October, 2002

Provisions for the Establishment of Reinsurance Companies ("the Provisions") Summary and Preliminary Analysis

- The Provisions were promulgated by the China Insurance Regulatory Commission ("CIRC") on September 17, 2002 and published after the October 1 national holiday. Despite their broad title, the Provisions are very brief and treat important aspects of the establishment and administration of reinsurance companies only by reference to other documents (if at all).

  Therefore, the Provisions have to be read together with the fundamental regulations on establishment of insurance companies: the Insurance Company Administration Provisions (the "Company Provisions") and the Regulations for the Administration of Foreign-Invested Insurance Companies (the "Foreign Investment Regulations").

  CIRC has also drafted – but not yet promulgated – Provisional Regulations on the Administration of Reinsurance Business, which will regulate reinsurance treaties, prudential requirements and CIRC supervision.

- The Provisions apply only to pure reinsurance companies, not to primary insurers, who, according to the PRC Insurance Law, are authorized to conduct reinsurance in their respective line of business (Article 2 of the Provisions). Reinsurance companies can be established for life, non-life or comprehensive reinsurance business (Article 3 of the Provisions)

- To operate a comprehensive reinsurance business, minimum paid-up capital of Renminbi Yuan ("Rmb") 300 million is required; Rmb 200 million is sufficient for pure life or non-life reinsurance (Article 5 of the Provisions). The same minimum amounts apply to the working capital of branches of foreign reinsurance companies (Article 7 of the Provisions).

  Capitalisation requirements under existing regulations are as follows:

  - Rmb 500 million for domestic insurance companies operating a nationwide business (Article 7(1) of the Company Provisions);
  - Rmb 200 million for domestic insurance companies operating a regional business (Article 7(1) of the Company Provisions); and
  - Rmb 200 million for Chinese-foreign joint venture or wholly foreign-owned insurance companies or branches of foreign insurance companies (Article 7 of the Foreign Investment Regulations).

  For foreign reinsurers, the effect of the Provisions is thus to increase the capitalisation requirement for their subsidiaries and branches in China if they wish to conduct both life and non-life reinsurance business: the Provisions require capital of Rmb 300 million in this case, while the amount stipulated by the Foreign Investment Regulations for all foreign invested insurance companies is Rmb 200 million. In providing this higher requirement, CIRC is exercising a right granted by Article 7 of the Foreign Investment Regulations.

- Article 7 of the Provisions also raises issues for foreign investors.

  The first paragraph provides that *Chinese* shareholders in reinsurance companies must comply with the Interim Provisions on the Investment and Equity Participation in Insurance Companies (the "Shareholding Provisions"). *Foreign* shareholders are not mentioned although the Shareholding Provisions are the regulatory basis for foreign investments in domestic insurance companies (such as Tai Kang Life, New China Life, Tai Ping Life and Ping An). This omission may indicate that CIRC is not presently considering foreign minority investment in China Re (the only domestic reinsurance company in existence, established when the former monopoly insurer, People's Insurance Company of China, was broken up along its business lines in 1998).

  The second paragraph of Article 7 simply states that foreign investment in joint venture or wholly foreign-owned reinsurance companies must comply with (i.e., not exceed what is agreed in) China's WTO accession commitments. This is the first time CIRC incorporates WTO requirements into internal law, and it is disappointing that it does so only by a cross-reference. If CIRC had drafted its own language, it would have had to clarify the very general and shorthand wording of the WTO accession documents and thus provide better guidance to foreign insurers.

  Also, China's WTO accession commitments do not provide for any specific restrictions on the operations of foreign reinsurers in China. It is therefore unclear what rules CIRC is actually referring to in this paragraph of the Provisions.

Provisions for the Establishment of Reinsurance Companies (Year 2002, Order No. 4 of the China Insurance Regulatory Commission)

The Provisions for the Establishment of Reinsurance Companies are hereby promulgated and shall be implemented as of the date of promulgation.

Ma Yongwei
Chairman
September 17, 2002

Provisions for the Establishment of Reinsurance Companies

Article 1. In order to promote the development of the reinsurance market and regulate the establishment of reinsurance companies, these Provisions are formulated in accordance with the Insurance Law of the People's Republic of China and the Regulations of the People's Republic of China for the Administration of Foreign-Invested Insurance Companies.

Article 2. For the purpose of these Provisions, "reinsurance companies" shall refer to the companies that are established with the approval of the China Insurance Regulatory Commission ("CIRC") and registered in accordance with law to specially operate reinsurance business.

Article 3. The establishment of reinsurance companies shall be subject to the approval of CIRC. Based on the scope of business, reinsurance companies can be divided into life reinsurance companies, non-life reinsurance companies and general reinsurance companies.

Article 4. Subject to the approval of CIRC, a reinsurance company may operate all or a part of the following businesses:

(a) life reinsurance business:

i. reinsurance business in the territory of China;

ii. retrocession business in the territory of China; and

iii. international reinsurance business.

(b) non-life reinsurance business:

i. reinsurance business in the territory of China;

ii. retrocession business in the territory of China; and

iii. international reinsurance business.

(c) simultaneously operate all or part of the businesses listed in (a) and (b).

Article 5. The paid-in monetary capital of a life reinsurance company or a non-life reinsurance company shall be no less than Renminbi Yuan 200,000,000 or its equivalent in a freely convertible currency. The paid-in monetary capital of a general reinsurance company shall be no less than Renminbi Yuan 300,000,000 or its equivalent in a freely convertible currency. Capital contributions by a foreign insurance company shall be made in a freely convertible currency.

Article 6. A reinsurance company shall employ actuaries certified by CIRC.

Article 7. A Chinese shareholder investing in a reinsurance company shall comply with the Interim Provisions on the Investment and Equity Participation in Insurance Companies of the CIRC; its shareholding percentage and changes of equity interest shall comply with the relevant provisions of the CIRC.

A foreign insurance company investing in a reinsurance company established as a Chinese-foreign equity joint venture or a wholly foreign-owned reinsurance company shall comply with China's relevant undertakings in connection with its accession to the World Trade Organization.

Article 8. These Provisions shall apply to the operating capital and establishment requirements for branches of foreign reinsurance companies established in the territory of China.

Article 9. Branches established in mainland China by reinsurance companies of the Hong Kong Special Administrative Region, the Macau Special Administrative Region and the Taiwan region shall refer to these Provisions.

Article 10. These Provisions shall be implemented as of the date of promulgation.

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