

## CIRC Proposes Capital Flexibility and Tighter Sanctions for Insurance Companies

China's State Council has published draft amendments (the "Draft for Comment") to the Insurance Law for public comment. The consultation period will end on 14 November 2015. Due to the lengthy Chinese legislative process, typically involving three rounds of review by the Standing Committee of the National People's Congress, the amendments are not expected to become law before late 2016.

The Draft for Comment proposes substantial changes to the current regime, including:

- **Changes to regulatory supervision**

- Under the current rules, an insurance company is required to report changes to their shareholders' actual controller to China Insurance Regulatory Commission (the "CIRC"). Under the Draft for Comment, any change of actual controller of a shareholder that holds 5 per cent. or more of the shares in an insurance company will need the CIRC's prior approval.
- Flexibility in application of insurers' capital

The Draft for Comment proposes the following changes in the use of insurance funds:

- The mandatory requirement for an insurance company to deposit capital reserve with a bank designated by the CIRC will be reduced from 20 per cent. to 10 per cent. of the registered capital, and will be capped at RMB200 million; and
- The cap on premium retained by a property and casualty insurance company<sup>1</sup> of four times its capital plus reserve funds will be removed.
- The Draft for Comment proposes additional sanctions on insurance companies that breach corporate governance requirements, including: (i) requiring submission of corporate governance plans; (ii) restricting shareholders' rights; (iii) ordering the shareholders to transfer their shares; (iv) limiting business scope; (v) restricting the use of insurance funds; (vi) moratorium on setting up branches and

<sup>1</sup> "Premium retained" refers to an insurance company's total insurance premium income (including reinsurance premium accepted) less reinsurance premium ceded.

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sub-branches; (vii) ordering changes to in-charge personnel; and (viii) suspending business operation. Under the current rules, insurance companies that breach the corporate governance requirements can only be ordered to rectify (the CIRC may directly instruct the insurers' shareholder and board meetings to rectify).

- The Draft for Comment proposes additional sanctions for insurance companies which fail to comply with the solvency requirements, including: (i) adjusting business or capital structures; (ii) restricting growth of business or capital; and (iii) ordering changes to in-charge personnel.
- The Draft for Comment proposes that insurance agency and brokerage companies suspending their business operations for a consecutive period of more than six months can have their business licences revoked by the CIRC.

- **Broader business and investment scope**

- The Draft for Comment expands the scope of life insurance business to include enterprise annuity and occupational annuity. This tracks current CIRC regulations and keeps pace with the developments in the market, which have made occupational annuity compulsory for government employees since March 2015.
- To further implement a State Council directive in August 2015<sup>2</sup> which called for the establishment of a catastrophe insurance legal system, the Draft for Comment provides for a catastrophe insurance framework with financial support from the Treasury to be legislated by the State Council. It has been reported that a new regulation for earthquake insurance will be passed within 2015.
- To be consistent with several recently issued CIRC departmental rules from 2010 to 2015, the Draft for Comment permits insurance companies to use insurance funds to invest in equities, insurance asset management products and financial derivatives for hedging purposes. Investments in substantial equity stakes and expansion of the investment application of insurance funds by insurance companies are subject to the CIRC's approval.

- **Enhanced consumer protection**

- The Draft for Comment proposes to extend the minimum statutory cooling-off period for life insurance contracts of more than 1 year from 10 days to 20 days from the signature of the policy. During the cooling-off period the policyholder is entitled to rescind the insurance contract and obtain a full refund of the premiums paid.
- The Draft for Comment proposes heftier penalties for misconduct by insurers and insurance intermediaries against insured parties,

<sup>2</sup> Several Opinions of the State Council on Accelerating the Development of a Modern Insurance Industry (国务院关于加快发展现代保险服务业的若干意见), 10 August 2014.

including: (i) fines from RMB200,000 to RMB1,000,000; and (ii) suspension of business pending rectification, or revocation of business licence in serious cases.

- The Draft for Comment proposes to include the following additional forms of prohibited conduct for insurers and insurance intermediaries: (i) disclosure of personal information; (ii) misleading/ false product advertising or explanations; and (iii) inducing their insurance agents to violate fiduciary duties.

- **Others**

- The Draft for Comment provides for a national unified insurance industry information sharing platform (which has been under preparation since 2013). Its main functions will be to collect, store, apply and process data and to register and process insurance policy information, thus providing more expedient access to the information needed by insurers to conduct their business.

**Reference:** The Legislative Affairs Office of the State Council: Comments Sought for Revisions of Insurance Law (国务院法制办就修改《保险法》征求意见)

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