

## 2002 Revision of the PRC Insurance Law

### - Summary and Preliminary Analysis-

The Standing Committee of the National People's Congress of the People's Republic of China ("PRC") on October 28, 2002 adopted amendments to the Insurance Law of the PRC (1995; the "Original Law"). The amended version of the law (the "Amended Law") will come into effect on January 1, 2003. The Paul, Weiss translation of the Amended Law is attached for your reference.

The Amended Law incorporates several WTO-mandated and other reforms, and marks progress away from mandatory controls toward prudential supervision of the insurance industry.

However, the Amended Law does not adopt all of the proposals made by the China Insurance Regulatory Commission ("CIRC"). The CIRC had submitted draft amendments to the Original Law (the "Draft Amendments") to the State Council earlier this year, in which the CIRC proposed relaxing additional mandatory requirements in the Original Law in favor of greater flexibility.<sup>1</sup> During the ensuing legislative procedure, the momentum slowed: some amendments proposed by the CIRC were not adopted and additional obligations were imposed on insurers and insurance intermediaries to enhance consumer protection.

Nor does the Amended Law address such issues of interest to foreign and foreign-invested insurance companies as application periods, registered capital requirements, license application review periods and applications to establish additional branches. Many of these matters are governed by the Administrative Regulations on Foreign-Invested Insurance Companies (2002) and the Administrative Regulations on Insurance Companies (2000).

### **What is New in the Amended Law?**

#### *From Mandatory Regulation toward Prudential Supervision*

The CIRC is in the process of modifying its supervisory role from one of enforcing mandatory requirements on the industry toward prudential supervision, which allows insurers and intermediaries greater flexibility so long as they satisfy solvency standards and do not violate rules and regulations. The Amended Law adopts most of the changes proposed to this effect in the Draft Amendments.

- Under Article 106 of the Original Law, basic clauses and premium rates for the main types of risk were determined by the CIRC. The Amended Law

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<sup>1</sup> The Paul, Weiss translation and summary analysis of the Draft Amendments is available upon request.

(Article 107) now provides that only three types of policies require CIRC approval: (i) policies “involving social and public interests”, (ii) mandatory insurance (e.g., motor vehicle insurance), and (iii) newly developed types of life insurance policies (such as unit-linked and participating policies). Clauses and premium rates for other policies only have to be filed with the CIRC for the record. If the Draft Amendments had been adopted in their entirety, the mandatory approval requirement would have been abolished for all types of policies, but the CIRC would have been empowered to determine which clauses and premiums would still require its approval. Under the Amended Law, the CIRC will have to clarify, on a case-by-case basis in some instances, which insured risks and policies “involve social and public interests”.

- The Amended Law (Article 108) requires that the CIRC establish a system of indicators for monitoring compliance with minimum solvency margin requirements.
- The CIRC’s supervisory powers with respect to the financial condition of insurers are also increased by empowering it to investigate insurance companies’ bank deposits (Article 109 of the Amended Law). This provision may require coordination with the People’s Bank of China for effective implementation.

#### *Increased Flexibility in Risk Management and Financial Operations*

- Article 101 of the Original Law required that non-life insurers cede 20% of their insurance business. This provision has been deleted. It is consistent with China’s agreement that mandatory reinsurance cessions to domestic reinsurance companies will fade away within four years after China’s accession to WTO, i.e., by December 11, 2005. Article 102 of the Amended Law places the responsibility for establishing reinsurance regulations in the CIRC. The CIRC has drafted, but not yet promulgated, Provisional Regulations on the Administration of Reinsurance Business which address mandatory cession and prudential rules for primary insurers’ ceded business.
- Statutory reserve requirements are relaxed. Article 93 of the Original Law provided that non-life insurers must allocate 50% of retained insurance premiums to reserves. The Amended Law (Article 94) deletes this mandatory requirement and only stipulates the objectives of reserve requirements (protecting policyholders and guaranteeing solvency), which apply to both life and non-life insurers. The CIRC is empowered to regulate allocations to and carryovers of reserve funds on this basis.

#### *Separation of Property and Life Businesses Relaxed*

- Article 92 of the Amended Law relaxes the previous rigid separation of life and non-life lines with respect to “third-field” insurance. Property insurers will also be permitted to write short-term health and accidental injury policies. This goes further than the Draft Amendments, under which health insurance could not be provided by property insurers.

### *Focus on Policyholder Protection*

The difference in focus between the CIRC on the one hand and the State Council and the legislature on the other is very apparent in the many consumer-friendly provisions in the Amended Law, none of which were part of the Draft Amendments. The Amended Law evidences particular concern with the regulation of insurance agents.

- Insurers must enter into written agency contracts with their agents (Article 127 of the Amended Law).
- If agents exceed their authority in entering into insurance policies on behalf of the principal, the policy is binding on the insurer if the insured had reason to believe that the agent acted within his scope of authority (Article 128). This amendment may appear unnecessary because the same rule already applies to all principal-agent relationships under Article 49 of the PRC Contract Law, but its inclusion highlights the concerns about consumer protection that inform the Amended Law and will facilitate enforcement by the CIRC.
- The Original Law prohibited insurance agents from selling life policies for more than one insurer. Under Article 129 of the Amended Law, this prohibition remains in place for individual agents but no longer applies to corporate agents. This change reflects the increasing importance of distribution relationships between insurers on the one hand and banks or other corporate entities on the other. The CIRC in the Draft Amendments had proposed abolishing the restriction for individual agents as well.
- Article 131 of the Amended Law describes in more detail than the Original Law which acts by insurance agents constitute deceit or coercion of policyholders.
- Insurers now have a legal obligation to train and administer agents, improve their professional ethics and not induce them into improper behavior (Article 136 of the Amended Law). This provision may constitute grounds for findings of vicarious liability by insurers for their agents, although here too the general doctrine of liability of the principal for the acts of its agent are addressed in the PRC Contract Law. Policyholders may also be tempted to rely on this provision to defend breach of contract claims, e.g. by alleging that an insufficiently trained or unethical agent encouraged them not to declare health risks when applying for life insurance.
- The obligations and liabilities of claims adjusters are also set forth in more detail than previously (Article 123 of the Amended Law).
- Insurers' confidentiality obligations under Article 32 of the Amended Law have been extended to cover personal data of policyholders, insured and beneficiaries.
- Penalties for violations under the Amended Law are more severe than under the Original Law. The amount of fines has been increased by up to six times, and references to criminal liability have been added, although it is unclear

whether these references constitute a sufficient basis for criminal liability without specific provisions in the PRC Criminal Law.

## **What Is Not in the Amended Law?**

### *Clarifications on Foreign Investment Were Expected, But Have Not Been Made*

- The Draft Amendments had proposed the deletion of Article 69 of the Original Law. Article 69 of the Original Law provided that PRC insurance companies may only be organized as "wholly-state owned companies" or "companies limited by shares" under the PRC Company Law, not the third form under the Company Law – "limited liability companies" ("LLCs"). At the same time, an exception (now Article 154) was made to the effect that foreign-invested insurance companies could be established under special legislation allowing for Chinese-foreign equity joint ventures, etc. – which are somewhat akin to LLCs, except that they are established under special rules for foreign investment. However, in the Amended Law, this restrictive provision (now Article 70) was not deleted.
- The effect of this continuing restriction is to forbid the establishment of insurance companies in China as mere LLCs. LLCs, which have between two and fifty shareholders and are permitted to have a more flexible ownership and management structure, may be preferable to wholly state-owned companies and companies limited by shares. They may also be a better vehicle for foreign investment, *i.e.*, instead of establishing a new Chinese-foreign equity joint venture insurance company, foreign investors could participate in an existing LLC (although the legal basis for direct foreign investment into existing LLCs in China is questionable).

### *Restrictions on Investment Remain*

- Article 105 of the Amended Law provides that the types of investments that can be made by insurance companies (other than bank deposits and purchases of government bonds and financial bonds) must be approved by the State Council. While Article 105 thus contemplates the further loosening of restrictions on investments by insurers, the Draft Amendments would have placed this responsibility in the CIRC, a change that would have facilitated a broader relaxation of the current, very restrictive investment regime.
- The Draft Amendments also proposed deletion of paragraph 3 of Article 105, which prohibits insurance companies from establishing securities firms or investing in enterprises, *e.g.*, through equity purchases. This prohibition remains in the Amended Law. Only investments by insurance companies in other insurance businesses, such as Chinese-foreign joint ventures, are exempted.

## Insurance Law of the People's Republic of China

(Adopted at the Fourteenth Session of the Standing Committee of the Eighth National People's Congress on June 30, 1995 and amended by the Decision to Amend the Insurance Law of the People's Republic of China at the Thirtieth Session of the Standing Committee of the Ninth National People's Congress on October 28, 2002)

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### CHAPTER ONE      GENERAL PROVISIONS

Article 1.      This Law is formulated in order to regulate insurance activities, protect the lawful rights and interests of parties to insurance activities, strengthen the supervision and administration of the insurance industry and promote the healthy development of the insurance business.

Article 2.      For the purposes of this Law, the term "insurance" shall refer to a commercial insurance act whereby a policyholder pays a premium to an insurer in accordance with contractual provisions while the insurer assumes liability for payment of insurance funds for property losses resulting from the occurrence of an event stipulated in the contract, or when the policyholder dies, becomes injured or disabled, falls ill or reaches the age or time limit stipulated in the contract.

Article 3. This Law shall apply to those engaging in insurance activities within the People's Republic of China.

Article 4. Those engaging in insurance activities must comply with laws and administrative regulations, respect social morals and adhere to the principle of voluntariness.

Article 5. Parties to insurance activities shall adhere to the principles of honesty and trustworthiness in their exercise of rights and performance of obligations.

Article 6. Entities operating in the commercial insurance business must be insurance companies established in accordance with this Law. No other work units or individuals may operate in the commercial insurance business.

Article 7. Where legal persons and other organizations in the People's Republic of China need to take out insurance inside China, they shall take out policies with insurance companies in the People's Republic of China.

Article 8. In developing their business, insurance companies shall adhere to the principle of fair competition and may not engage in unfair competition.

Article 9. The insurance regulatory authority of the State Council shall be responsible for the supervision and administration of the insurance industry in accordance with this Law.

## **CHAPTER TWO      INSURANCE CONTRACTS**

### **Section One.    General Provisions**

Article 10. An insurance contract shall be an agreement between a policyholder and an insurer stipulating the relationship of insurance rights and obligations.

The term "policyholder" shall refer to a person who concludes an insurance contract with an insurer and bears an obligation to pay an insurance premium in accordance with an insurance contract.

The term "insurer" shall refer to an insurance company that concludes an insurance contract with a policyholder and assumes liability for indemnification or payment of insurance funds.

Article 11. An insurance contract between a policyholder and an insurer shall be concluded in accordance with the principles of equality, mutual benefit, consensus and voluntariness, and may not harm the public interest.

Insurance companies and other work units may not force another person to conclude an insurance contract unless insurance is required under the provisions of laws or administrative regulations.

Article 12. A policyholder shall have an insurable interest in the insured subject matter.

An insurance contract shall be invalid where the policyholder has no insurable interest in the insured subject matter.

The term "insurable interest" shall refer to a legally-recognized interest of the policyholder in the insured subject matter.

The term "insured subject matter" shall refer to property and its related interests or the life or physical body of a person, as an insured object.

Article 13. An insurance contract shall be formed after a policyholder has put forward its insurance requirements and an insurer has agreed to underwrite such requirements, and agreement regarding the terms of the contract has been reached. The insurer shall issue to the policyholder an insurance policy or other evidence of insurance coverage in a timely manner, specifying in such insurance policy or other evidence of insurance coverage the contents of the insurance contract as agreed by the parties.

If the policyholder and the insurer agree following consultations, an insurance contract may be concluded in the form of a written agreement other than that specified in the preceding paragraph.

Article 14. After the formation of an insurance contract, a policyholder shall pay the insurance premium as stipulated. The insurer shall begin to assume insurance liability in accordance with the stipulated time.

Article 15. A policyholder may rescind an insurance contract after its formation, except as otherwise provided by this Law or such insurance contract.

Article 16. An insurer may not rescind an insurance contract after its formation, except as otherwise provided by this Law or such insurance contract.

Article 17. When concluding an insurance contract, an insurer shall explain to the policyholder the details of the terms of such insurance contract and may make inquiries concerning relevant details of the insured subject matter or of the insured. The policyholder shall respond truthfully.

The insurer shall have the right to rescind the insurance contract where the policyholder willfully conceals facts or fails to perform the duty to respond truthfully, or fails to perform the duty to respond truthfully as a result of negligence, thereby influencing the insurer's decision regarding whether to agree to underwrite the insurance or raise the premium rate.

Where the policyholder wilfully fails to perform its duty of responding truthfully, the insurer shall not be liable for indemnification or payment of insurance funds in connection with insured events which occur prior to the rescission of the insurance contract, and shall not refund the insurance premium.

Where the failure of the policyholder to perform its duty of responding truthfully is the result of negligence and this seriously influences the occurrence of insured events, the insurer shall not be liable for indemnification or payment of

insurance funds in connection with insured events which occur prior to the rescission of the insurance contract, but may refund the insurance premium.

The term "insured event" shall refer to events falling within the scope of insurance liability stipulated in an insurance contract.

Article 18. Where an insurance contract contains terms concerning exemptions from liability of an insurer, the insurer shall clearly explain such terms to the policyholder at the time of concluding the insurance contract. Any such terms which are not clearly explained shall not become effective.

Article 19. An insurance contract shall contain the following items:

- (1) the name and domicile of the insurer;
- (2) the name and domicile of the policyholder and the insured, and the name and domicile of the beneficiary of personal insurance;
- (3) the insured subject matter;
- (4) the insurance liability and exemptions from liability;
- (5) the duration of insurance coverage and the time of commencement of insurance liability;
- (6) the insured value;
- (7) the amount insured;
- (8) the insurance premium and the method of payment thereof;
- (9) the method for indemnification or payment of insurance funds;
- (10) liability for breach of contract and settlement of disputes; and
- (11) the date of concluding the contract.

Article 20. A policyholder and an insurer may agree on other items concerning insurance in an insurance contract in addition to those provided for in the preceding Article.

Article 21. During the term of an insurance contract, the policyholder and insurer may amend relevant contents of such insurance contract after reaching agreement through consultations.

Where the insurance contract is amended, the insurer shall endorse or attach an endorsement to the original policy or other evidence of insurance coverage, or the policyholder and the insurer shall conclude a written agreement on the amendments.

Article 22. Policyholders, insureds or beneficiaries shall immediately notify insurers after learning of the occurrence of an insured event.

The term "insured" shall refer to a person whose property or physical body is covered by an insurance contract and who enjoys the right to claim insurance funds. A policyholder may be an insured.

The term "beneficiary" shall refer to a person who enjoys the right to claim insurance funds, as designated in a personal insurance contract by the insured or the policyholder. Policyholders and the insured may be beneficiaries.

Article 23. When insurance funds are claimed from an insurer in accordance with an insurance contract following the occurrence of an insured events, the policyholder, insured or beneficiary shall provide to the insurer all proof and materials he can provide regarding the nature and cause of such event, the degree of loss, etc.

Where the insurer considers relevant evidence and materials to be incomplete pursuant to the stipulations of the insurance contract, it shall notify the policyholder, insured or beneficiary to provide supplemented relevant proof and materials.

Article 24. Upon receipt of a claim for indemnification or payment of insurance funds from the insured or the beneficiary, the insurer shall verify the claim in a timely manner and inform the insured or the beneficiary of the verification result. Where the claim falls under the insurer's insurance liability, the insurer shall perform its obligation to indemnify or pay insurance funds within ten days of reaching an agreement with the insured or the beneficiary regarding the amount to be indemnified or paid. Where the amount insured and time limit for indemnification or payment thereof are stipulated in the insurance contract, the insurer shall perform its obligation to indemnify or pay insurance funds in accordance with such stipulations.

Where the insurer fails to perform its obligations as specified in the preceding paragraph in a timely manner, it shall indemnify the insured or the beneficiary for losses suffered as a result thereof, in addition to paying the insurance funds.

No work unit or individual may unlawfully interfere with the insurer's performance of its obligation to indemnify or pay insurance funds or restrict the insured's or the beneficiary's right to obtain insurance funds.

The term "amount insured" shall refer to the maximum amount for which an insurer assumes liability to indemnify or pay insurance funds.

Article 25. After an insurer receives a claim for indemnification or payment of insurance funds from an insured or a beneficiary with respect to claims that do not fall under the insurer's liability, the insurer shall issue to the insured or the beneficiary a written notice of refusal to indemnify or pay such insurance funds.

Article 26. Where an insurer is unable to determine the amount of indemnification or insurance funds to be paid within sixty days after receiving a claim for indemnification or payment of insurance funds and relevant proof and materials, it shall first pay the minimum amount that can be determined on the basis of the existing

proof and materials. After determining the final amount of indemnification or payment of insurance funds, the insurer shall pay the corresponding difference.

Article 27. The right of the insured or the beneficiary to claim indemnification or insurance funds from the insurer under insurance other than life insurance shall be extinguished if it is not exercised within two years from the date on which the insured or the beneficiary learned of the occurrence of the insured event.

The right of the insured or the beneficiary to claim insurance funds from the insurer under life insurance shall be extinguished if it is not exercised within five years from the date on which the insured or the beneficiary learned of the occurrence of the insured event.

Article 28. Where the insured or the beneficiary falsely claims that an insured event has occurred when such insured event has not actually occurred, and submits to the insurer a claim for indemnification or payment of insurance funds, the insurer shall have the right to rescind the insurance contract without having to refund the insurance premium.

Where the policyholder, insured or beneficiary wilfully creates an insured event, the insurer shall have the right to rescind the insurance contract, shall not be liable for indemnification or payment of insurance funds and, except as otherwise provided in the first paragraph of Article 65 hereof, shall not have to refund the insurance premium.

After the occurrence of an insured event, where the policyholder, insured or beneficiary fabricates false causes of the event or overstates the degree of loss by means of forged or altered relevant proof, materials or other evidence, the insurer shall not be liable for indemnification or payment of insurance funds for the portion that is false.

If the policyholder, insured or beneficiary commit any of the acts described in the preceding three paragraphs, causing the insurer to pay insurance funds or incur expenses, the policyholder, insured or beneficiary shall make restitution or indemnification.

Article 29. The transfer by an insurer of a portion of the insurance business it has underwritten to another insurer by means of cession shall be reinsurance.

At the request of the reinsurer, the cedant shall disclose to the reinsurer relevant details of its own liability and the underlying insurance.

Article 30. The reinsurer may not demand payment of insurance premiums from the holder of the underlying policy.

The insured or beneficiary of the underlying insurance may not submit a claim for indemnification or payment of insurance funds to the reinsurer.

The cedant may not refuse to perform or delay the performance of its underlying insurance liability on the grounds that the reinsurer failed to perform its reinsurance liability.

Article 31. When a dispute arises between the insurer and the policyholder, insured or beneficiary regarding the terms of an insurance contract, the People's Court or an arbitration body shall interpret such terms to the benefit of the insured and the beneficiary.

Article 32. An insurer or reinsurer is obligated to maintain the confidentiality of the business and property details and personal secrecy of the policyholder, insured, beneficiary or cedant of which he learns in the course of handling the insurance.

## **Section Two. Property Insurance Contracts**

Article 33. Property insurance contracts shall be insurance contracts in which property and its related interests shall be the subject matter of insurance.

In this Section, the term "property insurance contract" is abbreviated to "contract", unless expressly stated otherwise.

Article 34. The insurer shall be notified of the assignment of the subject matter of insurance, and after the insurer agrees to continue to underwrite the insurance, the contract shall be amended according to law, except in the case of contracts for insurance of the transport of goods and contracts that provide otherwise.

Article 35. After the commencement of insurance liability for an insurance contract for the transport of goods or a voyage by transport vehicle insurance contract, the parties to the contract may not rescind such contract.

Article 36. The insured shall abide by State regulations such as those concerning fire protection, safety, production operations and labor protection and shall maintain the safety of the subject matter of insurance.

The insurer may inspect the safety of the subject matter of insurance and submit a written proposal to the policyholder or the insured to remove unsafe factors and potential dangers pursuant to the agreement in the contract.

Where the policyholder and the insured fail to perform their due responsibilities for the safety of the subject matter of insurance as agreed, the insurer shall have the right to demand an increase in the insurance premium or to rescind the contract.

Upon the consent of the insured, the insurer may adopt preventive or safety measures to maintain the safety of the subject matter of insurance.

Article 37. Where the degree of risk of the subject matter of insurance increases during the term of a contract, the insured shall notify the insurer in a timely manner in accordance with the contract and the insurer shall have the right to demand an increase in the premium or rescind the contract.

Where the insured fails to perform its obligation of notification specified in the preceding paragraph, the insurer shall not be liable for indemnity in case the insured event occurs due to the increase in the degree of risk.

Article 38. Unless a contract provides otherwise, the insurer shall reduce the insurance premium and refund the corresponding portion of the insurance premium calculated on a daily basis under any of the following circumstances.

(1) based on a change of the circumstances under which the premium rate was determined, the degree of risk of the subject matter of insurance has significantly decreased; or

(2) the insured value of the subject matter of insurance has significantly decreased.

Article 39. Where a policyholder demands rescission of a contract prior to the commencement of insurance liability, he shall pay a service charge to the insurer and the insurer shall refund the premium. Where the policyholder demands rescission of the contract after the commencement of insurance liability, the insurer may charge the premium for the period from the date of commencement of insurance liability to the date of rescission of the contract, and the balance shall be refunded to the policyholder.

Article 40. The insured value of the subject matter of insurance may be agreed upon by the policyholder and the insurer and set forth in the contract or determined according to the actual value of the subject matter of insurance at the time of the occurrence of the insured event.

The amount insured may not exceed the insured value. Where the insured value is exceeded, the excess portion shall be void.

Where the amount insured is less than the insured value, the insurer shall assume indemnity liability in accordance with the proportion of the amount insured to the insured value, unless the contract provides otherwise.

Article 41. Where a policyholder takes out duplicate insurance, he shall notify each insurer of the relevant details of such duplicate insurance.

Where the total amount insured under duplicate insurance exceeds the insured value, the total amount of indemnity of all insurers may not exceed the insured value. Each insurer shall assume indemnity liability according to the ratio of its amount insured to the total of the amounts insured, unless the contract provides otherwise.

The term "duplicate insurance" shall refer to insurance for which the policyholder concludes separate insurance contracts with two or more insurers in respect of the same subject matter of insurance, insurable interest and insured event.

Article 42. When the insured event occurs, the insured shall be responsible for making the best efforts to adopt necessary measures to prevent or reduce losses.

The necessary and reasonable expenses paid by the insured after the occurrence of an insured event to prevent or reduce losses in respect of the subject matter of insurance shall be borne by the insurer. The amount of expenses borne by the insurer shall be calculated separately from the indemnity for losses in respect of the subject matter of insurance and shall not exceed the amount insured.

Article 43. When a partial loss is suffered in respect of the subject matter of insurance, the policyholder may terminate the contract within thirty days after the insurer has paid indemnification. Except where the contract prohibits termination of the contract, the insurer may also terminate the contract. Where the insurer terminates the contract, it shall notify the policyholder fifteen days in advance and shall refund to the policyholder the premium for the portion of the subject matter of insurance in respect of which no loss was suffered, after deducting the portion payable in respect of the period from the date of commencement of insurance liability until the date of termination of the contract.

Article 44. After the occurrence of an insured event, if the amount insured has already been paid in full by the insurer and such amount is equal to the insured value, all rights to the subject matter of insurance in respect of which loss was suffered shall be owned by the insurer. Where the amount insured is less than the insured value, the insurer shall be entitled according to the ratio of the amount insured to the insured value to a portion of the rights to the subject matter of insurance in respect of which loss was suffered.

Article 45. Where a third party causes the insured event to occur by damaging the subject matter of insurance, the insurer shall, from the date it has indemnified the insured with insurance funds, be subrogated within the limit of the amount of indemnity to the insured's right to claim damages from the third party.

Where, after the occurrence of the insured event as set forth in the preceding paragraph, the insured has already obtained damages from a third party, the insurer may, at the time of indemnification with insurance funds, accordingly deduct the amount of indemnity obtained by the insured from the third party.

The insurer's exercise of its right of claim by subrogation in accordance with the first paragraph shall not affect the insured's right to claim indemnification from the third party for the portion for which it has not been indemnified.

Article 46 Where, after the occurrence of the insured event and prior to the insurer indemnifying with insurance funds, the insured waives its right to claim damages from a third party, the insurer shall not be liable for the payment of insurance funds.

Where, after the insurer has indemnified the insured with insurance funds, the insured, without the consent of the insurer, waives its right to claim damages from a third party, the waiver shall be void.

Where the insurer is unable to exercise its right to claim damages by subrogation due to the fault of the insured, the insurer may make a corresponding deduction from the amount of insurance indemnity.

Article 47. The insurer may not exercise its right to claim indemnity by subrogation against the insured's family members or constituent members, except where the insured's family members intentionally cause an insured event specified in the first paragraph of Article 45 hereof to occur.

Article 48. When the insurer exercises its right to claim indemnity by subrogation against a third party, the insured shall provide the insurer with the necessary documents and relevant details known to him.

Article 49. The necessary and reasonable expenses paid by the insurer or the insured in order to investigate and establish the nature and cause of the insured event and the degree of loss in respect of the subject matter of insurance shall be borne by the insurer.

Article 50. In respect of damage caused to a third party by the insured under liability insurance, the insurer may directly pay insurance funds to such third party, as provided for by law or in the contract.

The term "liability insurance" shall refer to insurance where the subject matter is the insured's legal liability to indemnify a third party.

Article 51. Where arbitration or litigation proceedings are instituted against the insured under liability insurance as a result of damage caused to a third party by an insured event, the costs of arbitration or litigation and other necessary and reasonable expenses paid by the insured shall be borne by the insurer, unless the contract provides otherwise.

### **Section Three. Personal Insurance Contracts**

Article 52. The term "personal insurance contract" shall refer to an insurance contract of which the subject matter is the life or physical body of a person.

In this Section, the term "personal insurance contract" shall be abbreviated to "contract", unless expressly stated otherwise.

Article 53. A policyholder shall have an insurable interest in the following persons:

- (1) himself;
- (2) his spouse, children and parents; and
- (3) members of his family and close relatives other than those in the preceding item with whom he has a child support, elder care or other care relationship.

In addition to the preceding paragraph, if an insured agrees to a policyholder entering into an insurance contract for him, the policyholder shall be deemed to have an insurable interest in the insured.

Article 54. Where the age of the insured as declared by the policyholder is not true and his true age fails to meet the age requirements set forth in the contract, the insurer may rescind the contract and in this case the insurer shall refund the premium to the policyholder after deducting a service charge, except where more than two years have lapsed from the date of conclusion of the contract.

Where the age declared by the insured is not true so that the premium paid by the policyholder is less than the premium which is otherwise payable, the insurer shall have the right to adjust the premium and demand that the policyholder make up the premium, or pay insurance funds in accordance with the ratio of the premiums actually paid to the premium which is otherwise payable at the time of paying such insurance funds.

Where the age declared by the insured is not true so that the premium actually paid by the policyholder is greater than the premium which is otherwise payable, the insurer shall refund the excess premiums received to the policyholder.

Article 55. A policyholder may not purchase, nor may an insurer underwrite, personal insurance for a person without capacity for civil acts where the death of such person whose life is insured is the condition for payment of the amount insured.

Personal insurance purchased by parents for their minor children shall not be governed by the preceding paragraph, provided that the total sum insured payable upon the death of minor children whose lives are insured does not exceed the limit set by the insurance regulatory authority.

Article 56. A contract in which the death of a person whose life is insured is set as the condition for payment of insurance funds shall be void where the amount insured has not been agreed and approved by the insured in writing.

Policies issued for contracts in which the death of a person whose life is insured is set as the condition for payment of insurance funds may not be assigned or pledged without the written consent of the insured.

Personal insurance purchased by parents for their minor children shall not be governed by the first paragraph.

Article 57. Following conclusion of a contract, the policyholder may pay the entire premium in a lump sum to the insurer or pay the premium by installments as specified in the contract.

Where the contract provides for payment of the premium by installments, the policyholder shall pay the first installment promptly upon conclusion of such contract and pay the remaining installments according to the schedule specified in the Contract.

Article 58. Where the contract provides for payment of the premium by installments and the policyholder, after having paid the first installment of the premium, fails to pay an installment within sixty days after expiration of the time limit therefor, the effect of the contract shall be suspended or the amount insured shall be reduced by the insurer as agreed in the contract, unless the contract provides otherwise.

Article 59. Where the effect of a contract is suspended pursuant to the preceding Article, such effect shall be restored after the insurer and the policyholder have reached an agreement through consultations, and the policyholder has made up the unpaid premium. However, where the parties fail to reach an agreement within two

years from the date of suspension of such effect, the insurer shall have the right to rescind the contract.

Where the insurer rescinds a contract pursuant to the preceding paragraph and the policyholder has already paid premiums for two years or more, the insurer shall refund the cash value of the policy in accordance with the contract. Where the policyholder has paid premiums for less than two years, the insurer shall refund the premiums after deducting a service charge.

Article 60. An insurer may not require a policyholder to pay a premium for personal insurance by means of litigation.

Article 61. The beneficiary of personal insurance shall be designated by the insured or the policyholder.

The consent of the insured shall be required when the policyholder designates a beneficiary.

Where the insured is a person without capacity for civil acts or with limited capacity for civil acts, the beneficiary may be designated by his guardian.

Article 62. The insured or the policyholder may designate one or several persons as beneficiaries.

Where there are several beneficiaries, the insured or the policyholder may determine the sequence in which they shall receive benefits and the proportions of benefits. Where the proportions of benefits are not determined, the beneficiaries shall be entitled to equal proportions of the benefits.

Article 63. The insured or the policyholder may change the beneficiary and shall notify the insurer of such change in writing. Upon receipt of a written notice of change of beneficiary, the insurer shall endorse the policy.

A change of beneficiary made by the policyholder shall be subject to the consent of the insured.

Article 64. Upon the death of the insured, the insurance funds shall become part of the insured's estate, and the insurer's obligation to pay insurance funds shall be performed in favor of the insured's successors under any of the following circumstances:

- (1) where no beneficiary has been designated;
- (2) where there is only one beneficiary and such beneficiary dies prior to the death of the insured; or
- (3) where there is only one beneficiary and such beneficiary loses or waives his rights as a beneficiary according to law.

Article 65. The insurer shall not be liable for payment of insurance funds where the policyholder or the beneficiary intentionally causes the insured to die or

become disabled, injured or ill. Where the policyholder has been paying premiums for two years or more, the insurer shall refund the cash value of the policy to the other entitled beneficiaries as provided for in the contract.

A beneficiary shall lose his rights as a beneficiary where he intentionally causes the insured to die or become injured or disabled, or intended to kill the insured but failed.

Article 66. In the case of contracts in which the death of a person whose life is insured is set as the condition for payment of the insurance funds, the insurer shall not be liable for payment of insurance funds where the insured commits suicide, except as provided in the second paragraph hereof. However, the insurer shall refund the cash value of the policy in accordance with the policy in respect of premiums already paid by the policyholder.

In the case of a contract in which the death of a person whose life is insured is set as the condition for payment of the insurance funds, the insurer may pay insurance funds in accordance with the contract if the insured commits suicide more than two years after the date of conclusion of the contract.

Article 67. The insurer shall not be liable for payment of insurance funds where the insured intentionally commits a crime causing injury, disability or death to himself. Where the policyholder has been paying premiums for two years or more, the insurer shall refund the cash value of the policy.

Article 68. Where such event as death, injury, disability or illness happens to the insured covered by personal insurance as a result of an act of a third party, the insurer shall not have recourse against such third party after the insurer has paid insurance funds to the insured or the beneficiary. But the insured or the beneficiary shall still have the right to claim indemnity from such third party.

Article 69. Where the policyholder rescinds a contract and has been paying premiums for two years or more, the insurer shall refund the cash value of the policy within thirty days after receiving the notice of rescission of the contract. Where the insured has been paying premiums for less than two years, the insurer shall refund the premiums in accordance with the contract after deducting a service charge.

### **CHAPTER THREE INSURANCE COMPANIES**

Article 70. Insurance companies shall be organized in one of the following forms:

- (1) company limited by shares; or
- (2) wholly State-owned company.

Article 71. The establishment of an insurance company must be approved by the insurance regulatory authority.

Article 72. The following requirements shall be met for establishing an insurance company:

- Law;
- (1) articles of association that conform to this Law and the Company
  - (2) minimum amount of registered capital prescribed herein;
  - (3) senior management personnel with the professional knowledge for their positions and working experience in the business;
  - (4) sound organizational structure and management system; and
  - (5) place of business that meets requirements, and other business-related facilities that meet requirements.

The insurance regulatory authority shall take into consideration the needs for the development and fair competition of the insurance industry when examining an application for approval to establish an insurance company.

Article 73. To establish an insurance company, the minimum amount of registered capital shall be RMB 200 million.

The minimum amount of registered capital of an insurance company must be paid-up capital in currency.

The insurance regulatory authority may adjust the minimum amount of registered capital of an insurance company according to the scope and scale of its business. However, such amount may not be less than the minimum amount set forth in the first paragraph.

Article 74. The following documents and information shall be submitted for establishing an insurance company:

- (1) written application for approval to establish the insurance company stating the name, amount of registered capital, scope of business, etc., of such company;
- (2) feasibility study report; and
- (3) other documents and materials specified by the insurance regulatory authority.

Article 75. After an application for approval to establish an insurance company has undergone preliminary examination, the applicant shall make preparations for the establishment of the insurance company in accordance with the provisions hereof and of the Company Law. Where the requirements for establishing an insurance company specified in Article 72 hereof are met, an official application form and relevant documents and materials listed below shall be submitted to the insurance regulatory authority:

- (1) articles of association of the insurance company;
- (2) register of shareholders and their shareholdings, or register of capital contributors and the amounts of their capital contributions;

- (3) proof of creditworthiness and relevant information of shareholders holding ten percent or more of the shares of the company;
- (4) capital verification reports issued by statutory capital verification entities;
- (5) resumes and qualification certificates of the senior management personnel who are to hold positions in the company;
- (6) business policies and plans;
- (7) information on the place of business and other business-related facilities; and
- (8) other documents and materials specified by the insurance regulatory authority.

Article 76. The insurance regulatory authority shall decide whether or not to grant approval within six months after receipt of official application documents for approval to establish an insurance company.

Article 77. The approval authority shall issue an "Insurance Business Operations Permit" to an insurance company approved to be established. Such insurance company shall then submit such permit to the administration for industry and commerce to undergo relevant registration procedures and obtain a business license.

Article 78. Where an insurance company to be established without proper reason fails to handle registration procedures for its establishment within six months after obtaining the "Insurance Business Operations Permit", such permit shall automatically become void.

Article 79. Upon establishment, an insurance company shall allocate twenty percent of the total amount of its registered capital as guarantee fund, and deposit such guarantee fund with a bank designated by the insurance regulatory authority, and may not use it for purposes other than paying the debts of the insurance company at the time of liquidation.

Article 80. The establishment by an insurance company of a branch office inside or outside the People's Republic of China shall be subject to the approval of the insurance regulatory authority in order to obtain a "Branch Office Insurance Business Operations Permit".

The branch offices of an insurance company shall not have the status of a legal person, and their civil liabilities shall be borne by the insurance company.

Article 81. The establishment by an insurance company of a representative office inside or outside the People's Republic of China shall be subject to the approval of the insurance regulatory authority.

Article 82. Any of the following changes in respect of an insurance company must be approved by the insurance regulatory authority:

- (1) change of name;
- (2) change of registered capital;
- (3) change of place of business of the company or branch office;
- (4) adjustment of the scope of business;
- (5) division or merger of the company;
- (6) amendment of the company's articles of association;
- (7) change of capital contributors or shareholders holding ten percent or more of the company's shares; or
- (8) other changes specified by the insurance regulatory authority.

Where an insurance company changes the chairman of the board or general manager, it shall submit the qualifications of the candidate for the position to the insurance regulatory authority for approval and examination.

Article 83. The provisions of the Company Law shall apply to the organizational structure of insurance companies.

Article 84. Wholly State-owned insurance companies shall set up a board of supervisors. The board of supervisors shall be comprised of personnel from the insurance regulatory authority, relevant experts and representatives of the employees of the insurance company. The board of supervisors shall supervise the withdrawal of reserves, the minimum repayment capability, preservation and appreciation of the value of State-owned assets, etc., of the wholly State-owned insurance company, and whether the senior management personnel of the company carry out activities in violation of law, regulations or the articles of association of the company and other activities that are harmful to the company's interests.

Article 85. Where an insurance company is divided or merged, or where a cause for dissolution of the company as specified in its articles of association arises, it shall be dissolved upon approval by the insurance regulatory authority. The insurance company to be dissolved shall set up a liquidation committee according to law to carry out its liquidation.

Insurance companies engaging in life insurance business may not be dissolved but may be divided or merged.

Article 86. Where the "Insurance Business Operations Permit" of an insurance company is legally revoked by the insurance regulatory authority due to the company's violation of laws or regulations, the company shall be dissolved according to relevant laws and regulations. The insurance regulatory authority shall promptly organize a liquidation committee according to relevant laws and regulations to carry out liquidation of such company.

Article 87. Insurance companies that cannot pay debts when due shall be lawfully declared bankrupt by a People's Court after the insurance regulatory authority has given its approval. Where an insurance company is declared bankrupt, the People's Court shall organize relevant departments such as the insurance regulatory authority and relevant personnel to set up a liquidation committee to carry out liquidation of such company.

Article 88. Where an insurance company engaging in life insurance business is lawfully closed down or declared bankrupt according to law, its life insurance contracts and reserves must be transferred to another insurance company engaging in life insurance business. Where no transfer agreement can be reached with another insurance company, the insurance regulatory authority shall designate an insurance company engaging in life insurance business to take over such contracts and reserves.

The lawful rights and interests of the insured and the beneficiary shall be protected in the transfer or taking over of the life insurance contracts and reserves as stipulated in the preceding paragraph by an insurance company engaging in life insurance business as designated by the insurance regulatory authority.

Article 89. Where an insurance company is declared bankrupt according to law, the bankruptcy assets shall be distributed for repayment purposes in the following chronological order after first being used for payment of its bankruptcy expenses:

- (1) wages and labor insurance premiums owed to staff and workers;
- (2) indemnification or payment of insurance funds;
- (3) taxes owed;
- (4) payment of the company's debts.

Where the bankruptcy assets are insufficient to pay all claims in a priority class, they shall be distributed on a pro-rata basis.

Article 90. Insurance companies which terminate their business activities according to law shall have their "Insurance Business Operations Permit" canceled.

Article 91. Matters concerning the establishment, changes in respect of, and dissolution and liquidation of insurance companies that are not provided for herein shall be governed by the Company Law and other relevant laws and administrative regulations.

#### **CHAPTER FOUR INSURANCE BUSINESS RULES**

Article 92. The scope of business of an insurance company shall include:

- (1) property insurance business which includes insurance businesses such as loss of property insurance, liability insurance, credit insurance, etc.;

(2) personal insurance business which includes insurance businesses such as life insurance, health insurance, accidental injury insurance, etc.

An insurer may not concurrently engage in both property insurance business and personal insurance business. However, an insurance company which engages in property insurance business may also engage in short-term health insurance business and accidental injury insurance business upon approval by the insurance regulatory authority.

The scope of business of an insurance company shall be approved by the insurance regulatory authority in accordance with law. An insurance company may only engage in insurance business activities within the approved scope of business.

An insurance company may not engage concurrently in business other than that provided in this Law and other laws and administrative regulations.

Article 93. Insurance companies may, upon approval by the insurance regulatory authority, engage in the following reinsurance businesses in respect of the insurance businesses mentioned in the preceding Article.

- (1) ceding insurance to another insurer;
- (2) retroceding insurance from another reinsurer.

Article 94. Insurance companies shall make allocations to various liability reserves based on the principle of protecting the interests of the insured and guaranteeing solvency of the company.

The insurance regulatory authority will formulate specific measures on the allocation and carryover of liability reserves by insurance companies.

Article 95. Insurance companies shall make allocations to an outstanding loss reserve on the basis of the amount of insurance indemnifications or payments already claimed and the amount of insurance indemnifications or payments not yet claimed in respect of insured events that have already occurred.

Article 96. In addition to making allocations to reserves in accordance with the two preceding Articles, insurance companies shall also make allocations to a common reserve in accordance with the provisions of relevant laws, administrative regulations and State financial and accounting systems.

Article 97. In order to safeguard the interests of the insured and maintain stable and sound operation of insurance companies, insurance companies shall make deposits into an insurance protection fund as prescribed by the insurance regulatory authority.

The insurance protection fund shall be centrally managed and used in a unified manner.

Specific measures for the administration and use of the insurance protection fund shall be formulated by the insurance regulatory authority.

Article 98. An insurance company shall possess a minimum level of solvency corresponding to its scale of business. The balance of the actual assets of an insurance company less its actual liabilities may not be less than the amount prescribed by the insurance regulatory authority. Where such balance is less than the prescribed amount, capital funds of the insurance company shall be increased to make up the difference.

Article 99. Current year premiums retained by insurance companies engaged in property insurance business may not be more than four times the sum of the paid-up capital and common reserve of such insurance companies.

Article 100. The liability of an insurance company for each risk unit, that is, the maximum coverage of loss that may be caused by the occurrence of an insured event, may not be more than ten percent of the sum of paid-up capital and common reserve of such insurance company. Any liability exceeding the sum shall be reinsured.

Article 101. Insurance companies shall submit their methods for assessment risk units and catastrophic risk arrangements and plans to the insurance regulatory authority for approval.

Article 102. Insurance companies shall handle reinsurance in accordance with the relevant provisions of the insurance regulatory authority.

Article 103. Where an insurance company needs to reinsure its own insurance business by taking it out, it shall give priority to insurance companies inside the People's Republic of China for reinsurance.

Article 104. The insurance regulatory authority shall have the right to restrict or prohibit insurance companies from reinsuring their own insurance business to insurance companies outside the People's Republic of China, or from accepting reinsurance business from insurance companies outside the People's Republic of China.

Article 105. Insurance companies shall use their funds in a stable and healthy manner and in compliance with the principle of safety, and ensure the preservation and appreciation of the value of the assets.

The use of funds by insurance companies shall be limited to bank deposits, purchase and sale of government bonds and financial bonds, and other forms of fund utilization specified by the State Council.

The funds of insurance companies may not be used for the establishment of entities that engage in securities business.

The funds used by an insurance company and the specific proportion of funds that an insurance company uses for specific projects shall be regulated by the insurance regulatory authority.

Article 106. An insurance company and its working personnel may not perform the following activities in the course of insurance business:

- (1) deceiving the policyholder, insured or beneficiary;

- (2) withholding from the policyholder material information relating to the insurance contract;
- (3) hindering the policyholder's capability to perform or inducing the policyholder not to perform his duty of truthful disclosure under this Law;
- (4) promising the policyholder, insured or beneficiary a kickback on the insurance premium or other benefits not provided in the insurance contract;
- (5) intentionally making up insured events that have not occurred to make false insurance claims to gain insurance funds through deceit.

## **CHAPTER FIVE          SUPERVISION AND ADMINISTRATION OF THE INSURANCE INDUSTRY**

Article 107. The insurance clauses and premium rates for types of insurance, such as insurance involving social and public interests, legally mandated compulsory insurance and newly developed life insurance shall be submitted to the insurance regulatory authority for examination and approval. The insurance regulatory authority shall comply with the principle of protecting social and public interests and preventing improper competition in examining the clauses and rates and granting approval. The scope of examination and approval and the specific measures shall be formulated by the insurance regulatory authority.

The insurance clauses and premium rates for other types of insurance shall be submitted to the insurance regulatory authority for the record.

Article 108. The insurance regulatory authority shall set up a monitoring index system to perfect the solvency of insurance companies and to monitor the minimum solvency of insurance companies.

Article 109. The insurance regulatory authority shall have the right to inspect the business status, financial position and utilization of funds by insurance companies, and require insurance companies to provide relevant written reports and information within a prescribed period.

Insurance companies shall be subject to supervision and inspection in accordance with law.

The insurance regulatory authority shall have the right to inspect the deposits of insurance companies with financial institutions.

Article 110. Where an insurance company fails to allocate or carry over funds to various reserves or arrange for reinsurance in accordance with the provisions hereof, or materially violates the provisions hereof in relation to the utilization of funds, the insurance regulatory authority shall order such insurance company to rectify the situation within a specified period by adopting the following measures:

- (1) allocating or carrying over the funds to various reserves according to law;

- (2) arranging for reinsurance according to law;
- (3) rectifying the conduct of illegal utilization of funds;
- (4) replacing responsible persons and relevant management personnel.

Article 111. After the insurance regulatory authority has made a decision on rectification within a specified period pursuant to the preceding Article, if the insurance company fails to rectify the situation within the specified period, the insurance regulatory authority may decide to appoint insurance professionals and designate relevant personnel of the insurance company to form a rectification organization to rectify the acts of the insurance company.

The name of the insurance company whose acts are to be rectified, reasons for rectification, rectification organization and period for rectification shall be stated in the decision on rectification and shall be publicly announced.

Article 112. During the rectification process, the rectification organization shall have the right to supervise the day-to-day business of the insurance company. The responsible persons and relevant management personnel of such insurance company shall exercise their own functions and powers under the supervision of the rectification organization.

Article 113. During the rectification process, the original business of the insurance company shall continue; however, the insurance regulatory authority shall have the authority to halt new business development or part of the business to adjust the utilization of funds.

Article 114. Where an insurance company whose acts being rectified resumes normal business situation following rectification of its acts that were in violation of the provisions hereof, the rectification organization shall issue a report and the rectification shall end after approval by the insurance regulatory authority.

Article 115. Where an insurance company violates the provisions hereof by damaging public interests so that the solvency of the insurance company may be or has been seriously endangered, the insurance regulatory authority may assume control over such insurance company.

The purpose of the assumption of control is to take necessary measures with respect to an insurance company over which control is assumed for the protection of the interests of the insureds and the resumption of normal operation of the business of such insurance company. The credit and liabilities of an insurance company over which control is assumed shall remain unchanged notwithstanding such assumption of control.

Article 116. The composition of the organization assuming control and the method of assuming control shall be decided by the insurance regulatory authority and be publicly announced.

Article 117. The insurance regulatory authority may decide to extend the period of control upon expiration of such period. However, the maximum period of control may not exceed two years.

Article 118. Where an insurance company over which control was assumed has recovered its capacity for normal operations upon expiration of the period of control, the insurance regulatory authority may decide to terminate the control.

Where the organization assuming control regards the assets of the insurance company placed under its control as insufficient for the full repayment of its debts, it may, upon approval by the insurance regulatory authority, lawfully apply to a People's Court for declaration of bankruptcy of such insurance company.

Article 119. Within three months after the end of each fiscal year, an insurance company shall submit to the insurance regulatory authority a business report, financial and accounting reports and relevant statements for the preceding year, and publish the same according to law.

Article 120. By the end of each month, an insurance company shall submit to the insurance regulatory authority business statistical statements for the preceding month.

Article 121. Insurance companies must employ actuarial professionals certified by the insurance regulatory authority and set up an actuarial reporting system.

Article 122. Matters related to the insurance business shall be truthfully recorded in business reports, financial and accounting reports, actuarial reports and other relevant statements, documents and information. False records, misleading statements and material omissions are not allowed.

Article 123. The insurer and the insured may employ an independent evaluation organization established according to law or experts with statutory qualifications to carry out evaluation and appraisal of insured events.

Evaluation agencies and experts retained in accordance with law to carry out evaluation and appraisal on insured events shall do their jobs in accordance with the law and on a fair basis. They shall be responsible for making indemnification in accordance with the law if the insurer or the insured suffers damages caused by them willfully or negligently.

The evaluation agencies retained in accordance with the law to carry out evaluation and appraisal on insured events shall charge fees in accordance with laws and administrative regulations.

Article 124. Insurance companies shall properly keep a complete set of account books, original vouchers and information concerning their business activities.

The period for keeping a complete set of account books, original vouchers and relevant information mentioned in the preceding paragraph shall begin from the date of termination of an insurance contract, and may not be less than ten years.

## CHAPTER SIX INSURANCE AGENTS AND INSURANCE BROKERS

Article 125. Insurance agents shall be work units or individuals entrusted by an insurer to handle insurance business on behalf of the insurer within the scope of the insurer's authorization and shall charge an agency fee to the insurer.

Article 126. Insurance brokers shall be work units that provide intermediary services for the conclusion of insurance contracts between policyholders and insurers in the interest of the policyholders, and shall charge a commission therefor according to law.

Article 127. An insurer entrusting an insurance agent to handle insurance business on its behalf shall conclude an entrustment agreement with the insurance agent to agree on the rights and obligations and other agency matters of the two parties in accordance with the law.

Article 128. An insurer shall be responsible for the acts of its insurance agents in handling insurance business on its behalf in accordance with its authorization.

If an insurance agent who handles insurance business on behalf of an insurer exceeds the limits of his authority and the policyholder has reason to believe that it has agency authority and an insurance contract has been concluded, the insurer shall be responsible for insurance liability. However, the insurer may pursue the liability of the insurance agent in accordance with law for exceeding the limits of his authority.

Article 129. Insurance agents engaging in life insurance agency business may not concurrently accept entrustment by two or more insurers.

Article 130. Insurance brokers shall be liable for indemnification of losses suffered by the policyholder or the insured due to the fault of such insurance brokers in the course of handling insurance business.

Article 131. When handling insurance business, insurance agents and insurance brokers may not commit the following acts:

- (1) deceiving the insurer, policyholder, insured or beneficiary;
- (2) withholding important details relating to an insurance contract;
- (3) hindering the policyholder from performing, or inducing the policyholder not to perform, his duty of truthfully disclosure as specified herein;
- (4) promising the policyholder, insured or beneficiary other benefits not provided in the insurance contract;
- (5) coercing or inducing the policyholder to conclude, or restricting the policyholder in concluding, an insurance contract by taking advantage of their administrative powers and functions, the convenience provided by their positions or other improper means.

Article 132. Insurance agents and insurance brokers shall meet the qualification requirements specified by the insurance regulatory authority, obtain an "Insurance Agency Business Operations License" or "Brokerage License", register with the administration for industry and commerce, obtain a business license and pay a deposit or take out professional liability insurance.

Article 133. Insurance agents and insurance brokers shall have their own places of business, special account books for recording the particulars of revenue and expenditures relating to insurance agency or brokerage business, and shall be subject to supervision by the insurance regulatory authority.

Article 134. Handling fees of insurance agents and brokers' commissions shall not be paid to any person other than legally qualified insurance agents and insurance brokers.

Article 135. Insurance companies shall keep a register of their insurance agents.

Article 136. Insurance companies shall strengthen the training and management of insurance agents and enhance the professional ethic and work quality of insurance agents and may not induce or mislead insurance agents to carry out activities in violation of their good faith obligations.

Article 137. The provisions of Articles 109 and 119 hereof shall apply to insurance agents and insurance brokers.

## **CHAPTER SEVEN      LEGAL LIABILITY**

Article 138. If a policyholder, insured or beneficiary engages in insurance fraud by conducting any of the following acts and the act constitutes a criminal act, criminal liability shall be investigated in accordance with the law:

- (1) the policyholder intentionally makes up the subject matter of insurance to obtain insurance proceeds under false pretenses;
- (2) falsely claiming the occurrence of an insurance accident that has not occurred to obtain insurance proceeds under false pretenses;
- (3) intentionally causing an insurance accident that involves property losses to obtain insurance proceeds under false pretenses;
- (4) intentionally causing a personal insurance accident, such as the death, injury, disability or illness of the insured to obtain insurance proceeds under false pretenses;
- (5) forging or altering certificates, information and other evidence relating to an insurance accident, or instigating, abetting or bribing other persons to provide false certificates, information or other evidence to fabricate a false cause of the accident or overstate the extent of the loss to obtain insurance proceeds under false pretenses.

If the circumstances of any of the acts set forth in the preceding paragraph are not serious and do not constitute a criminal act, an administrative penalty shall be imposed in accordance with the relevant provisions of the State.

Article 139. If an insurance company and its working staff withhold, in the course of insurance activities, important details relating to an insurance contract to deceive the policyholder, insured or beneficiary, or refuse to perform its obligation to indemnify or pay insurance proceeds as agreed in the insurance contract, and such acts thus constitute criminal acts, criminal liability shall be investigated in accordance with the law. If the acts do not constitute criminal acts, the insurance regulatory authority shall impose a fine of between RMB 50,000 yuan and RMB 300,000 yuan. Working staff committing illegal acts shall receive a fine of between RMB 20,000 yuan and RMB 100,000 yuan. If the circumstances are serious, the business scope of the insurance company shall be restricted or the insurance company shall be ordered to cease accepting new business.

If an insurance company and its working staff hinder the policyholder from performing, or induce the policyholder not to perform, its obligation of truthful disclosure, or promise the policyholder, insured or beneficiary an illegal kickback on the insurance premium or other benefits, and such acts constitute criminal acts, criminal liability shall be investigated in accordance with the law. If the acts do not constitute criminal acts, the insurance regulatory authority shall order corrections to be made and impose a fine of between RMB 50,000 yuan and RMB 300,000 yuan on the insurance company and a fine of between RMB 20,000 yuan and RMB 100,000 yuan on the working staff committing illegal acts. If the circumstances are serious, the business scope of the insurance company shall be restricted or the insurance company shall be ordered to cease accepting new business.

Article 140. If an insurance agent or insurance broker deceives the insurer, policyholder, insured or beneficiary in his business operations, and such acts constitute criminal acts, criminal liability shall be investigated in accordance with the law. If the acts do not constitute criminal acts, the insurance regulatory authority shall order corrections to be made and impose a fine of between RMB 50,000 yuan and RMB 300,000 yuan. If the circumstances are serious, the Insurance Agency Business Operations License or Brokerage License shall be revoked.

Article 141. If an insurance company and its working staff intentionally make up an insurance accident that has never occurred and falsify a settlement to obtain insurance proceeds under false pretenses, and such acts constitute criminal acts, criminal liability shall be investigated in accordance with the law.

Article 142. If, in violation of the provisions of this Law, an insurance company is established arbitrarily without authorization or commercial insurance business activities are conducted illegally, such company or business operations shall be banned by the insurance regulatory authority. If the acts constitute criminal acts, criminal liability shall be investigated in accordance with law. If the acts do not constitute criminal acts, the insurance regulatory authority shall confiscate the illegal income and impose a fine of between one and five times the amount of the illegal income. If there is no illegal income or the illegal income is less than RMB 200,000

yuan, a fine of between RMB 200,000 yuan and RMB 1,000,000 yuan shall be imposed.

Article 143. If a company, in violation of the provisions of this Law, engages in insurance businesses beyond the approved scope of business or concurrently engages in businesses other than those provided in this Law and other laws and administrative regulations, and such violations constitute criminal acts, criminal liability shall be investigated in accordance with law. If the acts do not constitute criminal acts, the insurance regulatory authority shall order corrections and order it to refund the insurance premiums it has already collected, confiscate the illegal income, and impose a fine of between one and five times the amount of the illegal income. If there is no illegal income or the illegal income is less than RMB 100,000 yuan, a fine of between RMB 100,000 yuan and RMB 500,000 yuan shall be imposed. If the corrections are not made within the time limit or serious consequences arise from the violation, it shall be ordered to cease operations for rectification or its Insurance Business Operations Permit shall be revoked.

Article 144. If, in violation of the provisions of this Law, the particulars such as the name, articles of association or registered capital of an insurance company, or the places of business of the company or its branches are changed arbitrarily without approval, the insurance regulatory authority shall order corrections and impose a fine of between RMB 10,000 yuan and RMB 100,000 yuan.

Article 145. If, in violation of the provisions of this Law, any of the following acts is conducted, the insurance regulatory authority shall order corrections and impose a fine of between RMB 50,000 yuan and RMB 300,000 yuan. If the circumstances are serious, the insurance regulatory authority may restrict the scope of business, order the violator to cease accepting new business or revoke its Insurance Business Operations Permit:

(1) failure to pay a deposit in accordance with regulations or use of such deposit in violation of regulations;

(2) failure to allocate or carry over funds to the various types of liability reserves or make allocations to the outstanding loss reserve in accordance with regulations;

(3) failure to make allocations to the insurance protection fund or the common reserve in accordance with regulations;

(4) failure to reinsure an insurance policy taken out by another insurer in accordance with regulations;

(5) use of insurance company funds in violation of regulations;

(6) establishment of a branch office or a representative office without approval;

(7) division or merger without approval;

(8) failure to submit for examination and approval the insurance terms and premium rates of types of insurance required to be submitted for examination and approval in accordance with regulations.

Article 146. If, in violation of the provisions of this Law, any of the following acts is conducted, the insurance regulatory authority shall order corrections. If the corrections are not made within the time limit, a fine of between RMB 10,000 yuan and RMB 100,000 yuan shall be imposed:

(1) failure to submit for the record relevant reports, statements and materials in accordance with regulations;

(2) failure to submit for the record the insurance terms and premium rates of types of insurance required to be submitted for the record in accordance with regulations.

Article 147. If, in violation of the provisions of this Law, any of the following acts is conducted, and such acts constitute criminal acts, criminal liability shall be investigated in accordance with the law. If the acts do not constitute criminal acts, the insurance regulatory authority shall order corrections and impose a fine of between RMB 100,000 yuan and RMB 500,000 yuan. If the circumstances are serious, the insurance regulatory authority may restrict the scope of business, order the violator to cease accepting new business or revoke the Insurance Business Operations Permit:

(1) provision of false reports, statements, documents and information;

(2) rejection or hindrance of lawful inspections and supervision.

Article 148. If, in violation of the provisions of this Law, any of the following acts is conducted, the insurance regulatory authority shall order corrections and impose a fine of between RMB 50,000 yuan and RMB 300,000 yuan:

(1) provision of coverage in excess of the insured amount and the circumstances are serious;

(2) underwriting an insurance policy for a person without capacity for civil acts where the death of such person whose life is insured is set as a condition for payment of the insurance proceeds.

Article 149. If, in violation of the provisions of this Law, insurance agency businesses or brokerage businesses are illegally engaged in without obtaining an Insurance Agency Business Operations License or Brokerage License, such business operations shall be banned by the insurance regulatory authority. If the acts constitute criminal acts, criminal liability shall be investigated in accordance with the law. If the acts do not constitute criminal acts, the insurance regulatory authority shall confiscate the illegal income, and impose a fine of one and five times of the amount of the illegal income. If there is no illegal income or the illegal income is less than RMB 100,000 yuan, a fine of between RMB 100,000 yuan and RMB 500,000 yuan shall be imposed.

Article 150. Directly responsible senior management personnel of an insurance company and other directly responsible persons who violate the provisions of

this Law but whose acts do not constitute criminal acts may be given warnings, ordered to be replaced or have a fine of between RMB 20,000 yuan and RMB 100,000 yuan imposed by the insurance regulatory authority according to differences in circumstances.

Article 151. If damages are caused to others as a result of a violation of this Law, the violator shall bear civil liability in accordance with the law.

Article 152. For approval of the application for establishment of an insurance company that does not comply with the conditions provided under this Law, or approval of an application which does not comply with the conditions of an insurance agent or an insurance broker, or other acts that involve abuse of power and dereliction of duty, if the acts constitute criminal acts, criminal liability shall be investigated in accordance with law, and if the acts do not constitute criminal acts, an administrative penalty shall be imposed in accordance with law.

## **CHAPTER EIGHT SUPPLEMENTAL PROVISIONS**

Article 153. Marine insurance shall be governed by the relevant provisions of the Maritime Law. Matters not covered in the Maritime Law shall be governed by the relevant provisions of this Law.

Article 154. Chinese-foreign insurance companies, wholly foreign-owned insurance companies and branches of foreign insurance companies shall be governed by the provisions of this Law. If laws and administrative regulations provide otherwise, the provisions of such laws and administrative regulations shall prevail.

Article 155. The State shall support the development of the insurance business for agricultural production. Agricultural insurance shall be separately provided by other laws and administrative regulations.

Article 156. Insurance organizations of a nature other than insurance companies provided in this Law shall be separately provided in other laws and administrative regulations.

Article 157. Insurance companies established upon approval in accordance with the provisions of the State Council prior to the implementation of this Law shall be maintained. Those that do not satisfy all conditions provided by the provisions of this Law shall satisfy the conditions provided in this Law within the prescribed period. Specific measures shall be provided by the State Council.

Article 158. This Law has been implemented since October 1, 1995.