

## JT&N's PRC Insurance Highlights News Alert

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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](mailto:jtninsurance@jtnfa.com)

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### 1. 《市场准入负面清单》及《外商投资法》草案发布

#### Market Access Negative List and Draft Foreign Investment Law Promulgated

2018 年 12 月 21 日, 发改委和商务部联合发布了《市场准入负面清单》。2018 年 12 月 26 日, 全国人大常委会发布《外商投资法》草案并公开征求意见, 征求意见期截止至 2019 年 2 月 24 日。《外商投资法》一旦正式公布, 将取代目前的《外资企业法》、《中外合资经营企业法》及《中外合作经营企业法》。

根据《外商投资法》草案、《市场准入负面清单》和 2018 年 6 月 28 日公布的《外商投资准入特别管理措施(负面清单)(2018 年版)》, 在外商投资负面清单中没有特别限制的情况下, 外国投资者将和中国投资者享受同等对待。

On December 21, 2018, the National Development and Reform Commission and the Ministry of Commerce jointly promulgated the Market Access Negative List, which applies to both domestic and foreign investors.

On December 26, the Standing Committee of the National People's Congress published the draft Foreign Investment Law to solicit public comments until February 24, 2019. If promulgated, the Foreign Investment Law will supersede the China-Foreign Equity Joint Venture Law, the Wholly Foreign-owned Enterprise Law and the China-Foreign Cooperative Joint Venture Law.

### Contact Us

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Pursuant to the draft Foreign Investment Law, the Market Access Negative List and the Foreign Investment Negative List (promulgated on June 28, 2018), unless the Foreign Investment Negative List imposes additional market access restrictions on foreign investors in respect of specific industrial sectors, domestic investors and foreign investors will be treated equally.

## **2. 《互联网金融从业机构反洗钱和反恐怖融资管理办法（试行）》发布 Anti-money Laundering and Anti-terrorism Financing Rules for Online Financial Services Providers Promulgated**

2018年10月10日，中国人民银行、银保监会和证监会联合发布了《互联网金融从业机构反洗钱和反恐怖融资管理办法（试行）》。《试行办法》将于2019年1月1日生效。《试行办法》要求互联网金融从业机构，包括互联网保险从业机构，建立健全反洗钱反恐怖融资的内控体系、进行有效客户身份识别、提交大额和可疑交易报告、开展涉恐名单监测并保存反洗钱反恐怖融资相关的信息、数据及文件。根据《试行办法》，中国互联网金融协会将按照有关要求建设、运行和维护互联网金融反洗钱和反恐怖融资网络监测平台，互联网金融服务商和金融机构等应当在该平台上开展相应的反洗钱反恐怖融资工作。

On October 10, 2018, the People's Bank of China ("PBOC"), China Banking and Insurance Regulatory Commission ("CBIRC") and China Securities Regulatory Commission ("CSRC") jointly promulgated the Administrative Measures on Anti-money Laundering and Anti-terrorism Financing for Online Financial Services Providers (Trial) (the "Measures"), which will become effective on January 1, 2019.

The Measures require online financial services providers, including online insurance service providers, to perform certain obligations, relating to (i) maintaining an internal control system concerning anti-money laundering and anti-terrorism financing, (ii) conducting customer identification procedures, (iii) reporting suspicious transactions and large-value transactions, (vi) monitoring the lists of terrorist organizations and individuals and (v) archiving information, data and documents generated from anti-money laundering and anti-terrorism financing work.

The National Internet Finance Association of China will establish and maintain an online supervision platform (the "Platform") in accordance with the relevant requirements of the PBOC and the financial regulators, and each online financial services provider must perform certain of its anti-money

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laundering and anti-terrorism financing obligations via the Platform.

### 3. 银保监会放宽保险公司股权投资限制

#### **CBIRC Relaxes Equity Investment Restrictions for Insurance Companies**

2018 年 10 月 24 日，银保监会发布《关于保险资产管理公司设立专项产品有关事项的通知》，通知于当日生效。10 月 26 日，银保监会又发布了《保险资金投资股权管理办法》的征求意见稿。

根据银保监会有关规定，保险公司的股权投资总额不得超过该保险公司上年度总资产的 30%。《通知》允许符合条件的保险资产管理公司开发专项产品，以化解优质上市公司股票质押流动性风险，保险公司以投资该等专项产品的方式投资股权则不受上述股权投资额度的限制。

现行《保险资金投资股权暂行办法》规定，保险资金直接投资相关股权仅限于保险类企业、非保险类金融企业和与保险业务相关的养老、医疗、汽车服务等企业的股权。《征求意见稿》在总体放开了投资标的所在行业限制，并降低了保险公司进行股权投资的部分资质条件，如净资产要求及偿付能力要求等。

On October 24, 2018, CBIRC promulgated the Circular re Matters Concerning the Establishment of Specialized Products by Insurance Asset Management Companies (the “Circular”), which took effect on the same date. On October 26, CBIRC further published the draft Administrative Measures for the Investment of Insurance Funds in Equities (the “Draft Measures”) for public comments, with the commenting period ended on November 26, 2018.

Pursuant to CBIRC rules, the total equity investments of an insurance company are subject to a cap 30% of the insurance company’s total assets as of the end of the previous year. Pursuant to the Circular, a qualified insurance asset management company may issue special products that aim at investing in shares and bonds of a publicly-listed company and the exchangeable bonds of a shareholder of a publicly-listed company, and the insurance company’s equity investments, if made through such special products, will not be subject to the aforesaid equity investment cap.

The Draft Measures generally allow an insurance company to make equity investment in all industrial sectors, subject to certain restrictions. The Draft Measures also lower the qualifications for insurance companies to make equity investment, such as solvency and net asset requirements.

#### **JT&N’s Insurance Practice**

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

#### 4. 《关于完善系统重要性金融机构监管的指导意见》发布

#### **Guiding Opinions on Improving the Regulation of Systemically Important Financial Institutions Promulgated**

2018年11月27日，中国人民银行、银保监会和证监会联合发布了《关于完善系统重要性金融机构监管的指导意见》，《指导意见》于当日生效。系统重要性金融机构是指一旦发生重大风险事件而无法持续经营，将对金融体系和实体经济产生重大不利影响、可能引发系统性风险的证券业、银行业及保险业金融机构。国务院金融稳定发展委员会（“金融委”）也可以将金融控股公司认定为系统重要性金融机构。

《指导意见》明确，完善系统重要性金融机构监管主要应当从制定特别监管要求和建立特别处置措施两方面实现。中国人民银行将会同银保监会和证监会制定每年的系统重要性金融机构评选标准及范围，由金融委最后确定具体的系统重要性金融机构。特别监管要求主要立足于资产、杠杆率、流动性、大额风险暴露等方面。同时，中国人民银行、银保监会、证监会和财政部等部门将联合组建危机管理小组，由危机管理小组建立系统重要性金融机构的特别处置机制、协助每个系统重要性金融机构制定恢复及处置计划、开展可处置性评估等，以确保系统重要性金融机构经营失败时不会引发系统性风险。系统重要性金融机构应当制定恢复及处置计划，提交危机管理小组审议修订后执行。

On November 27, 2018, PBOC, CBIRC and CSRC jointly promulgated the Guiding Opinions Concerning the Improvement of the Regulation of Systemically Important Financial Institutions (the “Opinions”), which took effect on the same day. A systemically important financial institution (“SIFI”) refers to a financial institution that is in banking, securities or insurance sector and may have a significant adverse impact on the financial system and real economy and cause systemic risks if it fails to continue to operate due to a major risk event. A financial holding company may also be identified as a SIFI by the Financial Stability and Development Committee under the State Council (the “Committee”).

Pursuant to the Opinions, PBOC will, together with CBIRC and CSRC, formulate the relevant standards and scopes for identifying the SIFIs on an annual basis, and the Committee will finally identify the specific SIFIs. SIFIs will be subject to special regulatory requirements concerning their assets, leverage ratios, liquidity, significant risk exposure, and etc.

In addition, PBOC, CBIRC, CSRC, the Ministry of Finance and other

#### **Our Offices**

*JTN has offices in  
Beijing, Shanghai,  
Shenzhen, Chengdu,  
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, Hangzhou, Nanjing and*

relevant authorities will jointly establish a crisis management team that will be responsible for adopting a special disposal mechanism for SIFIs, assisting SIFIs with the formulation of recovery and disposal plans, and conducting disposability assessment. Each SIFI will need to formulate its own recovery and disposal plans, submit the same to the crisis management team, and implement the plans as reviewed and cleared by the team.

## 5. 关税保证保险试点

### Pilot Program on Customs Duty Guarantee Insurance

2018 年 10 月 30 日，海关总署和银保监会联合发布了《关于开展关税保证保险通关业务试点的公告》，公告于 2018 年 11 月 1 日生效。《公告》试点的关税保证保险是一种针对海关税收担保的新型保险，选择集中结算关税的进出口企业可以使用关税保证保险代替目前的现金保证金及银行保函这两种海关税收担保措施。相比目前的两种担保措施，关税保证保险能够为企业降低融资成本和资金占用成本。

On October 30, 2018, the General Administration of Customs and CBIRC jointly promulgated the Announcement on the Customs Duty Guarantee Insurance Pilot Program (the "Announcement"), which took effect on November 1, 2018. Customs duty guarantee insurance is a new line of insurance that protects against the risk of any late payment of customs duties. Pursuant to the Announcement, when an importer or exporter chooses to pay its customs duties on a cumulative basis for a specific time period, it may purchase a customs duty guarantee insurance product in lieu of the previously required bank guarantee letter or cash deposit, and reduce the relevant financing expense.

## 6. 外国投资者直接投资享受新税收优惠政策

### New Tax Benefit for Foreign Investor's Direct Investment

2018 年 9 月 29 日，财政部、国家税务总局、中国发展与改革委员会以及商务部联合出台《关于扩大境外投资者以分配利润直接投资暂不征收预提所得税政策适用范围的通知》。通知在 2017 年 1 月 1 日推出的政策基础上进一步扩大了税收优惠政策，并追溯至 2018 年 1 月 1 日生效。

根据通知，如果一名外国投资者符合《中华人民共和国企业所得税法》第三条第三款的非居民企业的规定，在其从中国境内居民企业分配的利润所得用于直接股权投资的情况下，该等利润可暂不征收预提所得税，直到该外国投资者实际收回享受暂不征收预提所得税政策待遇的直接投资为止。如果一名外国投资者按照通知可以享受暂不征收预提所得税政

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策但未实际享受的，可申请退还已缴纳的税款。

On September 29, 2018, the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and the Ministry of Commerce jointly promulgated the Circular on Expanding the Applicable Scope of the Policy of Temporarily Not Levying the Withholding Tax on Distributed Profits Used by Overseas Investors for Direct Investment (the “Circular”), which took effect retroactively on January 1, 2018 and expanded the scope of the tax benefit that has been available since January 1, 2017.

Pursuant to the Circular, if a non-PRC resident overseas investor receives a profit distribution from a PRC resident enterprise, and uses the distributed money to make a direct equity investment in another PRC entity, the withholding tax on the profit distribution will be deferred until the overseas investor liquidates such direct equity investment. An overseas investor may apply for a tax refund if it has paid the relevant tax that can be covered by the Circular.

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