

**William D Torchiana, Mark F Rosenberg and Marion Leydier**

GETTING THE  
DEAL THROUGH 

# Insurance & Reinsurance 2017

*Contributing editors*

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

Publisher  
Gideon Roberton  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com



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# Preface

## Insurance & Reinsurance 2017

Tenth edition

**Getting the Deal Through** is delighted to publish the tenth edition of *Insurance & 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 China, Ireland and a new article on the GDPR.

**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  
June 2017

# 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.**

China's insurance market is principally regulated by the China Insurance Regulatory Commission (the CIRC), a ministerial-level agency of the central government of the People's Republic of China (PRC). Established in 1998, the CIRC is headquartered in Beijing and has 36 provincial and five municipal-level bureaus.

The CIRC is charged with:

- formulating policies and regulations of the insurance industry;
- licensing and supervision of insurance institutions;
- regulation and development of the insurance market; and
- monitoring risks and maintaining insurance market stability.

### 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;
- shareholder qualifications;
- paid-in capital; and
- CIRC approval.

#### Shareholding percentage

For any new 'domestic' Chinese insurance or reinsurance company (ie, a company wherein the equity interest held by domestic investors is greater than 75 per cent), a single shareholder may not hold an equity interest in excess of 20 per cent (unless otherwise approved by the CIRC). Another shareholding limitation is that no single limited partnership (LP) may acquire an equity interest in excess of 5 per cent or constitute the single largest shareholder, a controlling shareholder or an actual controller of such company. Moreover, the aggregate equity interest held by all LPs may not exceed 15 per cent. However, for any 'foreign invested' Chinese insurance or reinsurance company (ie, a company wherein the equity interest held by domestic investors is not greater than 75 per cent), the aforementioned limitations do not apply.

#### Shareholder qualifications

It should be noted that domestic and foreign investors are subject to differing shareholder qualification requirements. (See question 13 for qualification requirements applicable to a foreign investor.)

A domestic investor holding an equity interest in an insurance or reinsurance company of less than 15 per cent must meet the following criteria:

- (i) it cannot be a commercial bank, securities institution or a wholly foreign-owned enterprise (unless otherwise approved by the CIRC);
- (ii) it must have earned profits in the fiscal year prior to its application;
- (iii) the capital to be injected into the company must be in cash and derived from the investor's own equity (unless otherwise approved by the CIRC);

- (iv) it must not have materially violated any applicable laws or regulations within the preceding three-year period;
- (v) it must have a record of good credit and tax payment;
- (vi) if it is a financial institution, it must have met the capital adequacy and other prudential requirements of the relevant regulatory authorities;
- (vii) it must have obtained relevant approvals from its shareholders or board of directors;
- (viii) it must have obtained approvals from the relevant regulatory authorities, if applicable; and
- (ix) its business must operate well and its financial status must be sound and stable.

A domestic investor either holding an equity interest of between 15 and 20 per cent or holding an equity interest of less than 15 per cent but having the power to directly or indirectly exercise control over the company must meet the above criteria in (i) to (ix) and, additionally, must meet the following criteria:

- (x) have net assets of not less than 200 million yuan as at the end of the year prior to the application;
- (xi) have consecutively earned profits in each of the three preceding fiscal years;
- (xii) have the capability to make continuous capital contributions; and
- (xiii) have a good reputation and a leading position in its industry.

An LP investing in an insurance or reinsurance company must meet the following criteria:

- the insurance company to be invested in must have a controlling shareholder or actual controller, a reasonable equity structure and sound and stable corporate governance;
- the general executive partners of the LP must have good integrity and have a record of tax payment, have no record of major illegalities or irregularities, must undertake that the sources of funding are not in violation of the provisions on anti-money laundering, and must bear corresponding liabilities for the investment in the insurance and reinsurance company;
- the LP cannot constitute the single largest shareholder, controlling shareholder or actual controller of the company, and the LP cannot participate in the management of the insurance company; and
- the LP must transfer its shares to another qualified holder prior to the expiry of the term of the LP (if any).

#### Paid-in capital

Paid-in capital requirements are determined by the business engaged in by the particular insurance or reinsurance company (see question 5).

#### CIRC approval

The CIRC 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 CIRC to obtain preliminary approval for establishment of a company. Once 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 only conduct activities relating 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 CIRC 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 CIRC has cognisance over administration of legal entity-level and provincial branch-level licensing, and the relevant local CIRC 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' or '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 CIRC to conduct one or more specified basic lines of business, and are required to obtain further approval from the CIRC in order to operate a new basic line of business or to expand into any extended line or lines of business.

In addition to the CIRC licensing, insurance and reinsurance companies must also register with the State Administration of Industry and Commerce (SAIC) or its local bureaus to obtain a business licence before engaging in insurance business. Generally speaking, SAIC registration is procedural in nature and, once CIRC licensing is obtained, an enterprise typically would not encounter any significant obstacles in obtaining a SAIC 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 CIRC 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 CIRC for serious unlawful conduct;
- received a warning or monetary fine from the CIRC 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 prescribed by the CIRC.

### 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, that a company established prior to 2 May 2013 with registered capital of 200 million yuan may be permitted by the CIRC 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?

Insurance and reinsurance companies are 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 CIRC 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 CIRC.

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

In addition to satisfying solvency requirements, the PRC Insurance Law also requires insurance companies to set aside liability reserves necessary to protect customers' interests, and the CIRC has promulgated detailed rules with regard to the calculation of minimum reserves.

### 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 CIRC requires that certain types be registered for approval by the CIRC prior to offering for sale, while remaining types are permitted to be immediately offered for sale, as long as they are properly filed with the CIRC within 10 days of the offering date. Products prescribed by the CIRC 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 CIRC must again be approved by the CIRC if the product's insurance clause or premium is amended. Products that have been previously registered with the CIRC must again be filed with the CIRC if the insurance coverage or premium is amended. With respect to life insurance products, the CIRC requirements generally follow the same approval or registration procedure as for P&C products. The following life insurance products have been prescribed by the CIRC 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 CIRC carries out a comprehensive assessment and classification quarterly and will, accordingly, determine applicable regulatory measures, if any. In addition, the CIRC also mandates a system of supplemental periodic reporting, including actuarial reports, financial reports, solvency reports and compliance reports, each of which must respectively be provided to the CIRC within the relevant prescribed time frame. In addition to periodic reports, insurance companies are also obliged to submit a variety of event-based reports. The CIRC also carries out a system of programmed and ad hoc inspections. Originally commenced in 2015, the annual inspection programme is carried out by the CIRC Insurance Consumer Protection Bureau, and aims at combating activities that are deemed to be harmful to customers' legitimate interests. Recently, the CIRC has placed increased emphasis on ad hoc inspections. For example, in early 2017, the CIRC conducted ad hoc onsite inspections of insurance companies that focused on shareholder relationships, corporate governance and insurance company internal control. In future, the CIRC may be expected to continue using ad hoc inspections as a means of testing regulatory compliance with selected topics (eg, capital investment, financial records keeping and compliance with 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 CIRC 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 CIRC requires insurance and reinsurance companies to diversify investment in accordance with respective 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.

On 24 January 2017, the CIRC promulgated the 'Circular on Further Strengthening Stock Investment by Insurance Funds', pursuant to which, the CIRC classifies investment in mainland China publicly listed companies into the following three categories:

- normal investment: after completion of the acquisition, the investing insurance institution will hold an equity interest in such publicly listed company that is less than 20 per cent, and will not hold controlling power over such company;
- material investment: after completion of the acquisition, the investing insurance institution will hold an equity interest in such publicly listed company that is equal to or more than 20 per cent, but will not hold controlling power over such company; and
- company acquisition: after completion of the acquisition, the investing insurance institution will hold controlling power over such publicly listed company.

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 CIRC, 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 shareholder whose shareholding is equal to or greater than 5 per cent is subject to CIRC review and approval. Specific requirements depend on circumstances, including:

- the nature of the target (domestic or foreign-invested insurance or reinsurance company);
- the identity of the acquirer (domestic or foreign); and
- intended shareholding percentage.

If the investor is not already a shareholder of the target company, the investor must also submit, among other things, information about its shareholders or controlling persons, or both, and a statement with respect to the relationships between its shareholders or controlling persons, or both, and other investors in the company. The CIRC may conduct background investigations of the officers, directors and controlling persons if it deems necessary.

## 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 in cash derived from its own equity, which means that it may not use debt to finance its investment. However, the CIRC may authorise an investor to finance a merger or acquisition with loans and other financial instruments up to a maximum of 50 per cent of the cash consideration. For the purposes of this exception, a merger refers to the activities whereby two or more companies merge into one company. An acquisition refers to the acquisition by an investor in one transaction or a series of transactions of greater than one-third of the equity interest in a company, through which the investor becomes the single largest shareholder of the company, or an acquisition that is equal to or less than one-third of the equity interest in a company, through which the investor becomes the single largest shareholder and could exercise control over the company.

## 12 Minority interest

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

As noted in question 10, any change of shareholder whose shareholding is equal to or greater than 5 per cent is subject to CIRC review and approval. Additionally, in the case of a privately-held insurance or reinsurance company, any change of shareholder whose shareholding is less than 5 per cent must be reported to the CIRC within 15 days of the execution of the relevant share transfer agreement. 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?

The requirements for foreign investment in an insurance or reinsurance company are principally grouped into the following general categories:

- shareholding percentage;
- shareholder qualifications; and
- CIRC approval.

### Shareholding percentage

For a life insurance company, the aggregate shareholding of foreign investment is subject to a cap of 50 per cent; however, for a P&C insurance company or a reinsurance company, there are no maximum shareholding limitations.

### 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 of less than 15 per cent of a domestic insurance or reinsurance company (ie, a company wherein the equity interest held by domestic investors is greater than 75 per cent) must meet the following criteria:

- (i) it must be a financial institution in a World Trade Organization (WTO) member and cannot be a natural person or a governmental entity;
- (ii) it must have earned profits in each of the three consecutive fiscal years prior to its application;
- (iii) it must have total assets of not less than US\$2 billion as of the end of the year prior to the application;
- (iv) it must 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;
- (v) it must not have materially violated any applicable laws or regulations within the preceding three-year period;
- (vi) it must have met the capital adequacy and other prudential requirements of its home regulator; and
- (vii) its financial status must be sound and stable.

A foreign shareholder either holding an equity interest in a domestic insurance or reinsurance company of between 15 per cent and 20 per cent, or holding an equity interest in a domestic insurance or reinsurance company of less than 15 per cent but having the power to directly or indirectly exercise control over the company, must meet the above criteria in (i) to (vii) and, additionally, must meet the following criteria:

- (viii) have net assets of not less than 200 million yuan;
- (ix) have the capability to make continuous capital contributions; and
- (x) have a good reputation and a leading position in its industry.

A foreign shareholder holding an equity interest in a domestic insurance or reinsurance company of greater than 20 per cent but less than 25 per cent must meet the above criteria in (i) to (x) and, additionally, must meet the following criteria:

- (xi) have total assets of not less than 10 billion yuan as at the end of the year prior to the application;
- (xii) have net assets of not less than 30 per cent of its total assets;
- (xiii) have net assets that are not less than its long-term equity investments (including investment in the company);
- (xiv) must not have violated any code of conduct for shareholders of insurance companies stipulated in the PRC Insurance Law and other CIRC rules; and
- (xv) have maintained an equity interest in the company for three or more years.

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 meet the following criteria:

- have 30 or more years of relevant experience in a WTO member;
- have maintained a qualifying representative office in China for more than two years;
- 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;
- meet the solvency requirements of its home jurisdiction;
- the competent authorities of its home jurisdiction must consent to the application; and
- other conditions prescribed by the CIRC.

### CIRC approval

As noted in question 10, any change of shareholder whose shareholding is equal to or greater than 5 per cent is subject to CIRC review and approval. Additionally, in the case of a privately-held insurance or reinsurance company, any change of shareholder whose shareholding is less than 5 per cent must be reported to the CIRC within 15 days of the execution of the relevant share transfer agreement. As noted in question 2, the formation of a new insurance or reinsurance company is subject to a two-stage approval process.

## 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 CIRC'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 CIRC. An insurance holding company as well as its insurance company subsidiaries must also meet 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).

As opposed to regulation of reinsurance contracts, the CIRC focuses particular attention on the qualifications of the reinsurance companies themselves. The CIRC 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 CIRC, 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 other CIRC 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 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 CIRC's 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 CIRC, 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 CIRC's approval, apply to a competent court for restructuring, reconciliation or bankruptcy liquidation of the company. Alternatively, the CIRC 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 CIRC may impose a series of supervisory measures on any financially troubled insurance or reinsurance company (see question 6).

## 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 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 adjusters.

Insurance intermediaries conducting business in China must be approved and licensed by the CIRC; however, that an overseas insurer broker in a WTO member without a licence from the CIRC is also allowed to conduct cross-border reinsurance brokerage transactions with Chinese insurance companies. Pursuant to CIRC 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 the approval of the CIRC. In addition, a broker engaging in reinsurance transactions with a Chinese insurance company, whether licensed by the CIRC or not, must also register in a specialised system sponsored and maintained by the CIRC.

### 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 paid-in capital of 50 million yuan (unless otherwise approved by the CIRC). Such paid-in 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. However, with respect to a professional insurance agency company established prior to 27 April 2013 with a paid-in 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 branch, unless its registered capital is increased to 50 million yuan or more. The status of regulatory guidance governing part-time insurance agency companies is relatively fluid, as compared with the regulations governing professional insurance agency companies, with respect to the licence holders, licence renewal requirements and related matters.

### 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 paid-in capital of 50 million yuan (unless otherwise approved by the CIRC). Such paid-in capital must be derived from its own equity and must be placed under the supervision of a qualified bank. The CIRC licences insurance brokerage companies on a nationwide basis. However, with respect to an insurance brokerage company established prior to 27 April 2013 with a paid-in capital of less than 50 million yuan, such company will only be permitted to conduct business where it has established branches unless its registered capital is increased to 50 million yuan or more.

## Insurance adjustors

There are no requirements as to the minimum capital of an insurance adjustor, and the capital of an insurance adjustor is not required to be paid-in on the commencement of operations. The CIRC licences insurance adjustor companies on a nationwide basis.

## 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 the insurer to indemnify the 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 shall 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 CIRC, 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 CIRC 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 CIRC 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 CIRC 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 obliged to effect such primary payment as can be determined within 60 days of receipt of the substantiating evidence, and the insurer is obliged 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 on whether 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 CIRC 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 only becomes relevant 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 enforce against the insurer, but the insurer's obligation should 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, a policyholder must truthfully disclose information in connection with the insured subject or the insured on the request from the insurer, 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).

### 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.



### Update and trends

Recent key developments include:

- implementation of C-ROSS;
- enhanced oversight of insurance companies; and
- the introduction of new provisions regulating the use of information technology.

C-ROSS, China's second-generation solvency regulation system, was formally launched in the first quarter of 2016. On 25 October 2016, the CIRC announced, via a media release posted on its official website, that the industry Integrated Risk Rating (IRR) process for the second quarter of 2016 had been completed, marking full implementation of C-ROSS. The IRR results demonstrate that, as of the end of June 2016, 98 per cent of all insurance companies (including reinsurance companies) in the Chinese market were in compliance with applicable solvency requirements, earning an IRR rating of Class A or Class B, reflecting operations in a solvency condition of relatively low risk. With respect to the remaining 2 per cent of insurance companies whose solvency ratio or IRR rate fell short of applicable standards, the CIRC has implemented supervisory measures, including imposing restrictions on investment portfolios, suspending approval for new branch establishment and suspending approval for business line expansion. The CIRC also released a series of C-ROSS implementing rules and standards, among which are the qualification requirements for collateral posted by overseas reinsurers (see question 17). Recently, the CIRC announced that the second stage of C-ROSS implementation is planned to commence in the near future, and that the CIRC will promulgate additional detailed implementing measures.

The CIRC recently increased oversight of insurance companies, as reflected in a series of measures. With respect to corporate governance, the CIRC has promulgated several rules governing insurance company investor conduct. Additionally, the CIRC recently released the draft Equity Measures for Insurance Companies, which proposed certain shareholder restrictions to constrain the ability of an investor to establish control over an insurance company. With respect to product regulation, the CIRC has introduced new restrictions on short or mid-term life

products (ie, certain life products with an expected duration period of less than five years are subject to greater scrutiny by the CIRC). With respect to insurance company investment, the CIRC has promulgated new requirements aiming to curb risk and encourage prudent investment by insurance companies, especially in the stock market (see question 9). With respect to policy sales, in order to encourage customer satisfaction and confidence in the China insurance industry, the CIRC has strengthened scrutiny of pre-sale and claims-related services.

Regulation of internet-related matters relevant to the insurance industry remains highly active. The Cyber Security Law, promulgated in November 2016, is effective from 1 June 2017, and establishes an overarching cyber security framework. Within that framework, supporting measures to provide relatively more detailed implementation guidance are under development. For example, the draft Measures for the Security Assessment of Outbound Transfer of Personal Information and Important Data (Cross-Border Data Transfer Measures) were released for public comment in April 2017, and are intended to govern outbound data transfers, encompassing personal information and important data that is generated in the course of business operations in China, and transferred overseas. In May 2017, the Cross-Border Data Transfer Measures were followed by publication of the draft Information Security Technology – Guidelines for Data Cross-Border Transfer Security Assessment, proposing more detailed guidance. Also, earlier, in 2015, the CIRC published the draft Provisions on Insurance System Informatization (the Draft Informatization Measures) for public comment, which would regulate the use of information technology in the insurance sector, including broadened applicability, new corporate governance obligations, reporting requirements and technology standards, as well as mandating the establishment of a senior-level chief information officer to oversee company informatisation plans and operations. Certain aspects of the aforementioned laws and regulations are unclear and subject to further clarification by relevant authorities. But the evident trend of regulation will likely impact many foreign and Chinese insurance and reinsurance companies, whose compliance burden is likely to be increased.

## 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:

- there was no arbitration agreement between the parties;
- the matters in question fall outside of the arbitration agreement or beyond the power of the arbitration commission;
- the composition of the members of the arbitral tribunal or the procedure of the arbitration violates required legal procedure;
- the evidence on which the award was based has been forged;
- the counterparty concealed evidence that could materially affect fair arbitration; or
- 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 CIRC, 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.



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  
Jianguo Menwai Avenue  
Chaoyang District  
Beijing 100004  
China

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



**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.

**50 Extra-contractual 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.

## Getting the Deal Through

Acquisition Finance	Equity Derivatives	Pharmaceutical Antitrust
Advertising & Marketing	Executive Compensation & Employee Benefits	Ports & Terminals
Agribusiness	Financial Services Litigation	Private Antitrust Litigation
Air Transport	Fintech	Private Banking & Wealth Management
Anti-Corruption Regulation	Foreign Investment Review	Private Client
Anti-Money Laundering	Franchise	Private Equity
Arbitration	Fund Management	Product Liability
Asset Recovery	Gas Regulation	Product Recall
Automotive	Government Investigations	Project Finance
Aviation Finance & Leasing	Healthcare Enforcement & Litigation	Public-Private Partnerships
Banking Regulation	High-Yield Debt	Public Procurement
Cartel Regulation	Initial Public Offerings	Real Estate
Class Actions	Insurance & Reinsurance	Restructuring & Insolvency
Commercial Contracts	Insurance Litigation	Right of Publicity
Construction	Intellectual Property & Antitrust	Securities Finance
Copyright	Investment Treaty Arbitration	Securities Litigation
Corporate Governance	Islamic Finance & Markets	Shareholder Activism & Engagement
Corporate Immigration	Labour & Employment	Ship Finance
Cybersecurity	Legal Privilege & Professional Secrecy	Shipbuilding
Data Protection & Privacy	Licensing	Shipping
Debt Capital Markets	Life Sciences	State Aid
Dispute Resolution	Loans & Secured Financing	Structured Finance & Securitisation
Distribution & Agency	Mediation	Tax Controversy
Domains & Domain Names	Merger Control	Tax on Inbound Investment
Dominance	Mergers & Acquisitions	Telecoms & Media
e-Commerce	Mining	Trade & Customs
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