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China's Insurance Regulator Issues Revised Draft Measures for the Administration of Equity Interests

In December 2016, the China Insurance Company Regulatory Commission ("CIRC") released draft Measures for the Administration of Equity Interests in Insurance Companies (the "Previous Draft"). We had briefed you about this development (see our previous updates on [China insurance M&A reform](#) and [changes in investments in Chinese insurance companies](#)).

On July 20, 2017, CIRC released a revised draft of the same Measures (the "New Draft"). The New Draft differs from the Previous Draft in significant respects, which we highlight below. CIRC is holding another round of public consultations on the New Draft, in which comments may be submitted until August 21, 2017.

Categorization of shareholders

Shareholders of insurance companies are classified into the following four categories based on the size of their shareholding, instead of three categories under the Previous Draft:

Category	Threshold under the New Draft	Threshold under the Previous Draft
Type I Financial Shareholder	less than 5% equity interest;	less than 10% equity interest and no major influence on the operation and management of the insurance company
Type II Financial Shareholder	more than 5% but less than 15% equity interest;	
Strategic Shareholder	more than 15% but less than 30% equity interest;	(a) at least 10% but less than 20% equity interest; or (b) less than 10% equity interest and major influence on the operation and management of the insurance company
Controlling Shareholder	(a) more than 30% equity interest; or (b) major influence on the resolutions of the shareholder meetings of the insurance company through voting rights based on the shareholding	(a) at least 20% equity interest; or (b) less than 20% equity interest and controlling influence on the operation and management of the insurance company

Under the Previous Draft, there were no qualification requirements for Financial Shareholders. Under the New Draft, Financial Shareholders need to satisfy financial tests: Type I Financial Shareholders must have been profitable in the last financial year and have a reasonable level of revenue. Type II Financial Shareholders must have been profitable in the last two financial years, have net assets of at least Rmb 200 million and the capacity to provide further capital to the insurance company.

The financial tests for Strategic and Controlling Shareholders remain generally the same (but note the higher shareholding threshold (15% instead of 10%) for Strategic Investors and the higher shareholding threshold (30% instead of 20%) for Controlling Shareholders from which the requirements apply). CIRC has added some qualitative requirements for Controlling Shareholders, which reflect the PRC government's recent concern that domestic conglomerates are investing imprudently into unrelated industries: Under the New Draft, an investor may not become a Controlling Shareholder of an insurance company if its business plan is not feasible, if it does not have the financial capability to support the operations of the insurance company on an ongoing business, or if its business is overly diversified or its governance has obvious weaknesses.

Maximum shareholding

The maximum shareholding in an insurance company is limited to one third of the share capital, as in the Previous Draft. The New Draft also repeals the existing CIRC rules on mergers and acquisitions of insurance companies, which allow investors to acquire a higher shareholding.

Under the New Draft, there remains only one exception from the one-third shareholding cap: a PRC insurance company may own up to 100% of another insurance company as a result of establishing or acquiring such company for purposes of innovation, specialization or group formation. A new limit is added to this exception: The investing insurance company may not transfer control of an insurance company it has established for innovation or specialization purposes.

Lock-up

The New Draft provides for longer lock-up periods as shown below:

Category	Lock-up Period under the New Draft	Lock-up Period under the Previous Draft
Type I Financial Shareholder	1 year after becoming a Type I Financial Shareholder	1 year after company establishment
Type II Financial Shareholder	2 years after becoming a Type II Financial Shareholder	
Strategic Shareholder	3 years after becoming a Strategic Shareholder	2 years after company establishment
Controlling Shareholder	5 years after becoming a Controlling Shareholder	3 years after company establishment

Foreign invested insurance companies

The New Draft removes the clarification (which features in both the Previous Draft and the currently effective regulations) that shareholding in insurance companies in which foreign investors hold at least 25% of the equity interests is subject to separate rules. Imposing the provisions of the New Draft (in particular, the 33% maximum shareholding) on such companies would be a major change; it is not clear whether this is intended or implied in the New Draft.

Structured transactions

The Previous Draft had removed the existing requirement that equity investments in insurance companies must be made with the investor's own funds, thus liberalizing financing for acquisitions. The New Draft not only reinstates the requirement, but prohibits arrangements to circumvent it, specifically targeting nominee arrangements, special purpose vehicles and structured financing. As a new deterrent, shareholders who enter into nominee or beneficial transfer arrangements can be deprived of their voting rights.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Jeanette K. Chan
+852-2846-0388
jchan@paulweiss.com

John E. (Jack) Lange
+852-2846-0333
jlange@paulweiss.com

Xiaoyu Greg Liu
+86-10-5828-6302
gliu@paulweiss.com

Judie Ng Shortell
+86-10-5828-6318
jngshortell@paulweiss.com

Betty Yap
+852-2846-0396
byap@paulweiss.com

Hans-Günther Herrmann
+852-2846-0331
hherrmann@paulweiss.com

David Lee
+852-2846-0376
dlee@paulweiss.com

Po Ying Lo
+852-2846-0381
plo@paulweiss.com

Corinna Yu
+852-2846-0383
cyu@paulweiss.com

Partner Betty Yap, counsel Hans-Günther Herrmann and China associate Lucia Chen contributed to this Client Memorandum.