

JT&N's PRC Insurance Highlights News Alert

March 2019

Welcome to the latest edition of JT&N's PRC Insurance Highlights News Alert, reporting recent regulatory developments in the PRC insurance sector. We welcome your comments, questions and feedback. To contact us please email: jtninsurance@jtnfa.com

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1. 全国人大通过《外商投资法》 PRC Foreign Investment Law Adopted

2019年3月15日，中国全国人大通过了《外商投资法》。该法将于2020年1月1日生效，《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》（合称“外资三法”）同时废止。该法就外商投资的保护、促进及管理等方面外商投资法律制度做了诸多基本的、原则性的明确规定，也规定了相关的法律责任。该法同时允许依照外资三法设立的外商投资企业在该法生效后五年内继续保留原企业组织形式等，具体实施办法由国务院制定。国务院及相关部委预期会积极推进相关配套法规的制定工作。

On March 15, 2019, the National People's Congress of the People's Republic of China (the "PRC") adopted the PRC Foreign Investment Law (the "Foreign Investment Law"), which will take effect on January 1, 2020 and supersede the PRC Sino-foreign Equity Joint Venture Law, the PRC Sino-foreign Cooperative Joint Venture Law and the PRC Wholly Foreign-owned Enterprise Law (collectively, the "FIE Laws"). The Foreign Investment Law includes various broad, general principle provisions on the protection, promotion and management of foreign investment as well as relevant legal liabilities. The Foreign Investment Law provides foreign-invested enterprises established under the FIE Laws with a 5-year transition period, during which such enterprises may remain in their original corporate form and etc., and the State Council (i.e. the PRC central government) will promulgate implementing rules for the transition period. It is expected that the PRC central government and various ministries and government agencies will issue more implementing rules and guidelines before and after the Foreign Investment Law becomes effective.

外商投资法将外商投资定义为外国投资者直接或者间接在中国境内进行的投资活动，包括（一）外国投资者单独或者与其他投资者共同在中国境内设立外商投资企业；（二）外国投资者取得中国境内企业的股份、股权、财产份额或者其他类似权益；（三）外国投资者单独或者与其他投资者共同在中国境内投资新建项目；或（四）法律、行政法规或者国务院规定的其他方式的投资。

Foreign investment is defined as the direct or indirect investment made by a foreign investor, including (i) establishing a PRC company independently or jointly with any other investors, (ii) acquiring equity interest or other similar rights of a PRC company, (iii) initiating a new project within PRC independently or jointly with any other investors, or (iv) making investment in any other manner stipulated by laws and regulations or the provisions of the State Council.

《外商投资法》部分重点内容列举如下：

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Questions?
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About JT&N

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- **平等保护。**除国务院发布的《外商投资负面清单》有特别规定外，外商投资将与境内投资享受相同的待遇及市场准入条件。
- **政策透明。**制定与外商投资有关的法律、法规、规章的，应当采取适当方式征求外商投资企业的意见和建议。与外商投资有关的规范性文件、裁判文书等，应当依法及时公布。
- **特别优惠。**国家根据国民经济和社会发展的需要，鼓励和引导外国投资者在特定行业、领域、地区投资。外国投资者、外商投资企业可以依照法律、行政法规或者国务院的规定享受优惠待遇。
- **平等竞争。**国家保障外商投资企业依法通过公平竞争参与政府采购活动。政府采购依法对外商投资企业在中国境内生产的产品、提供的服务平等对待。
- **禁止征收。**仅在为公共利益的目的的情况下，国家可以征收或征用外商投资。征收、征用应当依照法定程序进行，并及时给予公平、合理的补偿。
- **跨境支付。**外国投资者在中国境内的出资及利润可以依法以人民币或者外汇自由汇入、汇出。
- **知识产权。**国家将严格保护外商的知识产权，任何行政机关及其工作人员均不得利用行政手段强制转让技术。
- **商业秘密。**行政机关及其工作人员对于履行职责过程中知悉的外商的商业秘密应当依法予以保密。
- **政府承诺。**地方各级人民政府及其有关部门应当履行向外商及外商投资企业依法作出的政策承诺以及依法订立的各类合同。
- **信息报送。**外商或者外商投资企业应当通过国家建立的信息系统向商务主管部门报送必要的投资信息。
- **安全审查。**国家将对影响或者可能影响国家安全的外商投资进行安全审查，其作出的决定是终局的。

Certain highlights of the Foreign Investment Law are listed below:

- **Equal Treatment.** When making investment, a foreign investor will enjoy equal treatment and market access with domestic investors in the PRC, except in those excluded sectors specified in the negative list promulgated by the State Council.
- **Policy Transparency.** Comments and suggestions from foreign-funded enterprises should be sought in a proper manner when formulating laws, regulations and rules relating to foreign investment. Binding rules and court decisions relating to foreign investment should be published timely in accordance with the law.
- **Preferential Treatment.** The PRC government may, according to the requirements of national economy and social development, encourage and guide foreign investors to invest in specific industries, sectors and regions. Foreign investors and foreign-funded enterprises may enjoy preferential treatment in accordance with laws, administrative regulations or provisions of the State Council.
- **Fair Competition.** The State should ensure that foreign-funded enterprises can participate in government procurement activities through fair competition. Products produced and services provided by foreign-funded enterprises within the territory of China should be treated equally in government procurements.
- **No Expropriation.** The PRC government may expropriate or requisition a foreign investment only for public interest. Such takeover or requisition must be made in accordance with lawful procedures and reasonable compensation must be made timely.
- **Cross-border Remittance.** A foreign investor may, subject to relevant PRC laws and regulations, freely transfer its capital contributions and profits into or out of the territory of the PRC in RMB or foreign currency.

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

- **Intellectual Property Rights.** The PRC government will strictly protect the intellectual property rights of foreign investors, and no administrative department or its staff member may force any transfer of technology by administrative means.
- **Business Secret.** Administrative departments and their staff members should keep confidential any business secret known during their performance of duty.
- **Governmental Promise.** Local governments at all levels and their relevant departments should strictly keep their policy commitments made to foreign investors and foreign-funded enterprises and perform all contracts entered into in accordance with the law.
- **Information Report.** Foreign investors or foreign-invested companies must submit necessary investment information to competent commerce departments through information systems established by the PRC government.
- **Security Review.** The PRC government will conduct security review for foreign investment affecting or having the possibility to affect national security, and the relevant decisions will be final.

2. 银保监会发布《关于加强保险公司中介渠道业务管理的通知》 Notice Issued on Strengthening the Administration of Intermediary Channel Business of Insurance Companies

2019年2月26日，银保监会发布了《关于加强保险公司中介渠道业务管理的通知》，通知于当日生效。通知要求保险公司建立涵盖保险中介机构和从业人员的监管体系，包括（1）建立权责明晰的中介渠道业务管理制度体系，明确管理责任人，（2）加强对合作中介渠道主体的资质、业务及档案管理，（3）不得利用中介渠道主体开展违法违规活动，以及（4）完善中介渠道业务合规监督。

On February 26, 2019, CBIRC issued the Notice re Strengthening the Administration of Intermediary Channel Business of Insurance Companies (the "Intermediary Notice"), which took effect on the same date. The Intermediary Notice requires insurance companies to establish a supervisory system that covers the intermediary entities and their practitioners, including (i) establishing an administrative system that clearly specifies the relevant powers and duties, and specifying the administrative responsible person, for the intermediary channel business, (ii) strengthening the administration of the qualifications, business and archives of the cooperating intermediaries, (iii) avoiding conducting unlawful activities via intermediary channels, and (iv) improving the supervision on the compliance status of the intermediary channel business.

Our Offices
JTN has offices in
Beijing, Shanghai,
Shenzhen, Chengdu,
Hefei, Jinan, Shenyang
, Hangzhou, Nanjing and
Xi'an.

3. 银保监会扩大保险资金债券投资范围 CBIRC Expands Scope of Bond Investment for Insurance Funds

2019年1月25日，银保监会发布了《关于保险资金投资银行资本补充债券有关事项的通知》，通知于当日生效。根据通知，保险资金可以投资符合资质条件的银行所发行的二级资本债券和无固定期限资本债券。

On January 25, 2019, CBIRC issued the Notice re Matters Concerning the Investment of Insurance Funds in Capital Supplementation Bonds Issued by Banks (the "Bond Investment Notice"), which took effect on the same date. Pursuant to the Bond Investment Notice, insurance funds may be invested in tier two capital bonds and perpetual capital bonds issued by qualified banks.

4. 银保监会授权派出机构实施部分行政许可事项 CBIRC Delegates Certain Administrative Licensing Powers to its Local Bureaus

2019年3月13日，银保监会发布了《关于授权派出机构实施部分行政许可事项的通知》。

根据通知，下列行政许可事项改由保险公司或拟设省级分公司所在地银保监局批准：

- 保险公司在银保监局辖内变更营业场所审批；
- 保险公司省级分公司开业审批；
- 保险公司除董事长、总经理（含主持工作的副总经理）以外的董事、监事和高级管理人员任职资格核准。

On March 13, 2019, CBIRC issued the Notice re Delegation of Certain Administrative Licensing Powers to the Local Bureaus (the “**Delegation Notice**”).

According to the Delegation Notice, the following matters should be submitted to CBIRC local bureaus where an insurance company or an insurance company’s proposed provincial branch is located for approval:

- Approval of a change of the insurance company’s business premises if the new premises remain within the jurisdiction of the CBIRC local bureau;
- Approval of the business commencement of a provincial branch of the insurance company;
- Approval the qualifications of directors, supervisors and senior management personnel other than the chairman and general manager (including a deputy general manager who is serving as the acting general manager).

上述保险公司不包括政策性保险公司、再保险公司、相互保险组织、自保公司、互联网保险公司、健康保险公司、养老保险公司及其他银保监会认定的保险公司。

The above insurance companies do not include policy insurance companies, reinsurance companies, mutual insurance organizations, self-insurance companies, Internet insurance companies, health insurance companies, pension insurance companies and other insurance companies as may be specified by the CBIRC.

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