Asia Pacific Insurance - China

Guide for Insurance Sales, Advisory and Distribution

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# 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.

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