Asia Pacific Insurance - China

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# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Approval from the China Insurance Regulatory Commission (CIRC) for the appointment of directors/senior management is required.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

Yes. Approval from the CIRC is required for the appointment of directors/senior management of an insurance company. The approval requirement applies to all directors and senior management, whether they are executive directors or non-executive directors.

## Is there generally any distinction between EDs and NEDs?

Yes. The PRC distinguishes between executive directors, non-executive directors and independent non-executive directors (INEDs). In relation to INEDs, there are specific requirements governing their eligibility, qualification, tenure and responsibilities.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

No. However, the CIRC must be notified of the resignation or removal of directors/senior management.

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

There is no express requirement.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

The chair of the board is required to have at least five years of finance-related experience or at least 10 years of economic-related experience. Directors and senior management are required to have at least five years of experience related to their proposed function.

Directors and senior management are required to satisfactorily complete certain insurance examinations prescribed by the CIRC.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. Candidates must satisfy the criteria of personal conduct, professional knowledge, business capability and job performance, among others.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes, these include past convictions relating to fraud or dishonesty or other criminal offenses, being an undischarged bankrupt, or having been a director of an insolvent body corporate, among others.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

There is no express requirement.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is generally expected to ensure that all its directors and senior management appointed are fit and proper persons. In relation to INEDs, the insurer is required to certify to the CIRC regarding the suitability and the independence of the INEDs. The insurer is also responsible for ensuring that all information furnished to the CIRC is accurate and complete and free of material
omission.

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

Generally, the board is collectively responsible for the operations of the insurance company. However, INEDs are statutorily required to
exercise additional diligence in relation to matters such as material connected transaction and profits distribution proposals.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

Directors are responsible for the operations of the insurer, including compliance with applicable regulatory requirements. Directors are
specifically expected to remain loyal to the insurer, avoid conflicts of interest, and display a high standard of care, skill or diligence. Directors are also required to devote sufficient time to the affairs of the insurer and shall promptly attend board meetings. A director who does not attend a prescribed number of board meetings can be deemed incapable of performing his/her duties.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes. The CIRC may impose orders to prohibit the relevant director/senior management from leaving the PRC and also impose freezing orders on the personal assets of the director/senior management.

Statutory penalties include fines and/or imprisonment and the quantum/length depends on the offenses committed.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

Generally, no periodic filings apply to directors. However, ad hoc filings may apply to resignation or cessation of appointment.

Performance audits are also required to be performed on directors/senior management periodically by an external audit firm. Audit reports need to be filed with the CIRC.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. An insurer is encouraged to have a board of seven to 13 members.

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

Yes. Depending on the size of the insurer, at least one-third of the board of the insurer must be independent non-executive directors.

Insurers are encouraged to appoint an actuary as a director.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. Generally, depending on its size, an insurance company is expected to establish specialized committees. All committees are expected to
comprise directors of the insurer. For the audit committee, at least one member must possess audit or financial knowledge and experience.

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

Yes, provided that there is no conflict of interest and subject to an independence rule where the director concerned is an INED. In relation to INEDs, a declaration of independence needs to be filed with the CIRC at the time of the appointment, and they are not permitted to hold positions in other insurers that carry on similar lines of business. In addition, an INED cannot act as an INED for more than four companies at any given time.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific requirement or prohibition on remuneration to directors/senior management.

However, corporate governance rules apply in respect of remuneration of senior management and other key personnel. For certain matters, such as subsidy payments to be made to INEDs, it will require approval from the shareholders in a general meeting.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

Although fintech and insurtech are not terminologies recognized by the Chinese government or used in published laws and regulations, according to the Guidelines on the Promotion of the Healthy Development of Internet Finance (FinTech Guidelines) issued on 18 July 2015, which is considered to be the first comprehensive regulation concerning regulation of fintech in China, the division of responsibilities between financial regulators is as follows:

People's Bank of China is responsible for the regulation and supervision of internet payment services.

China Securities Regulatory Commission is responsible for the regulation and supervision of (i) internet lending services and (ii) internet trust and internet consumer finance.

China Securities Regulatory Commission is responsible for the regulation and supervision of (i) equity crowdfunding activities and (ii) internet fund sales.

China Insurance Regulatory Commission is responsible for the regulation and supervision of internet insurance services.

In July 2017, the Financial Stability and Development Commission was established to be the central regulator to coordinate with these financial regulations in respect of the regulation of financial sectors.

In addition to these financial regulators, the Ministry of Industry and Information Technology (MIIT) is responsible for the regulation and supervision of telecommunications-related businesses involved in the provision of fintech/insurtech, the Cybersecurity Administration of
China (CAC) is responsible for the regulation of cybersecurity compliance in the provision of fintech/insurtech and the CAC, together with the Ministry of Public Security (PSB), will regulate compliance with the handling of personal information in the provision of fintech/insurtech.

## What are the types of fintech/insurtech activities that are regulated?

The following types of activities are currently regulated under the Fintech Guidelines:

internet payment

internet lending

equity crowdfunding

internet fund sales

internet insurance

internet trust and internet

consumer finance

In addition, Chinese regulators have been actively clamping down on illegal fundraising through P2P lending and equity crowdfunding.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

While there has been strong government and regulatory support for fintech/insurtech, Chinese regulators have become more and more cautious about the potential risks posed by these businesses and may impose stricter and broader regulation on various fintech/insurtech
businesses.

The significance of fintech/insurtech has been recognized and endorsed by the Chinese government. For example, the Fintech Guidelines provided strong policy direction for supporting and promoting the development and growth of fintech in China. Specifically, the Fintech Guidelines set out the following goals of the Chinese government:

promoting innovation of fintech platforms, products and services

encouraging cooperation between financial institutions and internet companies

improving access to capital for fintech firms through the promotion of venture capital, SME finance and public listings

streamlining administrative approvals for fintech firms

providing tax benefits for fintech/insurtech start-ups and fintech innovations

encouraging the development of credit information infrastructure and supporting service systems for fintech/insurtech

However, with more and more reported cases of fraudulent or problematic P2P lending platforms in 2015, it has been reported that Chinese regulators are in the process of drafting new rules to tighten up the control over certain fintech/insurtech businesses such as internet lending, internet payment and internet insurance businesses. Many companies conducting internet lending, internet payment or internet insurance businesses have been closed down or had their operating licenses revoked since 2015.

## What are the licenses required and what are the criteria and process involved?

Depending on the specific activities involved, the following licensing and/or regulatory requirements may be triggered for:

conducting an Internet banking business – a financial license is required

conducting Internet payment services – a payment business license is required

Internet lending business: (i) Internet small-amount lending business is subject to the requirements of provincial-level finance office; (ii) for P2P online lending, the P2P online lending platform is required to serve as intermediary only and must choose a qualified banking financial institution as the capital depository institution for both the lenders and the borrowers.

conducting equity crowdfunding business, registration and membership with the Securities Association of China is required

conducting Internet fund sales, a publicly raised fund sales payment and settlement institution license is required.

conducting Internet insurance sales, an insurance license is required. However, for insurance sales through third-party platform, no license (other than the relevant telecommunication license or recordal) is required for the third-party platform.

conducting Internet trust business or Internet consumer finance, a financial license is required

In addition, the relevant telecommunication license or recordal is also required for operating the online platform for providing the relevant fintech/insurtech.

## Is the use of telematics and/or biometrics regulated?

Provision of telematics services is regulated in China. Specifically, location-based information services are subject to licensing and regulatory requirements for the providing Internet mapping services and value-added telecommunications services in China.

Use of biometrics data is not specifically regulated under Chinese law.

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

No.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

According to the Guidelines for the Administration over the Informatization of Insurance Companies (for Trial Implementation) issued by CIRC, effective 1 January 2010, insurance companies established and licensed within China are required to comply with the following obligations with respect to technology risk management:

establish data center and disaster recovery center within the territory of China

establish and implement detailed internal rules and systems concerning IT and network security management

appoint a chief information officer or a person who is mainly responsible for the IT-related work

conduct security assessment before implementation of new information systems and/or technologies

establish monitoring and reporting system for IT security

conduct risk assessment and audit of IT system

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

There is no comprehensive personal data protection law in China, but the concept exists under various laws and regulations such as the Tort Liability Law, the Criminal Law, the NPC Decision on Strengthening the Protection of Network Information and the Consumer Protection Law.

In the context of collecting and processing electronic personal data, the relevant Chinese laws and regulations require that organizations must expressly inform the data subjects the purposes, scope and manner of data collection and use and obtain their consent to the
same. Furthermore, organizations have an obligation to (i) keep the personal data of data subjects confidential, and must not disclose (unless with the data subject's consent), sell or unlawfully provide the same to a third party, and (ii) adopt technical and other necessary
measures to ensure that the data is secure, and must take remedial steps immediately where data disclosure, damage or loss occurs or may occur.

Chinese central government has shown increased interest in the use of big data by issuing several notices and circulars with framework policies and rules dealing with storage and use of big data by government agencies. Detailed enabling rules or specific regulations to govern the use of big data is yet to be promulgated.

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

No.

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

Yes. Most notably, the following laws contain provisions concerning cybersecurity:

The National Security Law, which provides the state's focus on safeguarding the security of cyberspace.

The 9th Amendment to the Criminal Law, which provides that network service providers will be subject to criminal liabilities, if they:  (i) fail to comply with network security management obligations, causing large-scale dissemination of illegal information or other
serious results; or (ii) knowingly provide technical support (such as Internet access, server hosting, network storage or communications transmission) to aid crimes committed through information networks.

The Anti-terrorism Law imposes obligations on telecom business operators and Internet service providers to (i) provide technical support to authorities in connection with investigations for terrorism, (ii) adopt security measures, monitor terrorist content and
cooperate with investigations, and (iii) verify customer identity.

The Draft Cybersecurity Law, which has yet to take effect, will be the first Chinese law that focuses exclusively on cybersecurity and addresses various aspects of cybersecurity in China.

## What innovations are insurance companies and/or regulators looking at implementing?

Fintech/insurtech innovations in China are still a relatively recent phenomenon. As a result, there are no specific insurtech innovations that we are aware of in the insurance sector. As mentioned, the insurance regulator has recently expressed its concern over the lack of
regulation and risk control of online insurance businesses conducted by unlicensed online platforms. Accordingly, the insurance regulator has announced that it will clamp down on unlicensed internet insurance businesses as one of its major tasks for 2016.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

There have been quite a number of cases where the operation of P2P lending platforms has been characterized as criminal offenses involving illegal fundraising or unlicensed deposit taking, and the persons found to be responsible for these platforms have been subject to criminal sanction.

## What are the most immediate challenges to insurtech innovation?

Lack of centrally coordinated regulator for fintech/insurtech business – While there are various regulators overseeing specific financial service sectors, they have not put in place a coordinated scheme to address their overlapping jurisdiction, which often results in a lack of specific guidance and supervision of fintech/insurtech innovation.

Difficulty in securing licenses – Due to the lack of specific rules and regulations, it has been difficult to obtain the appropriate licenses required for conducting fintech activities, which constantly result in the legality of the relevant fintech business being questioned or
challenged.

Cybersecurity issues

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

Fintech/insurtech will likely continue to play an important role in the financial services industry in China given the policy objective of the Chinese government to promote fintech/insurtech as well as the increasing use of digital devices by Chinese consumers.

The Chinese government is considering setting up a centralized financial and monetary regulator that may have comprehensive power to regulate most (if not all) fintech/insurtech activities. This has been considered one of the most significant impacts of fintech/insurtech innovation on the regulation of the financial services industry in China.

## What insurtech trends or disruptions may impact insurance companies?

It remains to be seen if internet insurance will continue to grow in China in the future, given the previous regulatory action taken by the Chinese insurance regulator.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

Currently, there are three categories of insurance intermediaries in China: (1) insurance agents; (2) insurance brokers (also referred to as insurance brokerage institutions); and (3) insurance assessment institutions. Insurance agents include (a) individual insurance agents and (b) institutional insurance agents. Individual insurance agents can only provide agency services for a rather limited range of insurance products. Institutional insurance agents consist of two categories: (i) full-time insurance agents, and (ii) part-time insurance agents (eg, commercial banks and travel agents, which sell insurances to their respective customers in the course of their main line of business). For the purpose of this China guide, the response to all questions relating to insurance agents may not be applicable to individual insurance agents.

Each category of insurance intermediaries should meet the respective qualification requirements. Full-time institutional insurance agents should obtain the Insurance Agency Business Operation License issued by the China Insurance Regulatory Commission (CIRC), while part-time institutional insurance agents should obtain the Part-time Insurance Agency License issued by CIRC. Insurance brokers should obtain
the Insurance Brokerage Business Operation License issued by CIRC. Insurance assessment institutions were originally required to obtain the Insurance Assessment Business Operation License issued by CIRC, but they are now only required to file a recordal of their insurance assessment business with CIRC or its local counterparts instead of obtaining a license issued by CIRC.

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

There is no such mandatory requirement in China.

## Do agreements between insurers and their agents need to take a certain form?

As a general principle, insurers should enter into written agency agreements with their appointed agents, which should stipulate the parties' respective rights and obligations. No specific requirement on the exact form that such agreements shall take.

## Can insurers pay volume-based commission to their appointed agents?

Yes. Insurers are permitted to pay volume-based commission to their appointed agents. The PRC law generally allows parties to negotiate and determine the commission amount.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. Insurers would be held liable for the acts of their agents or appointed distributors if such agents or appointed distributors act under the insurers' authorization. In addition, where an agent or appointed distributor signs a contract on behalf of an insurer without the insurer's authorization, beyond the insurer's authorization or after the termination of the insurer's authorization, from which the applicant has good reasons to believe that the agent or appointed distributor has been duly authorized by the insurer, the act of such agency would be deemed effective. However, the insurer may take remedial actions against, and seek indemnification from, such breaching agent or appointed distributor in accordance with the law to limit the insurer’s liability.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

There are no specific rules in this regard. However, insurance brokers do have the general obligation to introduce the insurer of the recommended insurance product to their customers, and make a comprehensive and fair analysis of the insurance products similar to the recommended insurance product for their customers.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

Insurance brokers may receive commission from both insurers and their customers at the same time pursuant to the contracts concluded by them. The amount of the commission can be negotiated and agreed upon by the relevant parties, so it can be volume-based. Insurance brokers are required to explain to their customers the mechanism and percentage for commission payment as per the customers' request.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

There is no such restriction directly imposed on agents or appointed distributors. However, specific rules prohibit insurers and their employees from offering any discount or rebate on insurance premiums or any special benefit to customers. Since the acts of agents or appointed distributors could be deemed as authorized by insurers, offering rebates on insurance premiums or other special concessions by agents or appointed distributors to customers would implicate vicarious liability for the insurers, and thus should be avoided.

## Can insurers appoint offshore agents or accept business from offshore brokers?

CIRC does not explicitly prohibit insurers from appointing offshore agents or accepting business from offshore brokers. However, it is a general rule that Chinese insurers must not appoint any individual or institution or that has not obtained the required qualification (applicable license or permit issued by CIRC) to engage in insurance sales activities, and must not pay any commission or give any other benefit to any institution or individual that has not obtained the required qualification. Offshore agents and brokers are not eligible to obtain the required licenses issued by CIRC. Therefore, it would not be legally viable for insurers in China to appoint offshore agents, or to
pay any commission or give any other benefit to offshore brokers in exchange for the business brought by them.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

Yes. CIRC has issued certain regulations on insurance sales activities through call centers, telemarketing or other distribution channels to ensure that such sales activities are traceable (in other words, to ensure that sales activities can be replayed, important information can be retrieved and liabilities can be confirmed). Insurers and insurance intermediaries should record key steps in the process of sales of insurance products in the form of audio or audiovisual materials and electronic data, by means of sound recording, video recording, etc. When insurers and insurance intermediaries carry out sales activities via telephone, they should record entire telephone conversations and archive audio recordings. These regulations are mandatorily applicable to sales of insurance products when the customers are individuals, except for group insurance products. CIRC has also issued certain more detailed regulations on telemarketing that are specifically applicable to life insurance products and property insurance products, respectively. For example, for telemarketing of both life insurance products and property insurance products, insurance institutions should establish a list of phone numbers that they should not call back in the future following receipt of express or implied rejection to avoid cold call harassment.

## Are there specific requirements on selling products through online channels?

CIRC has issued certain Interim Measures for the Supervision and Administration of Internet Insurance Business, which aim to regulate online sales of insurance products and provision of insurance-related services by insurers and insurance intermediaries through their own websites or third-party online platforms. Said measures have an implementation term of three years, commencing from 1 October 2015. As a general principle, an insurer shall ensure its internet insurance consumers receive insurance services (including insurance application, claim settlement, etc.) not inferior to those provided through other business channels, and shall safeguard the security of insurance transaction information and its customers' information. Internet insurance business should be operated and administered in a centralized manner, by the head office of the insurer that conducts Internet insurance business. Insurance institutions should specify all information of their insurance products and services as required by CIRC in explicit and plain language in a conspicuous location on the relevant
internet platforms.

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

As generally speaking, it is not possible for Chinese insurers to engage foreign insurance agents and brokers, we do not envisage that cross-border sharing of client information will be entailed. Insurance agents and brokers should be allowed to share client information with insurers because insurers are ultimately responsible for writing the insurance products purchased by clients. However, insurance agents and brokers must obtain the prior consent of their clients for insurance agents and brokers' necessary and reasonable collection, use and provision of their personal data and/or trade secrets in accordance with the PRC Law for the Protection of Consumers' Rights and Interests, the PRC Cybersecurity Law, the PRC Anti-unfair Competition Law, etc.

In cases where clients purchase insurance policies directly from insurers without any involvement of insurance agents and brokers, strictly speaking, insurers should not share such clients' information with insurance agents and brokers for the reason that insurers and their sales persons and other staff have the statutory obligation to keep clients' information in strict confidence, and must not disclose trade secrets and personal privacy of policy holders and insured persons to other parties.

# Investing in Insurtech Start-ups

## Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

Insurance companies are permitted to invest in start-up companies that satisfy the following conditions:

The start-up is duly set up and registered and has legal person status.

The business activities of the start-up are compliant with the industry policies of the Chinese government, and the start-up possesses the requisite qualifications to conduct the relevant business activities.

The shareholders and the senior management of the start-up have good standing and sound creditworthiness records.

The start-up is at the growth or maturity stage or within strategically new industry(ies), or has a clear IPO plan and relatively high acquisition value.

The start-up has market, technology, resource or competitive advantage and potential room of value increase, and has a specific profit distribution mechanism.

The management team of the start-up possesses professional knowledge, industry experience and management capabilities that are compatible with their job responsibilities.

The start-up is not involved in a major legal dispute and has complete and clean ownership over assets, and there is no legal defect in its shareholding or asset ownership.

There is no affiliation between the insurance company, the investment institution and professional advisor involved in the investment, unless otherwise permitted by the regulator and advance reporting/disclosure has been complied with.

Other prudential conditions required by the China Banking and Insurance Regulatory Commission (CBIRC).

Conditions (2), (4), (5) and (8) are not applicable if investment in the start-up is also a regulated entity in insurance industry. Start-up companies in which insurance companies are permitted to make direct equity investment must be: (i) regulated entities in the insurance industry; (ii) financial institutions in non-insurance sectors; (iii) entities whose businesses are relevant to the insurance business, such as pension, medical care, auto servicing; and (iv) energy enterprises, resource enterprises, and modern agricultural enterprises and new-type trading circulation enterprises that are relevant to insurance business, and such enterprises are compliant with the macro policies and industry policies of the Chinese government and have stable cash flows as well as good economic performances.

Start-ups in which insurance companies are investors should be in any of the following circumstances:

Its business is not in line with the industry policies of the Chinese government.

There is no expectation of stable cash return through the investment in the start-up or value increase in the start-up.

The start-up has high pollution or high energy consumption, fails to comply with the energy saving or environmental protection requirements, or has low technology value-add.

## What are the available options in terms of investments that an insurer can make in an insurtech start-up?

Insurance companies are permitted to indirectly make equity investments in an insurtech start-up via equity investment funds. However, it is not entirely clear for the time being whether an insurtech start-up falls within the scope of entities in which insurance companies can make direct equity investments. While it is not explicitly prohibited by published rules of CBIRC, insurance companies generally are not able to provide loans to companies in which they make equity investments.

## What are the restrictions on investing in an onshore insurtech start-up?

Aside from the restrictions mentioned above, an insurance company shall ensure the following:

The value of its equity investment in one entity shall not exceed 30% of its net asset value.

The total value of its equity investment shall not exceed its net asset value.

The total value of the equity investments it has made via direct equity investment and via equity investment funds does not exceed 10% of its total asset as of the most recent calendar quarter.

## What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

It is not entirely clear if insurance are permitted to make equity investment in offshore insurtech start-ups.

Equity investment in offshore entities are included in the scope of an insurance company's overseas investment, the value of which must comply with the total asset percentage imposed by CBIRC.

## Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

Generally speaking, it is not permissible for insurance companies to grant loans to its invested companies.

## What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

Equity investment in another entity must be approved by the shareholders' meeting or the board of directors of an insurance company, depending on the relevant requirements in its articles of association and/or its relevant rules of equity investment.

## Are there any general minority shareholder protection mechanisms in your jurisdiction?

Generally speaking, no.

## Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

There are no restrictions on insurance companies in respect of appointing its own staff or management to join the board of directors or management team of its invested companies. On the contrary, CBIRC expects insurance companies making equity investment in other companies to have the ability to appoint its own staff or management to the invested companies' board of directors or management team.

## Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

Service contracts concluded by an insurance company with its invested company whereby services are provided to the insurance company would be considered connected party transactions of the insurance company.

Depending on the absolute contract value and the percentage of the contract value to the net asset value of the insurance company as of the end of last financial year, a connected party transaction can be categorized as: (a) a major connected party transaction, which shall be subject to review by the affiliated party transaction control committee or the audit committee before being submitted to the board of directors or the shareholders' meeting of the insurance company, depending on the insurance company's articles of association and/or its relevant rules for connected party transactions and then be reported to CBIRC for recordal; or (b) a common connected party transaction, which shall be subject to examination and approval according to the internal procedures of an insurance company before being ultimately submitted to the affiliated party transaction control committee or the audit committee for record-filing or approval, which needs to be reviewed and approved in accordance with the insurance company's internal authorization process.

## Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

As mentioned, a major connected party transaction must be reported to CBIRC for recordal within 15 days of occurrence (approval) of such transaction.

## To what extent can the insurer provide operational support to the insurtech start-up?

There are no restrictions on insurance companies providing operational support to their invested companies. If the provision of operational support by an insurance company would not result in transfer of economic interest from the insurance company to its invested company, such transaction may not be considered a connected party transaction that is subject to the regulations of connected party transactions.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

There is currently no restriction on the form of remuneration for an insurance company to offer to its invested companies.

## How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights of companies invested by insurance companies can be transferred, either through a transfer and assignment agreement or by way of exclusive license.

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

There are none, as long as the insurtech start-up complies with the general data privacy laws and regulations as well as the general data privacy rules contained in the Cybersecurity Law.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

China Banking and Insurance Regulatory Commission (**CBIRC**)

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

There is a maximum foreign ownership of 51% for life insurers (by law), and the restriction on foreign stakes will be canceled in 2021. There is no cap on foreign equity for general insurers. The law does not provide for individual shareholders for foreign-invested insurance companies.

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (the law does not provide for composite license).

## Are there other conditions imposed by the regulator in doing an M&A transaction?

The CBIRC requires the applicant to have the following:

More than 30 years of established experience in the insurance industry

A representative office in China for two years

Total assets of USD5 billion

## Is dispensation given for fulfillment of these conditions and in what circumstances?

Generally no.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

Yes.

Generally there is such a policy for each of life and non-life businesses.

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

CBIRC approval is required for a share deal or an asset deal. There is otherwise no distinction from a regulatory perspective between a share deal and an asset deal.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

Regulatory approvals vary on a case-by-case basis. They can take a few months to more than a year.

## How open is the regulator to private equity participation in an insurer?

There is no statutory prohibition. Foreign investors need to possess relevant insurance experience.

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

There is no FHC concept for insurance companies.

A foreign insurer must satisfy the entry requirements before it can set up a JV or a wholly owned subsidiary in China. Such requirements include capital, insurance experience and having a representative office for two years in China.

## What are the typical modes of distribution for insurance companies?

Bancassurance, agency force and brokers

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution.

CBIRC approval is required.

The salient terms are:

Exclusivity

Products

Remuneration

Risk allocation

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

Regulatory approval

Price

MAC clause

**Asset deal**

Transfer of all other business undertakings

Transfer of employees

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

There is no specific data privacy regulator in China. However, following the issuance of the PRC Cybersecurity Law, the Cybersecurity Administration of China (CAC) and the Ministry of Public Security (MPS) will likely take the lead in enforcing the compliance requirements on data privacy.

## What is the main legislation on the protection of personal data privacy?

There is no specific data privacy legislation in China, but the concept and general requirements can be found in laws and regulations, for example, the General Rules of Civil Code, the Cybersecurity Law, the Tortious Liability Law, the Criminal Law, the NPC Decision on Strengthening the Protection of Network Information and the Consumer Protection Law.

# Regulatory Landscape and Issues in Bancassurance

## Who is the main regulator with oversight of bancassurance matters?

The China Banking and Insurance Regulatory Commission (**CBIRC**).

## Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.

Bancassurance partnerships are generally divided into the exclusive and non-exclusive arrangements.

## What are the main parameters in negotiating a distribution agreement?

The salient terms are:

a) exclusivity;
b) term and renewal;
c) product development arrangements;
d) remuneration; and
e) the rights of use of bank's customer data.

## Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes, banks are required to have the part-time insurance agency license issued by the CBIRC.

## Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

There is no regulatory restriction for an insurer to appoint a bank as its exclusive distributor or the term/duration of the appointment. In addition, the CBIRC requires that in general, each bank outlet should only have bancassurance arrangement with no more than three insurance companies, unless the local branch of the CBIRC approves otherwise.

## Assuming full exclusivity is not possible for legal or regulatory reasons, would the bank be able to grant the insurance company preferential treatment? If yes, under what conditions?

Yes, and the form of the preferential treatment is a matter of negotiation.

## What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

Notification.

## Would the insurance company and/or the bank be required to submit the distribution agreements (and any ancillary documents) to the regulators as part of any notification/approval process? If yes, do the regulators require any specific terms to be included in the distribution agreements?

The bancassurance agreement should be filed with CBIRC.

## If the distribution agreements are submitted, would the regulators review/provide comments and require that the agreements be modified?

In practice, it is uncommon that regulator will comment on the terms, although the regulators have an extensive regulatory power to do so.

## Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

It is advisable to do so.

## What are the competition law considerations that might impact the term (e.g., duration) of a distribution agreement?

There is no official guideline on this point.

## Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

There is no specific law in this regard, but generally speaking, individuals have their privacy rights, hence it is advisable to obtain customer consent.

## Are there any laws or regulations limiting or prohibiting the dissemination of customer information without the customers’ consent? Are customers allowed to waive any of these limitations or prohibitions?

Please see response to Question 12.

## Are there any other prohibitions or limitations resulting from applicable privacy laws relating to the sharing of customer information for purposes of marketing and distribution of insurance products?

Please see response to Question 12.

## Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

Yes, there are guidelines on amount of commissions.

## What are the sanctions for non-compliance with the prohibitions or limitations in respect of compensation arrangements?

No explicit sanctions, but CBIRC could request the relevant insurance company and the bank to rectify the non-compliant arrangement and impose a fine on them.

## Would the regulators request information on compensation arrangements (for specific jurisdictions or globally)?

Bancassurance agreements must be filed with the regulators.

## Are there any restrictions in relation to the classes of insurance products which may be offered pursuant to a bancassurance arrangement?

The products should be listed out in the bancassurance agreement.

## Are there any products or product lines that the insurance company would be unable to offer to and distribute through the bank?

None.

## Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

Insurance products should either be approved or filed with the CBIRC.

## Are there any prohibitions or limitations in respect of co-branding between the bank and the insurance company?

No specific prohibition, but the regulators will always have the power to raise requisitions and concerns if it creates market confusion.

## Would the bank personnel be required to hold any specific license in order to distribute the insurance products? Are there any reasons why bank personnel may be prohibited from distributing insurance products?

CBIRC generally disallows insurance companies from dispatching their sales personnel to bank outlets.

## If the sales person is employed by the bank: (a) is the insurance company required to have oversight or provide special training; and (b) are there applicable laws and regulations allowing the insurance company to compensate the bank for the service provided by its sales personnel?

a) There is no statutory requirement for training or oversight responsibility by the insurer. However, it is common for the insurer to provide training to the bank personnel.
b) There are rules as to how insurers should compensate the bank.

## If the sales person is employed by the insurance company, are there any restrictions on their access to the bank’s branches?

CBIRC generally disallows insurance companies from dispatching their sales personnel to bank outlets.

## Are banks allowed to lease space to insurance companies to market its products in the bank’s branches?

Not a common practice in China.

## Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

## Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

None.

## Are there any other issues that may affect the insurance company’s ability to enter into the distribution agreements and provide bancassurance services on an ongoing basis to the bank?

None.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

In practice, PRC banks are reluctant to offer exclusivity to a particular insurer. Even where the bank is the major shareholder of the insurer, the bank would still be reluctant to give exclusivity to the insurer in which it holds significant shares or equity interest.

## What are generally the obligations of an insurer in terms of providing manpower support?

Insurers will generally provide training support and a dedicated team to support the sales and marketing of the bancassurance products.

## What are the typical rights and provisions in relation to insurer’s right to access the bank’s customer database and also the obligations of an insurer that is in receipt of such information?

The insurer will usually have right to access and use customer data for the purpose of policy administration. The bank will usually remain as the owner of the customer data. The insurer will be required to maintain confidentiality of the data and cannot use it for upselling and cross-selling other insurance products without the permission of the bank.

## What are the issues to consider in respect of compensation payable by the insurer to the bank and cost of distribution of bancassurance products?

There are guidelines on commissions and insurers are required to observe such guidelines.

## What can parties do if the insurer is unable to develop or refuses to develop a bancassurance product or cease offering a bancassurance product?

The insurer will lose exclusivity in respect of such bancassurance product.

## What are the possible terms and issues relating to intellectual property that has been jointly developed (JDIP) pursuant to a bancassurance agreement?

This is more a commercial issue. Possible terms are the party proposing the product will have the IP rights and the other party will be restricted from developing similar products for other channels.

## What happens to the facilitation fee for the promotional and marketing activities paid by the insurer to the bank in the event of an early termination?

If the fee is paid upfront in a lump sum, insurer may consider clawback provisions so that part of the fees may be refunded in case of early termination or other events.

If the fees are paid by installments, the insurer may not be able to claw back those installments that have been paid. However, this is subject to negotiation between the parties.

## A pro-rata refund of the facilitation fee in the event of an early termination may not be fair to the banks as the banks would typically invest and incur more costs and expenses during the initial years of a bancassurance agreement to promote and market and put in place a business structure to supports the objectives of the bancassurance agreement. How can the parties address this issue?

The fees may be paid by installments agreed between the parties.

## Can a party ask for an indemnity for any losses, expenses and damages suffered as a result of an act by a bank staff and conversely can a bank to ask for an indemnity or any losses, expenses and damages suffered which is attributed to the other party?

Yes. Indemnity provisions are common in bancassurance agreements. However, there is always a cap to such indemnity and the default party will usually not be responsible for indirect or consequential damages, as under Chinese law, indirect and consequential damages as a result of breach of contract are generally not recognized.

## What are the issues to consider when forming a bancassurance steering committee?

The issues include: representation from each party, quorum and frequency of meetings, the matters should be discussed in the steering committee meetings (which should be management matters such as business plan, sales targets, new products, etc.). A mechanism has to be in place for resolution of deadlock situations. Usually, the matters will be escalated to the CEOs, failing which, to arbitration. In addition, a working committee may also be established to deal with the more daily routine matters.

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

Yes. The China Insurance Regulatory Commission (now China Banking and Regulatory Commission ("**CBIRC**")) issued the Interim Measures for the Supervision of Internet Insurance Business ("**Internet Insurance Measures**") to regulate the sale of insurance through online platforms. The initial validity period of the Internet Insurance Measures was 3 years from 1 October 2015 to 30 September 2018. CBIRC announced in October 2018 that the Internet Insurance Measures will continue to be effective until CBIRC issue the new rules.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

Yes. The Internet Insurance Measures apply to all kinds of online platforms including mobile application.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

Key regulatory requirements are: (i) only insurance companies and full-time insurance intermediaries duly licensed by CBIRC to conduct insurance business are permitted to distribute insurance through online platforms; (b) operation of online platforms for distribution of insurance products must be licensed by CBIRC; (c) online platforms that are operated and provided to insurance companies and full-time insurance intermediaries for sale of insurance products must be operated within China and have obtained requisite operating license or authorization from Chinese telecommunications regulator; and (d) sufficient security measures must be adopted and implemented for the operation of the online platforms.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

No specific rules, but the Internet Insurance Measures requires online platform operators must provide accurate and complete information of the insurance applicant and the insured to the relevant insurance companies within 24 hours following receipt of online application for purchase of insurance, and insurance companies shall establish and implement customer identity identification systems (i.e., for KYC purpose).

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

Yes. "Click-through" without wet signature is commonly used. Use of e-signature is still uncommon.

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

No. The advertising of insurance products through online platforms or the use of aggregators must be compliant with the PRC Advertising Law, the Interim Measures for the Administration of Internet Advertising, and the Internet Insurance Measures. Insurance companies are responsible for the truthfulness, accuracy and compliance of the contents of the advertisements of their insurance products.

## Are there any customer service requirements if the insurers sell their products online?

Insurance companies are generally required to provide online service systems that can provide customer services for their insurance products sold online.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There is no such obligation imposed yet.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

No. Insurers do not need to obtain specific insurance licenses in order to conduct online sales. However, except for certain insurance products, insurers may not distribute their insurance products in regions that are not covered in its insurance license through online sales. In addition, insurers that will distribute their products exclusively through online platforms will need to obtain specific license from CBIRC.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

No. Insurance intermediaries may rely on their existing insurance intermediary licenses to conduct online sales, provided that they comply with the geographic scope of product distribution specified in their insurance intermediary licenses in the course of online sales.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

No. There is no difference on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

No. Insurance companies that are not approved to only conduct online insurance business are generally permitted to engage intermediaries to sell their insurance products through online platforms, provided that the geographic scope of product distribution for the insurance companies and the insurance intermediaries as approved by CBIRC are complied with.

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