

THE INSURANCE AND
REINSURANCE
LAW REVIEW

TENTH EDITION

Editor
Simon Cooper

THE LAWREVIEWS

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PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant: it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with emerging markets in Asia and Latin America developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all the contributors for their work in compiling this volume.

One of the defining features of 2021 was the covid-19 pandemic, which has inflicted terrible human misery around the world. The insurance industry, like most other aspects of the economy, has been badly impacted by the pandemic. Although the financial loss to the industry seems likely to be manageable, it has undoubtedly raised issues about the suitability of a range of policy wordings for the modern commercial environment, while also raising various legal issues related to, for example, causation and the quantification of loss. The different jurisdictions represented in this book will have different responses to these developments so it is vital to hear from the lawyers in each of those countries on the factors that will govern the international response.

The year 2021 was another very bad year for insured losses from natural catastrophes. Hurricane Ida was the largest single loss event but other extreme weather events including deep winter freezes, severe thunderstorms, floods and heatwaves had a significant impact. These losses reinforce the continuing concern that climate change will see a long-term increase in the number and severity of such losses. From a legal perspective, the changing nature of natural catastrophes will raise issues of policy construction in relation to, for example, aggregation clauses and the obligation on reinsurers to follow their insured's underlying settlements.

The past year also saw no respite in the number or scale of cyber events, including the data breaches at the Microsoft Exchange Server and ransomware attacks on organisations as diverse as Bombardier, Acer, JSB Foods and Kia Motors. The insurer Axa also suffered a major ransomware attack which, interestingly, came shortly after the company indicated it would be amending some of its policies to exclude cover for the payment of ransoms. Events such as these test not only insurers and reinsurers, but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for

the courts and arbitral tribunals to consider. Aggregation will also be an area of uncertainty in relation to the treatment of all losses of this kind, and again different jurisdictions are likely to provide different responses.

Looking ahead, 2022 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will continue to present challenges around the world. This is reflected in our chapter on artificial intelligence. The current instability in international relations means there may also be an increased focus on issues such as the impact of sanctions on insurance recoveries and the scope of war exclusion clauses; for example, in relation to state involvement in cyber events.

I hope that you find this volume of use in seeking to understand today's legal challenges, and I would like to thank, once again, all the contributors.

Simon Cooper

Ince

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CHINA

*Zhan Hao, Wang Xuelei, Yu Dan, Chen Jun, Wan Jia, Liang Bing and Wu Shanshan*¹

I INTRODUCTION

In 2021, the Chinese insurance industry underwent several developments and changes. Firstly, the Chinese insurance industry is at an inflection point; namely, the beginning of a transition period from pursuing large-scale growth in the past to now pursuing high-quality growth for the future. There is industry consensus behind this need to re-evaluate the reasoning behind previous development and emphasise high-quality development. Secondly, the opening up of the Chinese insurance industry has continued to accelerate. In March 2021, the China Banking and Insurance Regulatory Commission (the CBIRC, Chinese insurance regulatory authority) revised the Implementing Rules for the Administrative Regulations of the People's Republic of China on Foreign-funded Insurance Companies, and further clarified market access standards for foreign insurance group companies and foreign insurance companies to invest in Chinese foreign-funded insurance companies. Thirdly, with China's rapid pace in ageing and the increasing proportion of the elderly among China's population, old-age security and related services have become the focus of the Chinese insurance industry. Fourthly, the CBIRC released the Circular on Relevant Matters Concerning Further Regulating the Online Personal Insurance Business of Insurance Institutions. The reform of this new regulation is unprecedented. It not only defines the business scope of internet life insurance products, but also sets solvency adequacy ratio, comprehensive risk rating, liability reserve coverage ratio, and corporate governance assessment for companies that can operate internet life insurance business.

Based on data released by the CBIRC on its official website,² on 25 January 2021, aggregate original insurance premium income reached 4.4900 trillion yuan; insurance indemnities and other expenditures reached 1.5609 trillion yuan; the total assets of the insurance industry reached 24.8874 trillion yuan; the net assets of the insurance industry reached 2.9306 trillion yuan; and the overall amount of insurance funds reached 23.2280 trillion yuan. Thus, China remains the second largest insurance market in the world.

II REGULATION

In 2021, several new regulations were issued by the CBIRC and other government authorities to press ahead with the reform and development of the insurance industry.

1 Zhan Hao is the managing partner, Wang Xuelei, Yu Dan, Chen Jun, Wan Jia and Liang Bing are partners, and Wu Shanshan is a senior associate at AnJie Law Firm.

2 <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1034665&itemId=954>.

i Circular on Clarifying the Measures Relating to the Liberalisation of the Insurance Intermediary Market

On 3 December 2021, the CBIRC issued the Circular on Clarifying the Measures Relating to the Liberalisation of the Insurance Intermediary Market (the Liberalisation Circular). The Liberalisation Circular clarifies that an insurance brokerage company funded and established in China by an overseas insurance brokerage company, which has actual business experience and qualifies under relevant CBIRC regulations, is allowed to operate an insurance brokerage business. Other related requirements are no longer applicable. Namely, foreign investors no longer need to: demonstrate 30 years of business history in a WTO member state; maintain a representative office in China for a period of at least two consecutive years; and have assets totaling no less than US\$200 million in the year immediately prior to the application. This new regulation will attract more foreign investors to compete in the Chinese insurance intermediary market.

ii Measures for the Supervision and Administration of Insurance Group Companies

On 24 November 2021, the CBIRC issued the Measures for the Supervision and Administration of Insurance Group Companies (the Measures). The Measures clearly define the types of enterprises that insurance group companies can invest in, together with investment ratio limits. The Measures respectively restrict the investment scope and proportion of insurance group companies' investments in insurance companies, non-insurance financial companies, non-financial companies, and overseas companies. The Measures also set up special chapters to regulate non-insurance subsidiaries. This new regulation shows the CBIRC's desire to regulate financial groups.

iii Circular on Relevant Matters Concerning Further Regulating the Online Personal Insurance Business of Insurance Institutions

On 12 October 2021, the CBIRC released the Circular on Relevant Matters Concerning Further Regulating the Online Personal Insurance Business of Insurance Institutions (the Personal Insurance Circular). In the Personal Insurance Circular, the CBIRC focuses on solving the problems of improper innovation associated with selling personal insurance products via internet channels, misleading sales, vicious competition, regulatory arbitrage, and other prominent problems reported by insurance consumers. The CBIRC intends to supervise property insurance companies and life insurance companies in a consistent way from the perspectives of business access, product pricing and regulatory mechanism.

iv Circular on Issuing the Measures for Regulation of the Behaviours of Major Shareholders of Banking and Insurance Institutions (for Trial Implementation)

The CBIRC released Circular on Issuing the Measures for Regulation of the Behaviours of Major Shareholders of Banking and Insurance Institutions (for Trial Implementation) (the Major Shareholders Circular) on 30 September 2021. The regulation is not only applicable to banks and insurers, but also to non-bank financial institutions such as insurance asset management companies, trust companies, financial asset management companies, financial leasing companies, consumer finance companies and auto finance companies.

v Circular on Relevant Matters Concerning the Issuance of Catastrophe Bonds by Domestic Insurance Companies in the Hong Kong Market

The Circular on Relevant Matters Concerning the Issuance of Catastrophe Bonds by Domestic Insurance Companies in the Hong Kong Market (the Catastrophe Bond Circular) was issued by the CBIRC on 17 September 2021. Based on the Catastrophe Bond Circular, insurance companies may issue catastrophe bonds in the Hong Kong market through special purpose insurance companies for the purpose of transferring catastrophe risk losses caused by natural disasters such as earthquakes, typhoons and floods or public health emergencies. This new regulation addresses the successful precedent in which CBIRC approved ChinaRE Group to issue catastrophe bonds in the US market.

III INSURANCE AND REINSURANCE LAW

i Sources of law

As China is a civil law country, the sources of law are found in statutory codes. The sources of insurance law in China consist mainly of:

- a* the Insurance Law;
- b* judicial explanations issued by the Supreme People's Court;
- c* other relevant laws promulgated by the National People's Congress; and
- d* regulations and guidelines issued by the CBIRC and other relevant government institutions.

ii Making the contract

The Insurance Law (the Law) does not define a reinsurance contract. In practice, a reinsurance contract is deemed to be a special type of insurance contract concluded between the ceding insurer and the reinsurer.

Pursuant to the Law, an insurance contract is defined as an agreement in which an applicant and an insurer set out their respective rights and obligations under the insurance policy. The term 'applicant' refers to the party that concludes the insurance contract with the insurer, and who must pay the premium in accordance with the contract. The term 'insurer' refers to the insurance company that concludes the insurance contract with the applicant, and that is liable for paying insurance indemnities in accordance with the contract.

The Law classifies insurance contracts into two classes, namely personal insurance contracts and property insurance contracts. A personal insurance applicant has an insurable interest in the insured at the time when the insurance contract is formed, while an insured in property insurance has an insurable interest in the subject insured at the time when an incident covered by the insurance occurs.

An insurance contract is formed when an insurance applicant applies for insurance and the insurer accepts the application. The insurer then issues to the insurance applicant an insurance policy or any other insurance certificate in a timely manner.

Pursuant to Article 18 of the Law, an insurance contract shall contain the following:

- a* the name and address of the insurer, the names and addresses of the insurance applicant and the insured, and the name and address of the beneficiary when applying for personal insurance;
- b* the subject insured;
- c* insurance liability and liability exemptions;
- d* the period of insurance and the commencement date of insurance liability;

- e* the amount insured;
- f* the premium and payment method;
- g* the method for paying indemnity or insurance benefits;
- h* liabilities for breaches of contract and resolution of disputes; and
- i* the day, month and year of the conclusion of the contract.

The insurance applicant and the insurer may agree upon other particulars related to insurance in the insurance contract.

In concluding an insurance contract, the applicant has a duty of honest disclosure when the insurer enquires about the subject insured or relevant circumstances concerning the insured. The insurer shall have the right to rescind the insurance contract if the applicant intentionally or with gross negligence fails to perform his or her duty of honest disclosure, to the extent that said failure materially affects the insurer's decision on whether to provide the insurance or whether to increase the premium rate. Invoking the right of rescission reverses any insurance liability that was assumed for insured incidents that occurred prior to the rescission of the contract, entitling the insurer to those benefits that had already been paid out. However, there is one minor distinction to be made between failing to disclose material facts as a result of gross negligence versus intentionally failing to disclose. If an applicant fails in their duty to disclose out of gross negligence, and this affects the insurer's pricing or provision of the policy, the insurer shall, with respect to the incidents occurring prior to the rescission of the contract, bear no insurance liability, but shall return the paid premiums. When an applicant intentionally fails to disclose a fact, however, they are not entitled to a refund of their policy premium in the event of its rescission. However, if an insurer enters into an insurance contract with an applicant knowing that the applicant has failed to disclose a material fact, the insurer is not entitled to rescind the contract, and if an insured incident occurs, the insurer shall bear the insurance liability.

For those clauses in the insurance contract that exempt the insurer from liability, the insurer must give sufficient warning to the applicant of said clauses in the insurance application form, the insurance policy or any other insurance certificate, and expressly explain the contents of those clauses to the applicant in writing or orally; if the insurer fails to give a warning or explicit explanation thereof, those exemption clauses shall be of no effect. The PRC Civil Code, which came into effect on 1 January 2021, brings about some changes with regard to the validity of standard clauses. Article 496 of the PRC Civil Code provides that besides standard terms that exempt or reduce the insurer's liability, other standard terms that the insurer provided to the applicant but failed to conclude in line with its duty of utmost good faith, and that carry a significant interest for the other party, will also be of no effect.

iii Interpreting the contract

The provisions of the insurance contract become ambiguous when the insurer and the insurance applicant, the insured or the beneficiary, have different interpretations of the policy. If a provision is found to be ambiguous, it should be interpreted in accordance with the following interpretative methods.

Semantic interpretation

Semantic interpretation means interpreting the policy with common knowledge in accordance with the common sense of ordinary people. The interpretation cannot deviate from the wording of the policies, and other methods of interpretation can be applied only when the outcome of a semantic interpretation is still unclear. The semantic interpretation method is also the fundamental method.

Systemic interpretation

Systemic interpretation refers to interpreting the provisions based on the entire contents of the contract and taking into consideration the connection of each provision with the other provisions in the contract.

Contract aim-based interpretation

Contract aim-based interpretation means interpreting the policy in accordance with the real intention of the parties to the insurance contract.

Good faith interpretation

Good faith interpretation is based on the utmost good faith principle, whereby the insurance contract is interpreted by applying the waiver and estoppel rules. The good faith principle is an essential principle in the civil law system and is similar to the utmost good faith doctrine in the common law system.

Special interpretation

Under a special interpretation, the contents of the schedule outweigh the policy clauses; the handwritten clauses outweigh the printed clauses; and a special exception is that the contents of the application form outweigh the insurance policy and schedule even if the application form is formed earlier than the latter two parts of the insurance contract.

Unfavourable interpretation

Where the insurer and applicant, insured or beneficiary have a dispute over a clause in an insurance contract concluded by using the standard clauses provided by the insurer, the clause shall be interpreted as commonly understood. If there are two or more possible interpretations of the clause, a court or arbitration institution shall interpret the clause in favour of the insured and beneficiary.

iv Insurance intermediaries

Insurance intermediaries include insurance brokerage companies, insurance agencies and insurance assessment institutions. China has adopted the Regulatory Provisions on Insurance Brokerages, Rules on Insurance Agents and the Regulatory Provisions on Insurance Adjusters to regulate insurance brokerage companies, insurance agencies and insurance adjusters.

Insurance brokerage companies and insurance agencies have to be in the form of either a limited liability company or a joint-stock limited company. Brokers provide intermediary services to insurance applicants and insurance companies to execute insurance contracts based on the interests of insurance applicants, while insurance agencies are, based on authorisations by insurance companies, authorised to handle insurance business on their behalf. The two regulations on insurance brokerage companies and insurance agencies, respectively, provide

the requirements on market access, operation rules, market exit, supervision and inspection, and legal liabilities. Further details are also provided regarding the business establishment, qualifications of personnel, scope of business and prohibited acts.

For instance, an insurance brokerage company must meet the following conditions to be established:

- a* Shareholders, promoters and sponsors must have a good reputation, and must have no record of major irregularities in the immediately preceding five years.
- b* The registered capital must reach a minimum requirement. The minimum registered capital of an insurance brokerage company must be 50 million yuan if it operates beyond a province, autonomous region, centrally administered municipality or the municipality with unilateral planning at the place of its industry and commerce registration. The minimum registered capital of an insurance brokerage company must be 10 million yuan if it operates within a province, autonomous region, centrally administered municipality or the municipality with unilateral planning at the place of its industry and commerce registration. The registered capital of an insurance brokerage company must be paid in cash.
- c* The articles of association must comply with the relevant provisions.
- d* The chair of the board of directors, the executive director and senior management must comply with the qualifications specified in the Regulatory Provisions mentioned above.
- e* It must have a sound organisational structure and management system.
- f* It must have a fixed domicile commensurate with the scale of its business.
- g* It must have business, financial and other computer hardware and software facilities commensurate with its business.
- h* It must meet other conditions specified in laws, administrative regulations and provisions of the CBIRC.

Similar conditions apply for a professional insurance agency. Only a few differences exist after the coming into effect of the CBIRC's Rules on Agents on 1 January 2021. This includes registered capital, whereby the registered capital of a professional insurance agency must be 20 million yuan, whereas it must only prove 10 million yuan if it operates in one province or another provincial region.

An insurance brokerage company may engage in the following business:

- a* drafting insurance application proposals, selecting insurance companies and handling the insurance application formalities for insurance applicants;
- b* assisting the insured or beneficiaries in claiming compensation;
- c* reinsurance brokerage business;
- d* providing clients with disaster, loss prevention, risk assessment or management consulting services; and
- e* other business approved by the CBIRC.

To engage in insurance brokerage business, an insurance brokerage must enter into a written brokerage contract with a client agreeing to the rights and obligations of both parties and other relevant matters. A brokerage contract may not violate any laws or administrative regulations, or the provisions issued by the CBIRC.

In conducting business, an insurance brokerage company must prepare a standard client notification letter. This letter must, at minimum, include basic information about the company, such as its name, business premises, scope of business and any contact methods.

If there is any affiliation between the company or its director or senior executive and an insurance company or insurance intermediary institution related to its brokerage business, this must be explained in the client notification letter.

An insurance brokerage practitioner must present the client notification and, at the request of the client, explain the manner of collection and the rate of commissions. The practitioner must also inform the clients of the insurer of an insurance product, make a full and fair analysis of any similar products recommended, and clearly alert an insurance applicant to the clauses in the insurance contract regarding, *inter alia*, liability exemptions or exceptions, surrender, deduction of other expenses, cash value and the cooling-off period.

A professional insurance agency may engage in the following insurance agency business:

- a* selling insurance products as an agent;
- b* collecting insurance premiums as an agent;
- c* conducting damage surveys and claim settlements for the relevant insurance business as an agent; and
- d* other business approved by the CBIRC.

To engage in insurance agency business, a professional insurance agency must enter into a written agency contract with an insurance company, agreeing on the rights and obligations of both parties and other relevant matters. An agency contract may not violate any laws or administrative regulations, or the provisions issued by the CBIRC.

A professional insurance agency must prepare a standard client notification letter and present it to the client while conducting business. The client notification letter must, at a minimum, include basic information about the full-time insurance agency and the represented insurance company, such as their names, business premises, scope of business and contact methods. If there is any affiliation between the professional insurance agency or its director or senior executive and the represented insurance company or the relevant insurance intermediary company, this must be explained in the client notification letter. Furthermore, the client notification letter must include an avenue for submitting complaints and handling dispute resolution clause as well. A professional insurance agency must also clearly alert an insurance applicant of the clauses in the insurance contract regarding, *inter alia*, liability exemptions or exceptions, surrender, deduction of other expenses, cash value and the cooling-off period.

v Claims

Under the Law, the applicant, insured or beneficiary shall, in a timely manner, notify the insurer after becoming aware of the occurrence of an incident covered by the insurance. Where an applicant, insured or beneficiary fails to notify the insurer in a timely manner either intentionally or out of gross negligence, making it difficult to ascertain the nature, cause and extent of the loss of the incident covered by the insurance, the insurer will not be liable for indemnification or payment of the insurance benefits for the indeterminable part, unless the insurer has known or should have known about the incident in a timely manner through other channels. An applicant also has a duty to cooperate with the insurer who is defending a claim on its behalf. The applicant must keep the insurer informed of all major case developments, respond to the insurer's reasonable enquiries and notify the insurer.

After receiving an insured's or beneficiary's claim for indemnity payment, the insurer must assess the claim in a timely manner. If the circumstances are complex, the insurer must complete the assessment within 30 days, unless otherwise agreed upon in the insurance

contract. The insurer must notify the insured or beneficiary of the assessment result. For a claim that falls within the insurance coverage, the insurer must perform the obligation of paying the indemnity within 10 days of after reaching an agreement on the payment of indemnity with the insured or beneficiary. If the insurance contract provides otherwise for the time limit for indemnity payment, the insurer must perform the obligation of paying the indemnity as agreed upon therein. If the insurer fails to perform the obligation as prescribed, it shall, in addition to paying the insurance indemnity, pay compensation for the insured's or beneficiary's loss suffered.

In cases where an insurer cannot determine the amount of indemnity to be paid within 60 days of receiving a claim for indemnity and the relevant certificates and materials, it must first pay the amount that can be determined according to the current certificates or materials, and after it finally determines the amount of indemnity to be paid, it shall pay the difference.

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

Jurisdiction

China's court hierarchy consists of four levels. The primary courts, intermediate courts, high courts and Supreme Court all have jurisdiction as courts of first instance over civil cases, including insurance litigation, in accordance with the amount of a dispute and the influence of the case.

Generally speaking, the primary courts act as the first-instance courts in most insurance cases. On 30 April 2015, the Supreme People's Court issued the Notice of the Supreme People's Court on Adjusting the Standards for the Jurisdiction of the Higher People's Courts and Intermediate People's Courts over Civil and Commercial Cases of the First Instance, and this can be referred to for the hierarchical jurisdiction of insurance disputes. On 30 April 2020, the Supreme People's Court further issued the Notice of the Supreme People's Court on Adjustments to the Criteria for First-instance Civil Cases under the Jurisdiction of Higher People's Courts and Intermediate People's Courts. This notice sets the minimum amount at issue for trial before a high court to 5 billion yuan. First-instance civil cases with an amount at issue below 5 billion yuan will only be heard by a high court when the matter carries significant influence in the court's jurisdiction. On 17 September 2021, the Circular of the Supreme People's Court on Adjusting the Criteria for the Jurisdiction of Intermediate People's Courts over Civil Cases of First Instance was released. According to this circular, in civil cases with 500 million yuan or more in dispute, and where the domiciles of all parties are within the same provincial-level jurisdiction or none of the parties are within the same provincial-level jurisdiction where the accepting court is located, the intermediate people's court will have first-instance jurisdiction. In civil cases with 100 million yuan or more in dispute, and where the domicile of one of the parties is not within the provincial-level jurisdiction where the accepting court is located, the intermediate people's court will have first-instance jurisdiction.

In terms of territorial jurisdiction, a lawsuit brought on an insurance contract dispute will usually be under the jurisdiction of the court where the domicile of the defendant or the insured object is located. Further, pursuant to Article 21 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law, which was issued on 30 January 2015, for an action instituted for a dispute arising from a property insurance contract, if the subject matter insured is a transport vehicle or goods that were in transit,

the case may be under the jurisdiction of the people's court at the place where the transport vehicle is registered, the place of destination or the place where the insurance accident occurs. A case of dispute over a personal insurance contract may be under the jurisdiction of the people's court of the place of the domicile of the insured.

For litigation involving marine insurance, the court of first instance is the professional marine court, and the Marine Special Procedure Law is applied in such procedure.

Choice of law

As a common rule, the parties to a contract can choose the governing law in a contract. However, pursuant to Article 12 of the PRC Civil Code, Chinese law shall apply to civil activities within China, except as otherwise stipulated by law. According to Article 3 of the Insurance Law, this law shall also govern insurance activities conducted within the territory of China.

For an insurance contract concluded within the territory of mainland China, and where both the insurance applicant and insurer are Chinese entities or Chinese citizens, Chinese laws will usually be applied compulsorily.

Arbitration clauses

More and more insurance companies are choosing arbitration as their dispute resolution method, and the most popular arbitration institution in China is the China International Economic and Trade Arbitration Commission.

However, in the insurance contracts of some foreign-invested insurance companies, a dispute resolution clause gives the parties the right to select the method of dispute resolution, either by arbitration or litigation.

Article 7 of the Interpretation of the Supreme People's Court on Certain Issues Concerning the Application of the Arbitration Law states that an arbitration agreement will be invalid if the parties thereto agree that disputes may be resolved either through submission to an arbitration institution for arbitration or by filing an action with a people's court, unless one of the parties applies to an arbitration institution for arbitration and the other party fails to raise an objection within the time limit specified in Article 20, Paragraph 2 of the Arbitration Law.

Consequently, a dispute resolution clause will usually be deemed invalid if it stipulates litigation and arbitration simultaneously. In that case, if either the insured or the insurer submits a dispute in connection with an insurance policy for arbitration, the other party may argue for the invalidity of the clause and refuse arbitration, which means that the dispute will ultimately be resolved by litigation.

ii Litigation

Pursuant to Article 26 of the Insurance Law, the statute of limitations for an insured or beneficiary to claim the insurance indemnity against the insurer in any insurance other than life insurance is two years, counted from the day when the insured or beneficiary knew or should have known of the occurrence of the insured accident. However, Article 188 of the PRC Civil Code now provides that applicants now have the right to apply for protection of their civil rights for up to three years. Courts, confronted by these two limitation periods, will usually apply the three-year period in cases concerning claims for insurance indemnity.

The statute of limitation for an insured or beneficiary in life insurance to claim indemnity against the insurer is five years, counted from the day when the insured or beneficiary knew or should have known of the occurrence of the insured accident.

The litigation procedure for insurance disputes is no different from that of other kinds of civil disputes, and the Civil Procedure Law and Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law will be applied. The court must complete trials of first instance cases within six months. It must complete trials of appeal cases against a judgment within three months of the appeal being docketed, but for an appeal case against a ruling, the court shall issue a final ruling within 30 days of the appeal being docketed.

If any party is unsatisfied with the judgment or verdict of the first instance court, the party can appeal to the appellate court at the higher level. The judgment or verdict of the appellate court is binding. The remedy for a binding judgment and verdict is legal review, but this procedure is rarely initiated.

During the civil procedure, each party submits evidence to prove the facts upon which its own litigation requests are based or upon which its refutation of the counterparty's litigation requests is based. However, in insurance disputes, the insurer bears the burden of proof under several conditions based on the Interpretations of the Supreme People's Court on Several Issues Concerning the Application of the Insurance Law (II). For instance, if the parties concerned have any dispute over the scope and content of the inquiry at the time of concluding the insurance contracts, the insurer then bears the burden of proof.

iii Arbitration

There is no difference between the arbitration procedure of an insurance dispute and that of other kinds of commercial disputes. The parties shall refer to the arbitration institution's arbitration rules and evidence guidelines in an arbitration procedure. The costs for an arbitration procedure are decided by the arbitration rules of each arbitration institution.

iv Mediation

On 18 December 2012, the former CIRC and the Supreme People's Court jointly issued the Notice of the Supreme People's Court and the China Insurance Regulatory Commission on Carrying out Pilot Work of Establishing the Mechanism for Linking Insurance Dispute Litigation with Mediation in Some Regions of China to establish a mediation system for insurance litigation in some cities. The local courts and insurance associations oversee this system.

Pursuant to the Notice, the courts in the pilot regions can, in accordance with the spirit of the Overall Plan of the Supreme People's Court on Expanding the Pilot Reform of the Mechanism for Settling Disputes by the Linkup of Litigation and Non-Litigation,³ establish registers of mediation organisations and mediators that are specially invited. Where conditions permit, the courts can also provide mediation organisations and invited mediators with mediation rooms that are specifically provided to carry out the work required for settling insurance disputes.

The courts in pilot regions must, under the precondition of respecting the parties' will and in accordance with the relevant provisions of the Several Opinions of the Supreme People's Court on Establishing a Sound Mechanism for Settling Disputes by the Linkup of

3 No. 116 [2012] of the Supreme People's Court.

Litigation and Non-Litigation,⁴ guide parties in effectively settling disputes with low costs through the mechanism for linking insurance dispute litigation with mediation by means of appointed mediation before a case is docketed, and by means of authorised mediation after a case is docketed.

In 2016, the Supreme People's Court and the former China Insurance Regulatory Commission jointly issued the Opinions on Comprehensively Advancing the Building of the Mechanism Linking Litigation with Mediation for Insurance Disputes. With the exception of regions carrying out the pilot programme at the earlier stage, the Opinions will actively expand the scope of the regions carrying out the pilot programme to include all municipalities directly under controlled by the central government and all provincial capitals (capitals of autonomous regions).

After receiving the bill of complaint and before registering a case, a people's court shall guide the parties to resolve insurance disputes via mediation. If the parties agree to this, they must complete relevant mediation forms or sign a letter of consent; if the parties do not agree, the people's court will register the case. After the case is registered, the people's court can still appoint mediation organisations to mediate the dispute with the consent of the parties based on the development of the case. The mediation organisations must finish mediating the dispute within 20 working days of being assigned the case. The mediation period can be extended by seven working days in special circumstances, with the consent of the parties. The mediation organisations can consult with the people's court when dealing with complicated cases.

If a contract is civil in nature, the mediation agreement concluded by the parties to insurance disputes will take place under the mediation of a mediation organisation or mediators. With the signatures and seals of the organisation or mediators, the parties may apply to the court with jurisdiction to confirm the validity of the mediation agreement. A mediation agreement that is confirmed to be valid by the court will have enforceability.

V YEAR IN REVIEW

On 30 December 2021, the CBIRC issued the Circular on Issuing the Regulatory Measures for Risks in the Outsourcing of Information Technology by Banking and Insurance Institutions (the Outsourcing Circular) which requires banking and insurance institutions to establish an information outsourcing management system and incorporate information technology outsourcing risks into a comprehensive risk management system. The Outsourcing Circular focuses on the following issues.

- a* When implementing IT outsourcing, a banking and insurance institution shall guarantee network and information security and strengthen the protection of important data and personal information.
- b* A banking and insurance institution shall define the IT functions that shall not be outsourced; functions involving strategic management, risk management, internal auditing, and other core competitiveness of IT shall not be outsourced.
- c* A banking and insurance institution shall, in accordance with the IT outsourcing strategies and in combination with the risk assessment situation, define the service

⁴ No. 45 [2009] of the Supreme People's Court.

provider admission standards, screen alternative service providers, and prudently introduce service providers that have high concentration risks or will increase the overall risks of the institution.

- d* A banking and insurance institution shall establish a classified management mechanism for IT outsourcing activities and establish the corresponding management and risk control strategies for different types of outsourcing activities; in principle, IT outsourcing shall be divided into the following types: consultation and planning, development and testing, operation and maintenance, security services, and business support.
- e* When conducting cross-border outsourcing, a banking and insurance institution shall fully assess the political, economic, social, legal, cultural, and other operational environments of the countries or regions where the service providers are located. The cross-border storage, processing and analysis of information, if involved, shall be subject to the relevant laws and regulations of China.

The promulgation of the Outsourcing Circular is an important measure for the CBIRC to better regulate the IT outsourcing activities of insurance institutions, and it also responds to the provisions of the Personal Information Protection Law on the protection of personal information.

VI OUTLOOK AND CONCLUSIONS

The deputy chairman of the CBIRC delivered a speech on 28 July 2021, where he stated that in the new era of development, the CBIRC will explore new paths and new mechanisms for financial support to achieve peak carbon emissions and carbon neutrality, build new, mutually reinforcing features of green finance together with environmental, social and governance investment, and continuously promote high-quality economic and social development and a comprehensive shift towards a green and low-carbon society.

We believe that in the year 2022, with the effective enforcement of relevant rules and regulations, the Chinese insurance industry will be presented with great opportunities for development and possibilities for a healthier and more mature market environment. In the meantime, with more and more open policies to foreign investors in the Chinese financial market, the Chinese insurance market will be further internationalised in the coming days.

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