transactions with a Chinese insurance company, whether licensed by the CBIRC or not, must also register in a specialised system sponsored and maintained by the CBIRC.

**Insurance agency companies**

Insurance agency companies distribute insurance products, collect insurance premiums and conduct insurance claim investigations on behalf of insurance companies. Among other licensing requirements, a professional insurance agency company must have a minimum registered capital of 50 million yuan (unless otherwise approved by the CBIRC). Such registered capital must be derived from its own equity and must be placed under the supervision of a qualified bank. A professional insurance agency company intending to conduct business beyond the territorial limits of its domicile first must establish a branch in each relevant province. With respect to a professional insurance agency company established prior to 27 April 2013 with a registered capital of less than 50 million yuan, such company will only be permitted to establish a branch within its domiciliary province or in a province where it has a previously established a branch, unless its registered capital is increased to 50 million yuan or more. The status of regulatory guidance governing part-time insurance agency companies with respect to licence holders, licence renewal requirements and related matters is relatively fluid, as compared with the regulations governing professional insurance agency companies.

**Insurance brokerage companies**

Insurance brokerage companies provide insurance broking services for the benefit of policyholders under direct insurance contracts, or for the benefit of direct insurance companies under reinsurance contracts. Among other licensing requirements, an insurance brokerage company must have a minimum registered capital of 10 million yuan (unless otherwise approved by the CBIRC). However, in order to conduct its business nationwide-basis, such company must have a minimum registered capital of 50 million yuan. Such registered capital must be derived from the company's own equity and must be placed under the supervision of a qualified bank. However, with respect to an insurance brokerage company established prior to 1 May 2018 with a registered capital of less than 10 million yuan, the CBIRC will prescribe corresponding measures for implementation. However, it should be noted that an overseas insurer broker in a WTO member without a licence from the CBIRC is also allowed to conduct cross-border reinsurance brokerage transactions with Chinese insurance companies.

**Insurance adjustors**

Commencing from 1 May 2018, an insurance adjustor will only need to complete a record filing with the CBIRC before conducting any business. An insurance adjustor must have a minimum registered capital of 1 million yuan (unless otherwise approved by the CBIRC). However, in order to conduct business on a nationwide basis, such company must have a minimum registered capital of 2 million yuan. The capital of an insurance adjustor is not required to be paid-in as of the commencement of operations.

**Insurance claims and coverage****22 Third-party actions****Can a third party bring a direct action against an insurer for coverage?**

A third party can bring a direct action against an insurer for liability insurance coverage if the insured's liability has been finally determined (either through admission by the insurer or through final adjudication by a competent court or arbitration) and the insured has failed to actively request that the insurer indemnify such third party.

**23 Late notice of claim****Can an insurer deny coverage based on late notice of claim without demonstrating prejudice?**

The PRC Insurance Law provides that a policyholder, an insured or a beneficiary must notify an insurer of the occurrence of an insured loss in a timely manner. If notification of the occurrence of such loss is delayed, either intentionally or as the result of gross negligence, and such delay prejudices the ability of the insurer to ascertain the nature, cause or extent of a claimed loss, then the insurer may deny such uncertain part of the loss, so long as the insurer did not have actual or constructive knowledge of the occurrence of the loss.

The PRC Insurance Law also requires that the right to claim for insurance payment must be exercised within two years (for non-life insurance) or five years (for life insurance), from the date when an insured or a beneficiary knew or should have known of the occurrence of the loss.

## 24 Wrongful denial of claim

### Is an insurer subject to extra-contractual exposure for wrongful denial of a claim?

In the case of wrongful denial of a claim, a claimant may file a complaint with the CBIRC, which may investigate and impose administrative penalties. The PRC Insurance Law provides that if an insurer wrongfully denies an indemnity obligation as agreed in an insurance contract, the CBIRC may order the insurer to rectify and impose a fine ranging from 50,000 yuan to 300,000 yuan. If the circumstances are found to be serious, the CBIRC may impose certain restrictions on the permissible scope of business for the insurer, order the insurer to cease accepting new business or even suspend its insurance business licence. The CBIRC may also issue a warning to responsible persons within the insurer, impose fines ranging from 10,000 yuan to 100,000 yuan and revoke approval of such persons' qualifications.

## 25 Defence of claim

### What triggers a liability insurer's duty to defend a claim?

A liability insurer does not have a duty to defend a claim unless it is provided for in the insurance contract. Pursuant to the PRC Insurance Law, unless otherwise provided in the insurance contract, if a third party claims for damages against an insured of a liability insurance contract for a matter falling within the scope of insurance coverage by means of arbitration or litigation, and loss or damage has been suffered by such third party, then the insurer must reimburse the costs of such proceedings and other necessary and reasonable expenses paid by the insured.

## 26 Indemnity policies

### For indemnity policies, what triggers the insurer's payment obligations?

An insurer's indemnification obligation is determined by the effective terms and conditions of an insurance contract. Pursuant to the PRC Insurance Law, an insurer must examine claims in a timely manner and determine whether the claims are allowable. If the insurer determines that any portion of a claim falls within the scope of coverage, it must notify the claimant and seek to reach an agreement with the claimant on the allowable payment. Unless otherwise provided in the insurance contract, within 10 days from the date of the contract, the insurer must make the payment. However, if the insurer determines that no portion of the claim falls within the scope of coverage, then within three days it must notify the insured or beneficiary. The PRC Insurance Law also provides that, if the total loss cannot be determined by existing evidence, an insurer remains obligated to effect such primary payment as can be determined within 60 days of receipt of the substantiating evidence, and the insurer is obligated to pay the outstanding payments after they are determined.

## 27 Incontestability

### Is there a period beyond which a life insurer cannot contest coverage based on misrepresentation in the application?

Pursuant to the PRC Insurance Law, an insurer may not contest coverage based on a misrepresentation in the insurance application:

- after 30 days from the date when the insurer has actual or constructive knowledge that the insured made an intentional or grossly negligent misstatement of fact that is material to the insurer's underwriting decisions; or
- after two years from the date of the insurance contract that included such material misrepresentation.

## 28 Punitive damages

### Are punitive damages insurable?

Punitive damages have been adopted in China in a limited way, and only for certain subjects. There is no statutory rule as to whether or not punitive damages are insurable; however, in the current market, punitive damages are usually excluded from the coverage of an insurance contract.

## 29 Excess insurer obligations

### What is the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent or its coverage is otherwise unavailable without full exhaustion of primary limits?

The obligation of an excess insurer in the context of insolvency or other circumstances, when primary insurer coverage is unavailable, has not received meaningful attention with respect to legislation, litigation or judicial interpretation in China.

With respect to an insolvency scenario in the case of a life insurance company, pursuant to the PRC Insurance Law, if a life insurer declares bankruptcy, then it has an obligation to assign its life insurance contracts and liability reserve funds to another qualified life insurer. If such life insurer is unable to reach an agreement with another qualified life insurer, then the CBIRC may designate a life insurer to assume the relevant life insurance contracts and liability reserve funds. Accordingly, an excess insurer of a life insurer would have no obligation to 'drop down and defend', even if the original primary insurer is insolvent, because another life insurer will have assumed the liability. However, as of the date hereof, no Chinese insurance or reinsurance company has ever been subject to a formal bankruptcy proceeding as described by the PRC Bankruptcy Law and the PRC Insurance Law, and, accordingly, the rule has not yet been tested.

With respect to an insolvency situation in the case of non-life insurance company and with respect to other scenarios, Chinese courts will enforce the effective agreement of the parties to a contract. Accordingly, the courts will likely enforce the express terms of a contract, which provides for an obligation for an excess insurer to 'drop down and defend', regardless of whether or not a primary insurer pays to the full extent of the primary coverage. In the absence of such express contractual provisions, the outcome would be uncertain.

## 30 Self-insurance default

### What is an insurer's obligation if the policy provides that the insured has a self-insured retention or deductible and is insolvent and unable to pay it?

This question becomes relevant only where insurance coverage is granted in relation to a third party, namely, where the policyholder or the insured is liable for damages suffered by another party. Where the policyholder or the insured's own risk is insured, the insurer will provide indemnification for an amount exceeding the deductible or self-insured retention according to the terms of the insurance contract, regardless of whether the policyholder or insured is insolvent or not.

In liability insurance, where the insurer covers the third party's claim against the policyholder or insured, if the policyholder or the insured is unable to pay the claim, the third party has the right to enforcement against the insurer, but the insurer's obligation would be limited to pay indemnity above the deductible and self-retention as provided in the insurance contract. However, with respect to other insurance, if the policy provides that the insured has a self-insured retention or deductible but is unable to pay it, the obligation of the insurer will depend on the terms of the insurance contract.

## 31 Claim priority

### What is the order of priority for payment when there are multiple claims under the same policy?

The order of priority for payment when there are multiple claims under the same contract has not received meaningful attention with respect to legislation, litigation or judicial interpretation in China. Chinese courts will enforce the effective agreement of the parties to a contract.

In the absence of such contractual provisions, the outcome would be uncertain.

### 32 Allocation of payment

#### How are payments allocated among multiple policies triggered by the same claim?

If a loss or claim is covered by multiple policies, the principle for the allocation among the insurers is different subject to whether the policies are life policies or P&C policies. If a loss or claim is covered by different life policies, each insurer needs to pay indemnification according to the terms and conditions of the policies, and there are no restrictions under Chinese law as to the total amount that the different insurers would pay for such loss or claim. However, if a loss or claim is covered by different P&C policies, the actual total insurance payment by multiple insurers may not exceed the total loss amount. Accordingly, if the total insurance coverage under multiple P&C insurance contracts does not exceed the total loss, then each insurer needs to pay indemnification according to the terms and conditions of the policies. However, if the total insurance coverage under multiple P&C insurance contracts exceeds the total loss, then unless otherwise provided in the insurance contract, an insurer's liability for indemnification is calculated in proportion to its respective insurance coverage as a percentage of the total coverage amount.

### 33 Disgorgement or restitution

#### Are disgorgement or restitution claims insurable losses?

Whether disgorgement claims are insurable has not received meaningful attention with respect to legislation, litigation or judicial interpretation in China; however, Chinese courts will enforce the effective agreement of the parties to a contract.

With respect to restitution claims, pursuant to the PRC Insurance Law, to the extent that restitution constitutes compensation for a third party's losses, then liability insurance may provide indemnification when the losses are recognised by an insurer or a court. With respect to other restitution claims, whether they are insurable also has not received meaningful attention with respect to legislation, litigation or judicial interpretation.

### 34 Definition of occurrence

#### How do courts determine whether a single event resulting in multiple injuries or claims constitutes more than one occurrence under an insurance policy?

Chinese law does not specify in what circumstances a single event resulting in multiple injuries or claims constitutes more than one occurrence under an insurance contract. Accordingly, consistent with the PRC Contract Law, courts are likely to interpret the scope of 'occurrence' with reference to its definition and the express usage within the insurance contract.

### 35 Rescission based on misstatements

#### Under what circumstances can misstatements in the application be the basis for rescission?

Pursuant to the PRC Insurance Law, upon a request from the insurer, a policyholder must truthfully disclose information in connection with the insured subject or the insured and, if a policyholder intentionally, or out of gross negligence, makes a misstatement that is material to an insurer's underwriting, the insurer may rescind the insurance contract. As an example, the PRC Insurance Law expressly provides that if a policyholder of a life insurance contract falsely states an insured's age and that age does not fall within the age limits specified by the contract, then the insurer may rescind the insurance contract. In such circumstances, the insurer has 30 days from the date when it has actual or constructive knowledge of such misstatement to rescind the contract. Regardless of knowledge, an insurer may not contest coverage based on such a misrepresentation after two years from the date when such an insurance contract has been entered into. However, the PRC Insurance Law also provides that if an insurer has actual or constructive knowledge that an insured has made an intentional or grossly negligent misstatement of the information requested by the

insurer at the time when parties enter into an insurance contract, then an insurer may not rescind the insurance contract for such misstatement.

### Reinsurance disputes and arbitration

### 36 Reinsurance disputes

#### Are formal reinsurance disputes common, or do insurers and reinsurers tend to prefer business solutions for their disputes without formal proceedings?

Formal reinsurance disputes are uncommon. Insurers and reinsurers in China generally prefer business solutions as the primary means to resolve their disputes, without resorting to litigation or arbitration. As a civil law jurisdiction, decisions of Chinese courts generally do not have precedential effect. However, insurers and reinsurers may consult published court decisions as a general reference on substantive issues. (See question 37 for a description of the most common issues that arise in reinsurance disputes.)

### 37 Common dispute issues

#### What are the most common issues that arise in reinsurance disputes?

To the extent that reinsurance disputes have been adjudicated in the Chinese court system, common issues that have arisen typically involved contractual terms such as:

- a reinsurer's liability under a reinsurance contract for interest in the event of a delayed payment to an insured;
- allocation of liability as between insurer and reinsurer;
- late notice of claims; and
- other major contractual terms.

### 38 Arbitration awards

#### Do reinsurance arbitration awards typically include the reasoning for the decision?

Pursuant to the PRC Arbitration Law, unless the parties to an arbitral award agree otherwise, an arbitral award must state the reasoning for the decision. This rule applies to any arbitral award, including reinsurance arbitral awards issued by a tribunal located within China (eg, the China International Economic and Trade Arbitration Commission).

### 39 Power of arbitrators

#### What powers do reinsurance arbitrators have over non-parties to the arbitration agreement?

Generally speaking, under Chinese law, arbitrators do not have power over non-parties to an arbitration agreement. However, pursuant to the PRC Arbitration Law, an arbitral tribunal may independently gather evidence, and may request witnesses to provide relevant materials and to attend arbitration proceedings.

### 40 Appeal of arbitration awards

#### Can parties to reinsurance arbitrations seek to vacate, modify or confirm arbitration awards through the judicial system? What level of deference does the judiciary give to arbitral awards?

Pursuant to the PRC Arbitration Law, an arbitral award will be legally effective as of the date on which it is made. However, within six months of the date of receipt of the award, any party to the arbitration may petition the intermediate people's court where the arbitration commission is located to vacate the award. To prevail, such party must demonstrate that:

- (i) there was no arbitration agreement between the parties;
- (ii) the matters in question fall outside of the arbitration agreement or beyond the power of the arbitration commission;
- (iii) the composition of the members of the arbitral tribunal or the procedure of the arbitration violated required legal procedure;
- (iv) the evidence on which the award was based has been forged;
- (v) the counterparty concealed evidence that could materially affect fair arbitration; or

### Update and trends

- China is modernising and strengthening oversight of the financial sector by consolidating insurance and banking industry regulatory authorities into the newly established China Banking and Insurance Regulatory Commission (the CBIRC).
- Recent governmental announcements reflect sustained support for relaxing barriers to foreign investment in the China insurance market.
- The CBIRC is placing emphasis on strengthening controls over shareholding in domestic and foreign invested insurance companies, as well as asset protection.
- Building on earlier developments, including the 2017 promulgation of the Cybersecurity Law, China continues to refine national cybersecurity, data protection and privacy regulations and guidelines.

#### Establishment of the CBIRC

On 21 March 2018, the Central Committee of the China Communist Party promulgated a plan for consolidation of the CIRC and the CBRC into the CBIRC. The CBIRC will primarily focus on preventing the occurrence of systematic financial risks. It 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. (See question 1 for a discussion of consolidation of the CIRC and the CBRC into the CBIRC.)

#### Relaxing barriers to foreign investment

On 10 April 2018, President Xi Jinping announced that, among other industries, China would substantially ease market access with respect to the insurance industry. In his remarks, President Xi emphasised 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 within the next few 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 will be eliminated by the end of 2018.

#### Strengthening controls over shareholding and asset protection

- On 7 March 2018, the CBIRC published the new 'Administrative Measures for Equity Interests of Insurance Companies,' effective 10 April 2018, replacing earlier regulations. Among other significant changes, these new measures prescribe: (i) a relatively more detailed system for categorising insurance company shareholders; and (ii) stricter regulatory standards in connection with shareholder qualifications, shareholding limitations, shareholder's activities, and other related criteria. (See question 2 for a discussion of the requirements for the formation and licensing of new insurance and reinsurance companies.)
- On 1 March 2018, CBIRC promulgated the 'Circular re Promulgation and Trial Run of the Regulatory Rules for Insurance Asset Liability Management (No. 1 to No. 5),' superseding earlier requirements promulgated in 2015. These rules prescribe requirements in connection with: (i) the capability and quantification testing of asset liability management for P&C insurance companies; (ii) the capability and quantification testing of asset liability management for life insurance companies; and (iii) compilation of insurance company asset liability management reports, setting the stage for the introduction of a comprehensive new 'Insurance Asset Liability Management Regulatory Regime,' recently previewed in the draft 'Regulatory Measures for Insurance Asset Liability Management' released by the CBIRC on 15 December 2017.

#### New cybersecurity, data protection and privacy regulations and guidelines

Recent regulatory trends suggest that insurance institutions, especially foreign-invested insurance institutions, will encounter heightened barriers to the conduct of cross-border data transfers; however, detailed guidance remains under development. Most recently, on 24 January 2018, China promulgated the 'Personal Information Security Specification' (GB/T 35273-2017), a non-mandatory, national-level technical standard governing personal information processing activities of an individual or organisation that oversees personal information administration, and that may be relied upon by any Chinese governmental authority when evaluating the preparedness and performance of a company that handles the personal information of a PRC citizen.

- (vi) the arbitrators solicited or accepted bribes, committed illegalities for personal gain or perverted the law.

The Chinese judiciary will give substantial deference to arbitral awards. Although Chinese courts may vacate or confirm arbitral awards, neither the PRC Arbitration Law nor the record of court decisions reflects an obvious inclination or capacity to modify an arbitral award. However, pursuant to the PRC Arbitration Law, the arbitral tribunal itself has the right to modify an award in the case of an error in calculation or wording, or an omission.

With respect to a foreign-related arbitration (ie, an arbitration in China that has a foreign nexus), pursuant to the PRC Civil Procedure Law, the competent court may vacate an arbitral award under specified circumstances. As an example, if the enforcement target can demonstrate that it either has not been provided notice with respect to the appointment of an arbitrator or for the inception of the arbitration proceedings, or was unable to present its case owing to causes for which it is not responsible, then the court typically would vacate the arbitral award. Additionally, the court would also vacate the arbitral award for the same reasons as noted in items (i), (ii) and (iii) above.

Additionally, with respect to an award by a non-Chinese arbitral tribunal, the PRC Civil Procedure Law provides that if any party to an arbitration by a foreign arbitral tribunal requires recognition and enforcement by a Chinese court, such party may petition the intermediate people's court with territorial jurisdiction over the target party or, where such party's property is located, to enforce the award. The Chinese judiciary will give substantial deference to an arbitral award and enforce a non-Chinese arbitral award in accordance with international treaties concluded or acceded to by China or in accordance with the principle of reciprocity. It should be noted that China is a signatory to New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

### Reinsurance principles and practices

#### 41 Obligation to follow cedent

**Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision? Where such an obligation exists, what is the scope of the obligation, and what defences are available to a reinsurer?**

The Administrative Regulations on Reinsurance by P&C Insurers provide that a claim payment should follow the principle of 'follow-the-fortunes', meaning that as long as the claim falls within the coverage of the reinsurance contract, the cedent's decisions on claims will apply to the reinsurer. Other than the above, there are no statutory requirements under Chinese law. However, unless otherwise provided in the insurance contract, market practice is to follow the cedent's underwriting fortunes for claims payments or settlements to the extent that the claims fall within the scope of the reinsurance contract and the cedent has handled the claims and settlements in good faith.

#### 42 Good faith

**Is a duty of utmost good faith implied in reinsurance agreements? If so, please describe that duty in comparison to the duty of good faith applicable to other commercial agreements.**

The PRC Insurance Law requires that all parties to an insurance activity must act in good faith during the performance of their rights and obligations. The PRC Contract Law also requires that parties to a contract act in good faith during the performance of their rights and obligations. The duty of good faith therefore is implied in all contracts, including reinsurance contracts; however, the duty of utmost good faith is not a well-recognised concept under relevant Chinese law.

**43 Facultative reinsurance and treaty reinsurance****Is there a different set of laws for facultative reinsurance and treaty reinsurance?**

There are no separate sets of laws in China governing facultative and treaty reinsurance; however, recipients in facultative and treaty reinsurance arrangements are subject to different rating, capital and other qualification requirements.

**44 Third-party action****Can a policyholder or non-signatory to a reinsurance agreement bring a direct action against a reinsurer for coverage?**

The PRC Insurance Law provides that a policyholder or beneficiary is precluded from bringing a direct action against a reinsurer for indemnity or insurance benefits.

**45 Insolvent insurer****What is the obligation of a reinsurer to pay a policyholder's claim where the insurer is insolvent and cannot pay?**

The PRC Insurance Law provides that a policyholder or beneficiary is precluded from bringing a direct action against a reinsurer for indemnity or insurance benefits. Accordingly, even if a cedent is insolvent and cannot pay, a policyholder may not raise a claim against the reinsurer. On the approval of the CBIRC, in accordance with the PRC Bankruptcy Law, such cedent may petition the competent PRC court for a declaration of bankruptcy. If a cedent is declared bankrupt, then the reinsurance coverage to be provided by the reinsurer will become part of the cedent's bankruptcy estate, and the insured or the beneficiary may become an unsecured creditor of the cedent pursuant to the bankruptcy process. However, as of the date hereof, no Chinese insurance or reinsurance company has ever been subject to a formal bankruptcy proceeding as described by the PRC Bankruptcy Law and the PRC Insurance Law, and, accordingly, the rule has not yet been tested.

**46 Notice and information****What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer and how does the language of a reinsurance contract affect the availability of such remedies?**

There are no specific requirements under Chinese law applicable to the notice and information to be provided by a cedent to its reinsurer under a reinsurance contract. Accordingly, the type and information that a

cedent must provide to a reinsurer with respect to an underlying claim, and the available remedies, will be subject to the terms and conditions of the reinsurance contract. A reinsurance contract typically may require timely delivery of all material claim-related information, including the facts, claim, loss assessment or estimated amount of loss, as well as relevant supporting documentation. Accordingly, pursuant to the agreed terms of the reinsurance contract, a reinsurer may have a basis to deny indemnification to a cedent under specified circumstances.

**47 Allocation of underlying claim payments or settlements****Where an underlying loss or claim provides for payment under multiple underlying reinsured policies, how does the reinsured allocate its claims or settlement payments among those policies? Do the reinsured's allocations to the underlying policies have to be mirrored in its allocations to the applicable reinsurance agreements?**

For the principle of payment allocation in the case of multiple direct insurance policies, see question 32. Chinese law does not require a reinsurance contract to mirror the above allocation principle. Reinsurers bear liabilities with respect to the insurers based on the terms of the reinsurance contracts.

**48 Review****What type of review does the governing law afford reinsurers with respect to a cedent's claims handling, and settlement and allocation decisions?**

Chinese law does not provide for a general right of review of a cedent's claims handling, or settlement and allocation decisions. However, a reinsurance contract may provide for such review rights.

**49 Reimbursement of commutation payments****What type of obligation does a reinsurer have to reimburse a cedent for commutation payments made to the cedent's policyholders? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?**

There are no statutory requirements imposing an obligation on a reinsurer to reimburse a cedent for commutation payments made to the cedent's policyholders. Accordingly, the obligation would be governed by the terms and conditions of the reinsurance contract.



JINCHENG TONGDA & NEAL  
金诚同达律师事务所

Elizabeth Lan Lan  
Elsie Shi  
George Hualiang Yu  
John Bolin  
Celia Luan

lanlan@jtnfa.com  
elsieshi@jtnfa.com  
georgeyu@jtnfa.com  
johnbolin@jtnfa.com  
celialuan@jtnfa.com

10th Floor, China World Tower A  
No. 1 Jianguo Menwai Avenue  
Chaoyang District  
Beijing 100004  
China

Tel: +86 10 5706 8585  
Fax: +86 10 8515 0267  
www.jtnfa.com

**50 Extracontractual obligations (ECOs)****What is the obligation of a reinsurer to reimburse a cedent for ECOs?**

There are no statutory requirements imposing an obligation on a reinsurer to reimburse a cedent for ECOs. Accordingly, such obligation would be governed by the terms and conditions of the reinsurance contract. It is not unusual that reinsurance contracts expressly relieve reinsurers from obligations to reimburse cedents for ECOs.

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