

FOR INFORMATION PURPOSE ONLY

# **GUIDE FOR FOREIGN INVESTORS IN CHINA'S BANKING AND INSURANCE SECTORS**



The Insurance Asset Management Association of China  
LLinks Law Offices

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# Table of Contents

<b>PREFACE</b>	<b>1</b>
<b>I. Overview</b>	<b>3</b>
<b>II. China's Foreign Investment Regime</b>	<b>4</b>
(i) Current Legal and Regulatory System	4
(ii) Enactment of the Foreign Investment Law	6
<b>III. Regulated Industry</b>	<b>9</b>
(i) Regulators	9
1. Financial Stability and Development Committee of the State Council	9
2. People's Bank of China	9
3. China Banking and Insurance Regulatory Commission	11
(ii) Laws and Regulations	12
<b>IV. Foreign Investment in the Banking Sector</b>	<b>13</b>
(i) Requirements for establishing or investing in a foreign invested bank's business entity	14
1. Registered capital requirements of wholly foreign-invested banks and Sino-foreign jointventure banks	14
2. Common requirements needed to be met by the shareholders of wholly foreign-invested banks and Sino-foreign joint venture banks, or by foreign banks that intend to set up branches and representative offices	15
3. Other conditions that shareholders of the wholly foreign-invested bank and Sino-foreign joint venture bank need to meet	15
4. Requirements for a foreign bank to set up its branch(es) in China	17
(ii) Application and approval of the establishment of a foreign invested bank's business entity	

or a representative office of a foreign bank	17
1. Establish a foreign invested bank's business entity	18
2. Establishing a representative office of a foreign bank	24
3. Establishing a branch of a Sino-foreign joint venture bank or a wholly foreign-invested bank	27
(iii) Banking-related businesses	30
(iv) Basel III and Capital Regulatory Requirements by the CBIRC	31
(v) The history and current status of foreign banks in China	33
<b>V. Foreign Investment in the Insurance Sector</b>	<b>34</b>
(i) The history and current status of the liberalization of China's insurance sector	35
(ii) Foreign Invested Insurance Company	37
1. Market Access	37
2. Shareholding Ratio	38
(iii) Foreign Invested Insurance Intermediaries	40
1. Insurance Agency Business	40
2. Insurance Brokerage Business	41
3. Insurance Survey Business	43
(iv) Foreign Invested Insurance Asset Management	45
(v) Representative Office of a Foreign Insurance Company in China	46
(vi) Licensing Authority and Application Procedures	47
1. Licensing Authority	47
2. On-line Applications and Flowchart	47
<b>VI. Continuous Compliance</b>	<b>51</b>
(i) General Obligations	51
1. Company Administrative and Reporting Duties	51
2. Annual Report Filing	54
3. Financial Related Matters	55

4.Cyber Security and Data Compliance	56
5.Other Compliance Issues	58
(ii) Compliance in the Banking Industry	58
1.Internal control and risk management	58
2.Anti-Money Laundering	67
3.Incidence Prevention and Control	71
(iii) Compliance in Insurance Sector	71
1.Corporate Governance and Compliance	72
2.Risk Management	74
3.Incidence Prevention and Control	75
4.Solvency Management	76
5.Asset and Liability Management	79
<b>VII. Foreign Exchange</b>	<b>80</b>
(i) Introduction to China's Foreign Exchange Regulatory System	80
(ii) Foreign Exchange Management - Foreign Investment in the Banking Sector	82
(iii) Foreign Exchange Management - Foreign Investment in the Insurance Sector	92
<b>VIII. Tax</b>	<b>95</b>
(i) Corporate Income Tax (CIT)	95
(ii) VAT	96
<b>Annex 1: Opening-up Schedule of China's Financial Sectors</b>	<b>98</b>
(i) Banking	98
(ii) Insurance	98
(iii) Securities and Funds	99
(iv) Stock Connect and QDII	99
<b>Annex 2: CBIRC Unveils 12 New Measures for Opening of Chinese Banking and Insurance Sectors</b>	<b>100</b>
<b>Annex 3: CBIRC's Departments and their Repsonsibilities</b>	<b>102</b>



# PREFACE

The reform and opening up of its financial sectors have always been at the forefront of the process of China's great economic liberalization over the past four decades. Over these forty years or so China's banking and insurance sectors have been transformed.

The official statistics show that by the end of December, 2018, 217 foreign banks from 54 countries and regions had invested in China. Of these, 41 are foreign invested banks in China with independent legal personality, 115 are branches in China, and there are 154 representative offices of foreign banks. The total number of foreign invested banks' business entities amounts to 989.

As regards the insurance sector, by the end of December 2018, 57 foreign invested insurance business entities had been set up in China by foreign insurance companies from 16 countries and regions; these were set up by 28 life insurance companies, 22 property insurance companies, six reinsurance companies and one insurance asset management company. In addition, there are now more than 1,800 branches of foreign insurance institutions and 141 representative offices of foreign insurance companies in China. The competitiveness of China's banking and insurance sectors has significantly improved thanks to the policy of liberalization and opening up, especially the cooperation between domestic and foreign companies.

Today, China's banking sector ranks first in the world in terms of total asset size, and China's insurance sector ranks second in the world in terms of premium income. Four of the 30 G-SIBs<sup>1</sup> are registered in China, and one Chinese insurance company is the only representative of emerging markets in the world's 9 G-SIIs<sup>2</sup>.

The Insurance Asset Management Association of China ("IAMAC") was established in September, 2014. Its establishment was an important part of the reform and development of China's banking and insurance sectors. Currently, the China Banking and Insurance Regulatory Commission ("CBIRC") is the consolidated regulator of the banking and insurance sectors, providing policy, operational guidance and supervision to the IAMAC.

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<sup>1</sup> Global Systemically Important Banks (G-SIBs)

<sup>2</sup> Global Systemically Important Insurers (G-SIIs)

Since its establishment the IAMAC has endeavoured to promote professionalism, internationalization and a market- and hi-tech orientation. Up to now, it has helped the development of more than 620 members engaged in the banking, insurance, securities, funds and other financial sectors. At the same time, the IAMAC has continuously expanded international communications and cooperation. By training, trade missions, visits and seminars, the IAMAC has established contacts with more than 200 foreign institutions, for example J.P.Morgan, UBS Asset Management, BlackRock, Schroders and Columbia Threadneedle Investments, and has signed memoranda of cooperation with institutions including the IFoA<sup>3</sup>, AIMA<sup>4</sup> and The Investment Association in the UK. Over the past four years, the IAMAC has organized more than 80 international events, invited almost 200 international experts to share experience with their Chinese peers, and commissioned more than 20 high-quality industry reports, introducing international experience to Chinese regulatory authorities and its members.

From its international contacts, the IAMAC has learnt that investing in China is a top priority of many foreign institutions. In particular, these institutions have an urgent need to accurately understand the content and direction of the opening up policies in China's banking and insurance sectors. In order to assist foreign investors to better understand the relevant liberalization policies and regulations, the IAMAC, after almost six months work with an invaluable input from LLinks Law Offices, has drafted this *Guide for Foreign Investors in China's Banking and Insurance Sectors* ("**Guide**"). This Guide concentrates on several aspects including the liberalization history of the banking and insurance sectors, the regulatory policies of the financial sectors, foreign investment, foreign exchange and tax regulations, establishment requirements, application procedures and continuous compliance. This Guide also provides a comprehensive introduction from a practical point of view, aiming to clarify the current policies and so make it easier for foreign investors to invest in China.

Due to the tight deadline set for the actual drafting of this Guide, please excuse any imperfections. The IAMAC and LLinks Law Offices will keep abreast of relevant policies and regulations and will regularly update the Guide, aiming to provide continuous and effective support for foreign investors.

We hereby express our special gratitude to LLinks Law Offices, in particular Mr Yi WANG, Ms Yuhua YANG and Ms Elva YU, for their great professional and legal support in drafting this Guide.

Insurance Asset Management Association of China

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<sup>3</sup> The Institute and Faculty of Actuaries (IFoA)

<sup>4</sup> The Alternative Investment Management Association

## I. Overview

Since China's financial sectors began to open up in the mid-1990s, China's financial industries' liberalization has steadily progressed. It was greatly boosted by China joining the WTO and significant accomplishments achieved; it also experienced the difficulties caused by the first global financial crisis in the 21st century.

The banking sector was the earliest financial sector to open up to foreign investment. China's insurance sector started its liberalization process when China joined the WTO, and it has since become one of the most liberal financial sectors for foreign investment. Nevertheless, despite positive developments over the last few decades, foreign-invested banks and insurance companies in China are still to some extent subject to restrictions. Further liberalization measures have been widely expected and awaited by both international and domestic investors.

Since 2017, the exciting further opening up of China's financial sectors has substantially accelerated. In August 2017, the State Council issued the *Notice on Several Measures to Promote Foreign Investment Growth*<sup>5</sup>, proposing to further reduce restrictions on the access of foreign investment. During President Trump's visit to China in November 2017, the Ministry of Foreign Affairs stated that China would substantially relax the market access rules of financial sectors. Following the ninth China-UK Economic and Financial Dialogue in December 2017, China committed to relax foreign investors' maximum shareholding percentage restrictions in financial sectors, particularly the banking and insurance sectors. On 11 April 2018, the Governor of the People's Bank of China, Yi Gang, announced a timetable and specific measures for further opening up the financial sectors (see Annex 1 to this Guide).

This new set of opening-up measures in the financial sectors will essentially liberalize three things; the shareholding proportion of foreign investments in China's banks and insurance companies, relevant foreign invested entities' scope of business and the licensing procedures. On 28 June 2018, the National Development and Reform Commission ("NDRC") and the Ministry of Commerce ("MOFCOM") jointly issued the *Special Administrative Measures (Negative List) for Foreign Investment Access (2018)*<sup>6</sup>, which, in the spirit of treating domestic and foreign investors equally, removed the foreign shareholding restriction in the banking sector and relaxed the upper limit of foreign shareholdings in a life insurance company to 51%<sup>7</sup>. Additionally, in three years' time (i.e. 2021), the restrictions on foreign shareholdings in life insurance companies will be completely lifted. On

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<sup>5</sup> *Notice of the State Council on Several Measures to Promote Foreign Investment Growth*, adopted by the State Council (Guofa [2017] No. 39) on August 8, 2017.

<sup>6</sup> *Special Administrative Measures (Negative List) for Foreign Investment Access (2018)*, Decree [2018] No.18 of the National Development and Reform Commission and the Ministry of Commerce, issued on 28 June 2018.

<sup>7</sup> i.e. controlling stake can now be held by a foreign investor.

25 November 2018, the China Banking and Insurance Regulatory Commission ("CBIRC") stated that it had in the meantime continued to legally implement the various liberalization policies in the banking and insurance sectors.

Most recently, on 1 May 2019, the Chairman of the CBIRC, Guo Shuqing, publicly unveiled plans to launch 12 new measures to further open up the Chinese financial sectors<sup>8</sup> (see Annex 2 to this Guide).

As far as foreign investors' concern, upon the removal of the foreign shareholding restriction, foreign companies may accelerate their market entry and expand by means of mergers and acquisitions of existing Chinese licence holders, achieving an effective "foreign holding + localized operation" model.

## II. China's Foreign Investment Regime

### (i) Current Legal and Regulatory System

Foreign investors investing in China must first comply with China's unified legal and regulatory requirements for foreign investment; these naturally apply to foreign investment in the banking and insurance sectors. For more than 30 years, China's legal system in the field of foreign investment has been centered on the "three foreign investment laws" and numerous implementation rules and regulations, practical guidance and interpretations.

Since 2016, China's foreign investment regulatory regime has shifted from an "approval-based system" to an "administrative filing system". What this means is that, with the exception of investments affected by the relevant negative lists and where special administrative measures are applicable (an outright ban or restrictions and/or approval), foreign investors establishing a presence in China and accessing the Chinese market are subject to a set of administrative filing and registration requirements.

#### 1. "Three foreign investment laws"

On 1 July 1979, China's first special law on foreign investment, the *Law on Sino-foreign Equity Joint Ventures*, was officially enacted, followed by the *Law on Wholly Foreign-owned Enterprises* and the

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<sup>8</sup> CBIRC has not published the specific timeline for implementing the 12 new measures for opening up.

*Law on Sino-foreign Cooperative Joint Ventures*, which were adopted in 1986 and 1988 respectively. These three laws have been widely known as China's "three foreign investment laws", marking the beginning of the construction of the legal system for foreign investment in China. These three laws set out the three legal forms of foreign-invested entities in China, namely wholly foreign-owned enterprises ("**WFOE**"), sino-foreign equity joint ventures ("**EJV**") and sino-foreign cooperative joint ventures ("**CJV**"), laying the legal and regulatory foundation for foreign investment administration in China.

On 15 March 2019, during the Second Session of the 13th National People's Congress of the People's Republic of China ("**PRC**"), the *Foreign Investment Law of the PRC* ("**Foreign Investment Law**") was passed, which means the "three foreign investment laws" that have been in force for more than three decades will officially be abolished and replaced on 1 January 2020<sup>9</sup>.

## 2. Industry specific regulations

In addition to the above-mentioned "three foreign investment laws" and their respective implementation rules and regulations, China has also adopted a number of industry specific regulations in respect of foreign investment, such as the *Regulations on the Administration of Foreign Invested Banks* and the *Detailed Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks* (banking sector) and the *Regulations on the Administration of Foreign Invested Insurance Companies* (insurance sector). The detailed industry specific regulations will be elaborated in the third part of this Guide.

## 3. Special administrative measures for the admission of foreign investment and administrative filing and registration systems

On 8 October 2016, the *Interim Measures on the Administration of Filing for Establishment and Changes of Foreign Invested Enterprises* (the "**Interim Measures**") came into effect. The Interim Measures stipulate that the establishment and changes to foreign invested enterprises ("**FIEs**") in China need only be filed with the commerce authority<sup>10</sup> while an application for approval would no longer be necessary, except for FIEs that are subject to special administrative measures for the admission of foreign investment as regulated by China. Accordingly, since the 2017 edition of the

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<sup>9</sup> The following five years (2020-2024) will be a transition period. China's foreign investment regime is undergoing significant transformation and numerous new implementation rules and regulations will be enacted in due course to replace and/or harmonize the existing ones.

<sup>10</sup> Previously the approval authority.

*Catalogue of Guidance for Foreign Investment Industries*, restrictive and prohibitive categories have been integrated into the "*Special Administrative Measures (Negative List) for Foreign Investment Access*", in order to clearly set out the specific sectors and relevant administrative measures such as an outright ban or applicable restrictions as well as the application and approval procedures.

## **(ii) Enactment of the Foreign Investment Law**

On 1 January 2020 the *Foreign Investment Law* will come into effect, ushering in a new era. It will serve as a basic and dominant law in the field of foreign investment in China. Its main content and core impacts are as follows:

### **1. Replacement of the "Three Foreign Investment Laws"**

When the *Foreign Investment Law* comes into force on 1 January 2020, the "Three Foreign Investment Laws" will be officially abolished. As regards the legal forms, corporate governance structure and business activities of FIEs, the *PRC Company Law* and the *PRC Partnership Law* and other relevant laws will directly apply<sup>11</sup>. The *Foreign Investment Law* stipulates a five-year transition period (2020-2024). The specific implementing regulations and rules will be enacted by the State Council in due course.

### **2. Foreign investment promotion and protection**

The *Foreign Investment Law*, in a fundamental legal way, has clearly reinforced certain principles and measures for the promotion and protection of foreign investment. It has the explicit intention of better protecting the legitimate rights and interests of foreign investors and FIEs in China and encouraging foreign investment.

According to the *Foreign Investment Law*, the investment promotion measures enjoyed by FIEs in China mainly include:

- ✧ All the support/preferential policies supporting the development of domestic companies will be equally enjoyed by FIEs;

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<sup>11</sup> As the *Foreign Investment Law* has not come into effect, the legal organizational forms of FIEs in this Guide are still introduced in accordance with the three legal forms of as set out in the "three foreign investment laws".

- ✧ FIEs are equally entitled to participate in the industry standardization process, and the mandatory standards established shall be equally applicable to FIEs;
- ✧ FIEs are entitled to participate in bidding for government procurement projects through fair competition;
- ✧ FIEs may raise equity or debt financing in China (including pursuing a listing on a Chinese stock exchange and issuing a corporate bond);
- ✧ Local governments at or above the county level may formulate, within their statutory authority, policies and measures to promote and facilitate foreign investment.

According to the *Foreign Investment Law*, the investment protection enjoyed by foreign investors and FIEs in China mainly includes:

- ✧ foreign investors' investments are not subject to expropriation. Those that have to be expropriated for reasons of public interest, due process and fair compensation shall be safeguarded;
- ✧ the intellectual property rights and trade secrets of foreign investors and FIEs shall be protected;
- ✧ foreign investors' income and/or profits generated from the Chinese market are freely exchangeable to a foreign currency;
- ✧ local governments shall honour their commitments to foreign investors and FIEs, and perform the contracts entered into in accordance with law.

### 3.Foreign investment regulatory system

The *Foreign Investment Law* sets forth a foreign investment regulatory system mainly based on negative list administration, information reporting and the national security review.

#### (1) Negative list administration

The *Foreign Investment Law* sets out a negative list administrative system which regulates the scope of foreign investment access. The relevant negative lists are issued or approved for issue by the State Council (central government). The current national version of the negative list --- *Special Administrative Measures (Negative List) for Foreign Investment Access (2018)* includes

48 articles, containing only one restriction imposed on the banking and insurance sectors, that is, the foreign shareholding of a life insurance company cannot exceed 51% (this restriction is expected to be removed in 2021). For those not affected by the applicable negative list, national treatment shall apply.

## (2) Information reporting system

China's current foreign investment information reporting system mainly involves information filing on the establishment of and changes to FIEs to be submitted by foreign investors or their FIEs, and FIEs' annual report filing<sup>12</sup>. The *Foreign Investment Law* emphasizes that the content and scope of the information reported shall be made on an "absolutely necessary" basis, which helps to reduce the burden imposed on FIEs while ensuring the necessary supervision of foreign investment. The foreign investment information reporting system needs to be further clarified by specific rules which will be adopted in the future.

## (3) National security review

The *Foreign Investment Law*, as a basic law, once again stipulates the national security review mechanism for foreign investment, i.e., a security review is carried out on foreign investment that affects or may affect national security. However, the *Foreign Investment Law* only outlines a framework for the national security review. It has yet to set out the specific review content, and it also does not specify the legal consequences of any violation; clarity of these two points awaits the adoption of the relevant implementation rules and regulations.

As a basic law in the field of foreign investment in China, the *Foreign Investment Law* is a very significant step in improving the legal system for foreign investment and encouraging foreign investment. However, in view of the fact that the provisions of the *Foreign Investment Law* are mostly just principles, the relevant content still needs to be clarified and defined through reference to other laws or administrative regulations. We recommend that foreign investors continue to pay close attention to and understand the supporting regulations and measures introduced in the future in order to get fully prepared for their intended investments.

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<sup>12</sup> The PRC Regulations on the Administration of Company Registration, enacted on 6 February 2016.

### III. Regulated Industry

#### (i) Regulators

##### 1. Financial Stability and Development Committee of the State Council

In November 2017, with the approval of the State Council, the Financial Stability and Development Committee of the State Council was established. As a body under the State Council for the deliberation and coordination of the major issues concerning financial stability, reform and development, the committee aims to implement the national financial decisions, review major plans for the reform and development of the financial sectors, and work on the major issues regarding financial regulation.

##### 2. People's Bank of China

The People's Bank of China ("PBC" or "PBOC") is the central bank of China and a component of the State Council. Under the leadership of the State Council, it is mainly responsible for formulating strategic plans for financial reform and development, drafting laws and administrative regulations, improving the operating rules of financial institutions, formulating and implementing monetary policies, preventing and resolving financial risks in an effort to maintain financial stability.

On 13 March 1979, with the approval of the State Council, the State Administration of Foreign Exchange ("SAFE") was established as a functional agency engaged in the management of foreign exchange. It is a national bureau under the centralized management of the PBOC. The main duties and responsibilities of the SAFE<sup>13</sup> are set out below:

- ✧ To study and put forward policy suggestions in respect of the reform of the foreign exchange administration system as well as risk prevention and improvement of the balance of international payments; to evaluate policy options for gradually promoting RMB's convertibility under capital accounts, fostering and developing the foreign exchange market, and to make proposals to the PBOC for the formulation of its RMB exchange rate policy.
- ✧ To participate in the drafting of relevant laws, regulations and ministry rules on foreign exchange administration, and to issue regulatory documents when discharging its duties;

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<sup>13</sup> Article 2 of the *Circular of the General Office of the State Council on the Issuance of Provisions on the Establishment of Institutions and Staffing of the Main Duties of the State Administration of Foreign Exchange* (Guo Ban Fa No.[2009]12) issued 1 March 2009.

- ※ To oversee the statistics and monitoring of the balance of payments and external credit and debt, publishing relevant information in accordance with regulations, and to undertake the related work concerning the monitoring of cross-border capital flows;
- ※ To be responsible for the supervision and management of the national foreign exchange market; to undertake the supervision and management of the settlement and sale of foreign exchange; to cultivate and develop the foreign exchange market;
- ※ To be legally responsible for the supervision and inspection of the authenticity and legality of the receipts and payments in foreign currencies made from and to current accounts; to be responsible for implementing foreign exchange administration of capital accounts; to continuously improve management in line with the capital accounts RMB convertibility progress; and to standardize the management of foreign exchange accounts at home and abroad;
- ※ To be responsible for the implementation of foreign exchange supervision and inspection according to law and to punish violations of foreign exchange regulations;
- ※ To undertake operations and management of national foreign exchange reserves, gold reserves and other foreign exchange assets;
- ※ To formulate plans and standards for the development of an IT-based foreign exchange administration, to standardize and organize its implementation, and to share regulatory information with relevant administrative departments according to law;
- ※ To participate in relevant international financial activities;
- ※ To undertake other matters assigned by the State Council and the PBOC.

Prior to the establishment of the former China Banking Regulatory Commission ("**CBRC**") and the former China Insurance Regulatory Commission ("**CIRC**"), the PBOC assumed the role of direct supervision of the Chinese banking and insurance sectors. Later, the former CIRC and then the former CBRC were set up, and the regulation mechanism of China's financial sectors was formed. On 18 March 2018, the National People's Congress published the *Institutional Reform Plan of the State Council* ("**Institutional Reform Plan**"), according to which the responsibilities of the former CBRC and the former CIRC in drafting important laws and regulations for the banking and insurance sectors and their duties to exercise prudent supervision were assigned to the PBOC.

### 3. China Banking and Insurance Regulatory Commission

At present, the CBIRC is responsible for regulating the banking and insurance sectors. As part of the Institutional Reform Plan, the former CBRC and the former CIRC were integrated into the CBIRC.

The main duties of the CBIRC are to supervise and manage the banking and insurance sectors in accordance with laws and regulations, protect the legitimate rights and interests of financial consumers, safeguard the legal and stable operation of the banking and insurance sectors, prevent and resolve financial risks, and maintain financial stability.

According to the *Regulations on Function Allocation, Institutions and Staffing of the China Banking and Insurance Regulatory Commission*<sup>14</sup>, the CBIRC has set up 26 internal bodies and a Communist Party Committee. A comparison of the internal bodies with those of the former CBRC and the former CIRC, as well as the responsibilities of the internal departments of the CBIRC, can be found in Annex 3 of this Guide.

Before the introduction of the Institutional Reform Plan, the former CBRC and the former CIRC were respectively the regulatory bodies for the banking sector and the insurance sector. The former CIRC was set up in November 1997 as the regulatory authority of all commercial insurance companies. Its administrative functions, authorized by the State Council, included supervising and administrating the national insurance market as well as maintaining the legal and stable operation of the insurance sector. The former CBRC was officially established on 28 April 2003, authorized to supervise and administer banks, financial asset management companies, trust investment companies and other deposit-based financial institutions in a unified manner. The setting up of CBRC showed that China had a segregated regulatory framework for its financial sectors, i.e. "One Bank Three Commissions".

On 8 April 2018, the CBIRC was officially established to bring banking and insurance regulators under one authority, i.e. the era of "One Bank Two Commissions"<sup>15</sup> started. This act of institutional reform was a clear sign of China's intention to align fragmented regulations spanning an increasingly large and complex financial sector. CBIRC's debut has been widely regarded as a positive

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<sup>14</sup> *Regulations on Function Allocation, Institutions and Staffing of the China Banking and Insurance Regulatory Commission*, enacted by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on 13 November 2018.

<sup>15</sup> Before the adoption of the *Institutional Reform Plan*, China's financial sector was under the supervision of the PBOC, the China Securities Regulatory Commission ("CSRC"), the former CBRC and the former CIRC, known as "One Bank Three Commissions". After the adoption of the *Institutional Reform Plan*, the main regulatory authorities in China's financial sectors are the PBOC, the CSRC, and the CBIRC, known as "One Bank Two Commissions".

development that is particularly appropriate in China, given the entrenched linkages between insurers, banks and other financial institutions. The consolidation of regulations within a single body will help reduce any blurred lines of responsibility, overlapping supervisory areas and the exploitation of regulatory loopholes.

In summary, China's current regulatory system is led by the State Council Financial Stability and Development Committee, with the PBOC keeping the function of formulating important laws and regulations in the financial sectors, and the CBIRC acting as the leading regulatory body and its local counterparts covering the whole country. In addition to the supervision by governmental administrations and regulators, several industry self-regulatory organizations such as the China Banking Association, the IAMAC, and the Insurance Association of China also play an indispensable role in the careful supervision of the entire financial sector.

## **(ii) Laws and Regulations**

### **1. The core laws and regulations governing foreign investment in the banking sector are as follows:**

- (1) *The PRC Regulations on the Administration of Foreign Invested Banks*
- (2) *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Banks*
- (3) *Implementation Measures of the China Banking Regulatory Commission on the Administrative Licensing for Foreign Invested Banks*
- (4) *Implementation Measures of China Banking and Insurance Regulatory Commission on Administrative Licensing for Non-Bank Financial Institutions*

### **2. The core laws and regulations governing foreign investment in the insurance sector are as follows:**

- (1) *The PRC Regulations on the Administration of Foreign Invested Insurance Companies*<sup>16</sup>

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<sup>16</sup> *The PRC Regulations on the Administration of Foreign Invested Insurance Companies*, Decree of the State Council No. 336, enacted on 12 December 2001, amended by the *Decision of the State Council to amend Several Administrative Regulations*, Decree of the State Council No. 666, issued on 6 February 2016.

(2) *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies*<sup>17</sup>

(3) *Interim Provisions on the Administration of Insurance Asset Management Companies*<sup>18</sup>

(4) *Notice of the China Banking and Insurance Regulatory Commission on Allowing Foreign Investors to Operate Insurance Agency Business in China*<sup>19</sup>

## IV. Foreign Investment in the Banking Sector

In China, four legal forms account for the bulk of foreign investments in the banking sector (hereinafter collectively referred to as "**foreign invested banks**")<sup>20</sup>, which are:

- (1) A wholly foreign-invested bank, which is a commercial bank solely established by a foreign bank or jointly established by a foreign bank and other foreign financial institutions;
- (2) A Sino-foreign joint venture bank, which is a bank jointly established by a foreign financial institution<sup>21</sup> and a Chinese company or enterprise;
- (3) A foreign bank's branch;
- (4) A representative office of a foreign bank.

In China, wholly foreign-invested banks, Sino-foreign joint venture banks and branches of foreign banks are collectively referred to as **foreign invested bank's business entities**. We will briefly introduce the requirements for the establishment of these three types of business entities and the criteria that the shareholders of wholly foreign-invested banks and Sino-foreign joint venture banks need to meet.

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17 *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies* (2018), the former CIRC [2004] No. 4, issued on 13 May 2004, amended by the *Decision of the former CIRC on Amending Four Regulations including Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies*, the former CIRC [2018] No. 4, issued by the former CIRC on 13 February 2018.

18 *Interim Provisions on the Administration of Insurance Asset Management Companies* (2011), the former CIRC [2004] No. 2, issued on 21 April 2004, amended by *Notice on Amending Relevant Rules of Interim Provisions on the Administration of Insurance Asset Management Companies*, the former CIRC [2011] No. 19, issued on 7 April 2011.

19 *Notice of the China Banking and Insurance Regulatory Commission on Allowing Foreign Investors to Operate Insurance Agency Business in China*, CBIRC [2018] No. 30, issued on 19 June 2018.

20 Article 2 of the *PRC Regulations on the Administration of Foreign Invested Banks*.

21 A foreign financial institution referred to in these Regulations shall mean a financial institution that is registered outside the PRC and approved or licensed by the finance regulatory authority of the country or region where it resides.

In addition, foreign investors investing in **non-banking financial institutions** in China also need to apply for administrative licensing/approval with the Chinese regulatory authorities. These non-banking financial institutions include:

- ✧ Financial asset management companies
- ✧ Corporate group finance companies
- ✧ Financial leasing companies
- ✧ Vehicle finance companies
- ✧ Currency brokerage companies
- ✧ Consumer finance companies
- ✧ Trust companies
- ✧ Overseas representative offices of non-banking institutions in China<sup>22</sup>

Due to the limited length of this Guide, we will not elaborate on the qualifications and approval procedures for foreign firms investing in the aforementioned non-banking institutions in China.

## **(i) Requirements for establishing or investing in a foreign invested bank's business entity**

### **1. Registered capital requirements of wholly foreign-invested banks and Sino-foreign joint venture banks**

The establishment of a wholly foreign-owned bank or a Sino-foreign joint venture bank in China is subject to approval by the CBIRC, and the minimum registered capital of such banks shall be RMB 1 billion or the equivalent amount in an exchangeable foreign currency. The registered capital shall be contributed in full.<sup>23</sup>

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<sup>22</sup> Article 2 of the *Measures for Administrative Licensing of Non-Bank Financial Institutions of China Banking Regulatory Commission* and Article 4 of the *Measures of the China Banking Regulatory Commission for the Implementation of Items Requiring Administrative Licensing for Trust Companies*.

<sup>23</sup> Article 8 of the *PRC Regulations on the Administration of Foreign Invested Banks*.

## 2. Common requirements needed to be met by the shareholders of wholly foreign-invested banks and Sino-foreign joint venture banks, or by foreign banks that intend to set up branches and representative offices

The shareholders or foreign banks that intend to establish wholly foreign-invested banks, Sino-foreign joint venture banks or branches or representative offices in China shall meet the requirements of sustainable profitability, good reputations, no material violations of laws and regulations, having had sufficient experience in international financial activities, and having established an effective anti-money laundering system. The foreign shareholders of the proposed wholly foreign-invested bank, the foreign shareholders of the Sino-foreign joint venture bank, or the foreign bank that intends to set up a branch or representative office in China shall be effectively supervised by the financial regulatory authorities of the country or region in which they are registered, and their applications shall be approved by such financial regulatory authorities. It should be noted that the country or regions of registration of the shareholders of the wholly foreign-invested banks, Sino-foreign joint venture banks or foreign banks proposed to set up branches or representative offices in China shall have established a sound financial regulatory and supervision system, and a good regulatory cooperation with the CBIRC.<sup>24</sup>

## 3. Other conditions that shareholders of the wholly foreign-invested bank and Sino-foreign joint venture bank need to meet

In addition to the abovementioned common requirements, the shareholder(s) of a wholly foreign-invested bank must also be financial institution(s), among them (as the case may be) the sole shareholder or the controlling shareholder shall also be a commercial bank whose total assets, as of the end of the year before the application for the establishment, shall be no less than US\$10 billion<sup>25</sup> (for banks from Hong Kong or Macau, total assets shall be no less than US\$6 billion), and the capital adequacy ratio shall conform to the relevant requirements set forth by the CBIRC and the applicable financial regulatory authority of the residing country or region.<sup>26</sup>

As to the shareholders of a Sino-foreign joint venture bank, in addition to foreign shareholder(s) satisfying the abovementioned common requirements, the foreign shareholder(s) and the sole or

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<sup>24</sup> Article 9 of the *PRC Regulations on the Administration of Foreign Invested Banks*.

<sup>25</sup> According to the Head of CBIRC Guo Shuqing's statement on 1 May 2019 (see Annex 2 for details), the total assets requirement is expected to be cancelled.

<sup>26</sup> Article 11 of the *Implementation Measures of the Administrative Licensing for Foreign-Invested Banks*.

main Chinese shareholder shall be financial institutions. In particular, the sole or main foreign shareholder shall meet the same criteria stipulated for the foreign shareholder of the wholly foreign-invested bank in the paragraph above.<sup>27</sup>

In addition to the above, shareholders of the wholly foreign-invested banks and Sino-foreign joint venture banks should also pay close attention to the following circumstances. If any of the following circumstances occur, its shareholder qualification will be restricted/impaired:

- (1) Obvious defect(s) in its corporate governance structure and mechanism;
- (2) Shareholding structure is abnormally complex or lacking in transparency;
- (3) Too many affiliated entities, and related-party transactions are unreasonably frequent or abnormal;
- (4) The core business is not prominent or the business scope is unreasonably wide;
- (5) Fluctuations in cash flow are greatly susceptible to the economic climate;
- (6) The asset-liability ratio and financial leverage ratio are significantly higher than the industry average;
- (7) Acting as nominal shareholder of wholly foreign-invested bank or Sino-foreign joint venture bank<sup>28</sup>;
- (8) Other situations that would have a material adverse effect on the proposed establishment of the bank.

Therefore, if a foreign investor intends to incorporate a wholly foreign-invested bank or invest in a Sino-foreign joint venture bank in China, it is advisable to ascertain whether it has satisfied all the applicable requirements and conditions, and cleared from any circumstances which might trigger any restrictions on its eligibility.

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<sup>27</sup> Article 12 of the *Implementation Measures of the Administrative Licensing for Foreign-Invested Banks*.

<sup>28</sup> Article 5 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

## 4. Requirements for a foreign bank to set up its branch(es) in China

### (1) Working Capital Requirements

A foreign bank setting up a branch in China needs to satisfy minimum working capital requirements, which means, the head office of the foreign bank shall allocate, at no additional costs, working capital no less than RMB200 million or equivalent amount in exchangeable foreign currency to its branch.<sup>29</sup> This is also one of the preconditions to be met by a foreign bank carrying out foreign exchange business in China. Where a foreign bank's China branch intends to conduct RMB business, its working capital shall be no less than RMB 300 million or the equivalent amount in an exchangeable foreign currency, of which the working capital in RMB shall be no less than RMB 100 million and the working capital in the foreign currency shall be no less than the amount equivalent to RMB 200 million.<sup>30</sup>

### (2) Other requirements

The foreign bank shall have total assets of no less than US\$20 billion<sup>31</sup> (for banks from Hong Kong or Macau, total assets shall be no less than US\$6 billion) as of the end of the year before the application for establishment. The capital adequacy ratio shall comply with the applicable requirements set out by the CBIRC as well as the relevant financial regulatory authority of the country or region where it is registered.<sup>32</sup>

## **(ii) Application and approval of the establishment of a foreign invested bank's business entity or a representative office of a foreign bank**

The CBIRC is in charge of approving the establishment of a foreign invested bank's business entity and the establishment of a representative office of a foreign bank. The main difference between these two types of approval procedure is that the former requires a **financial license**.<sup>33</sup>

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29 Article 8 of the *PRC Regulations on the Administration of Foreign Invested Banks*

30 Article 29 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

31 According to the Head of CBIRC Guo Shuqing's statement on 1 May 2019 (see Annex 2 for details), the total assets requirement is expected to be cancelled.

32 Article 31 of the *Measures for the Administrative Licensing of Foreign Invested Banks of the CBIRC*.

33 Article 29 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

The specific approval procedures and relevant application materials required are summarized below.<sup>34</sup>

## 1. Establish a foreign invested bank's business entity

### (1) Approval Process

The establishment of a foreign invested bank's business entity is divided into two stages: preparation and opening. The application for the preparation of establishing a foreign invested bank's business entity shall **be received and initially examined by the banking regulatory bureau where the proposed entity is registered, and is subject to final review and decision by the CBIRC**. The specific approval process is as follows:

### (2) Required application materials and relevant work

#### A. Application for Preparation of Establishment

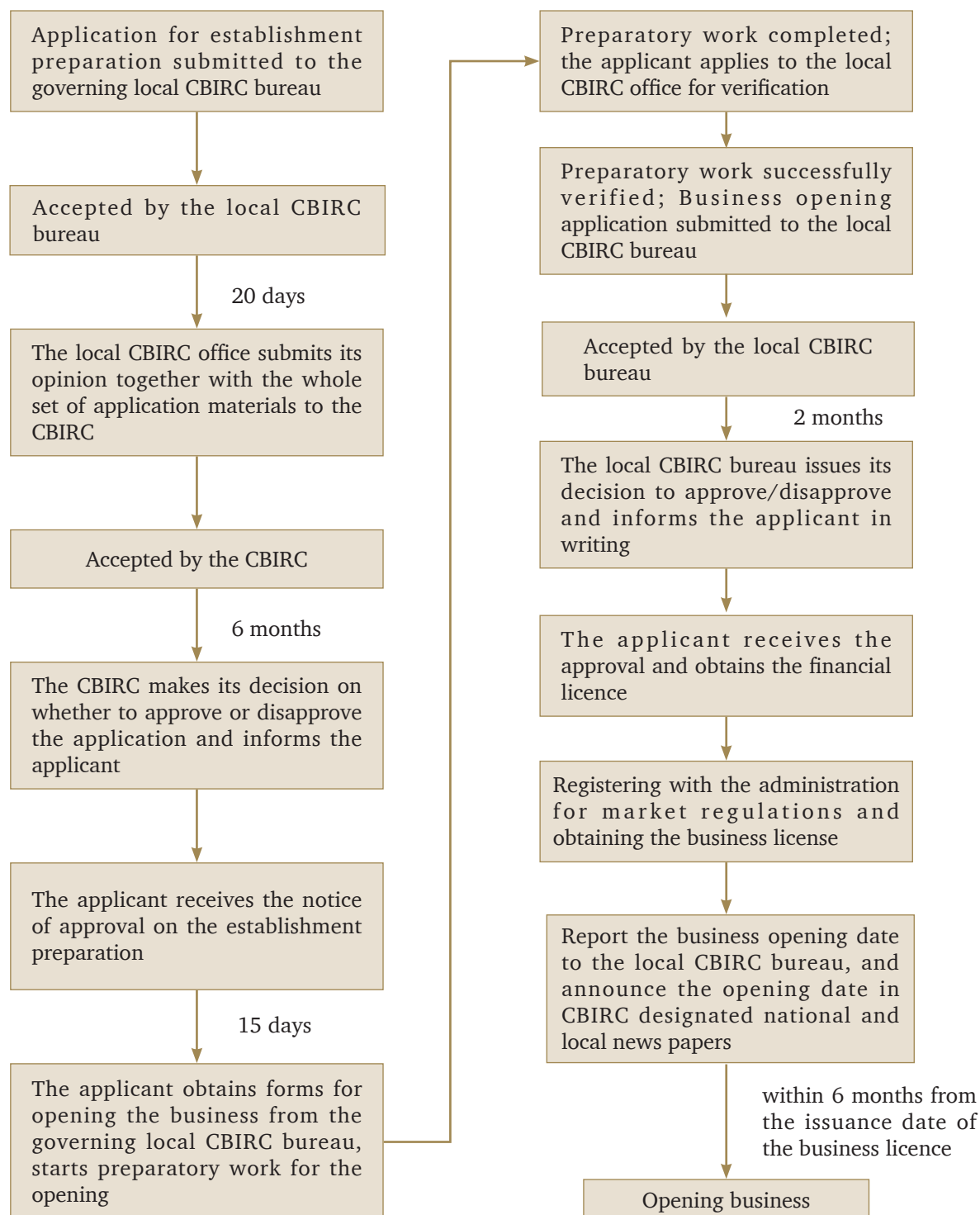
The following materials are required to be submitted for the establishment preparation of a Sino-foreign joint venture bank or a wholly foreign-invested bank:

- (i) A written application for preparing the establishment in China addressed to the Chairman of CBIRC, signed jointly by the chairman of the board of directors or the bank president (chief executive officer/general manager) of each shareholder. The application shall include the proposed name, address, registered capital, types of business applied, names of shareholders and the respective proportions of capital contribution, etc.
- (ii) Feasibility study report, which shall at least include the basic information of the applicant, an analysis of the market prospects of the proposed entity in China, a business development plan, a corporate governance structure plan, a 3-year (after opening) financial forecast on the assets and liabilities, profit and loss figures, and preliminary plans for the IT system, data center and networks in relation to its business operations;
- (iii) Draft articles of association of the proposed entity in China;

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<sup>34</sup> This flow chart of approval of establishing foreign invested bank's business entity is made according to the *Measures for the Administrative Licensing of Foreign Invested Banks of the CBRC*, the *Regulations on the Administration of Foreign Invested Banks* and *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

## Flow chart of approval of establishing foreign invested bank's business entity



- (iv) A joint venture contract signed by the shareholders of the proposed joint venture bank, except for the sole shareholder of a wholly foreign-invested bank;
- (v) Articles of association, or equivalent constitutional document, of each shareholder of the proposed entity in China;
- (vi) Respective shareholder(s)' organization chart/shareholder structure, list of major shareholders, list of overseas subsidiaries/branches and affiliated entities;
- (vii) Annual reports of the shareholder(s) for the past three years;
- (viii) The anti-money laundering system of the shareholder(s);
- (ix) Letter of undertaking signed by the shareholders for long-term sustainable operation in China and effective management of the proposed entity in China;
- (x) Photocopy of business licence or relevant financial licence issued by the financial regulatory authority of the country or region where the foreign shareholder(s) is registered and its applicable authority's opinion on the application;
- (xi) Where establishing a wholly foreign-invested bank or a Sino-foreign joint venture bank for the first time, a summary of the financial system of the country or region where the foreign shareholder is registered and relevant financial laws and regulations shall be submitted;
- (xii) Other information required by the CBIRC.<sup>35</sup>

The following materials are required to be submitted for the preparation for establishment of a foreign bank's China branch:

- (i) A written application for preparing the establishment in China addressed to the Chairman of CBIRC, signed by applicant's chairman of the board of directors or the bank president (chief executive officer/general manager). The application shall include the proposed name, address, working capital, types of business applied etc.
- (ii) A feasibility study report, which shall include basic information on the applicant, a market

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<sup>35</sup> Article 17 of the *Measures for the Administrative Licensing of Foreign Invested Banks*.

prospects analysis of the proposed branch in China, a business development plan, a corporate governance structure plan, a 3-year (after opening) financial forecast on the assets and liabilities, profit and loss figures, etc.;

- (iii) Applicant's articles of association;
- (iv) A shareholding structure/organization chart of the applicant and its corporate group, a list of major shareholders and a list of overseas subsidiaries/branches and affiliates;
- (v) The annual reports of the applicant for the past three years;
- (vi) The applicant's anti-money laundering system;
- (vii) A photocopy of the business license or relevant financial licence issued by the financial regulatory authority of the country or region where the applicant is registered and its applicable authority's opinion on the application;
- (viii) Where a foreign bank is to establish a branch in China for the first time, the applicant shall submit a summary of the financial system of the country or region in which it is registered and relevant financial laws and regulations;
- (ix) Other information required by the CBIRC.<sup>36</sup>

## B. Preparation for Establishment

Once the establishment preparation application is approved, the opening preparatory work includes:

- (i) establishing and improving the corporate governance structure, and reporting the corporate governance structure to the local CBIRC bureau (only applicable to a wholly foreign-invested bank and a Sino-foreign joint venture bank);
- (ii) establishing an internal control system, including internal organization structure, authorization and delegation, credit extension, management of credit funds, cash transactions, accounting, the IT control system and operational procedures, and reporting the internal control and operational procedures to the local CBIRC;

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<sup>36</sup> Article 35 of the *Measures for the Administrative Licensing of Foreign Invested Banks*.

- (iii) staffing with sufficient business personnel suitable for the proposed business development and who have received relevant training concerning for example policies and regulations and business knowledge, so as to meet the requirements for the effective monitoring of major business risks, approvals and verifications at different levels, allocation of functions of key positions and cross checks, etc.;
- (iv) printing out important business vouchers, receipts and slips to be used externally, and filing specimens of these with the local CBIRC counterpart for its records;
- (v) equipping safety and security facilities approved by the relevant government authorities, and submitting copies of relevant certificates to the local CBIRC counterpart;
- (vi) engaging a qualified accounting firm (CPAs) in China to conduct pre-opening audits of the internal control, accounting and IT systems, etc., and submitting the audit reports to the local CBIRC counterpart.<sup>37</sup>

### C. Application for Business Opening

The applicant for business opening of a wholly foreign-owned bank or a Sino-foreign joint venture bank shall submit the "Verification Certificate of Business Opening" together with the following application materials (in duplicate) to the applicable local CBIRC office/bureau:

- (i) An "Application for Business Opening" signed by the person-in-charge of the preparatory team addressed to the Chairman of the CBIRC, which shall include the name and address, registered capital, scope of business, all the shareholders and their shareholding percentage, and name of the proposed Chairman and President (Chief Executive Officer, general manager); where the applicant has established a representative office in the same city where the wholly foreign-owned bank or Sino-foreign joint venture bank is proposed to be established, an application for closure of the representative office shall be submitted simultaneously;
- (ii) "Application Form for Business Opening";
- (iii) The relevant materials required for approval of appointment qualifications of the proposed Chairman and President (Chief Executive Officer, general manager);

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<sup>37</sup> Article 10 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

- (iv) Pre-business opening audit report, and capital verification certificate (normally issued by an accounting firm in China);
- (v) Organisation structure chart of the proposed bank, description of job duties of all job positions, internal authorisation and reporting lines;
- (vi) List, CVs and training records of employees of the proposed bank;
- (vii) Draft articles of association of the proposed bank, and legal opinion on the draft articles of association issued by a Chinese law firm;
- (viii) Photocopies of security and fire system certificates of the business premises, or other relevant proofing materials;
- (ix) Photocopies of proof of ownership and proof of use rights or lease agreement of the business premises; and
- (x) Other information required by the CBIRC.<sup>38</sup>

The applicant for business opening of the proposed foreign bank's branch in China shall submit the "Verification Certificate of Business Opening" together with the following application materials (in duplicate) to the applicable CBIRC office/bureau:

- (i) An "Application for Business Opening" signed by the person-in-charge of the preparatory team addressed to the Chairman of the CBIRC, which shall include the name, business address, working capital, business scope, and name of the proposed candidate for the branch manager; where a representative office is established in the same city as the proposed branch, an application for closure of the representative office shall be submitted simultaneously;
- (ii) "Application Form for Business Opening";
- (iii) The relevant materials for approval of appointment qualifications of the proposed candidate for the manager of the proposed foreign bank branch;

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<sup>38</sup> Article 20 of the *Measures for the Administrative Licensing of Foreign Invested Banks*.

- (iv) Pre-business opening audit report, and capital verification certificate (normally issued by an accounting firm in China);
- (v) A letter of indemnity for bearing of taxes and debt liabilities of the proposed branch by the foreign bank;
- (vi) Organisation structure chart of the proposed branch, description of job duties of all job positions, internal authorisation and reporting lines;
- (vii) List, CVs and training records of the staff of the proposed branch;
- (viii) Photocopies of security and fire system certificates of the business premises, or other relevant proofing materials;
- (ix) Photocopies of proof of ownership and proof of use rights or lease agreement of business premises; and
- (x) Any other materials required by the CBRC.<sup>39</sup>

For the approval process and related materials for establishing a foreign invested bank's business entity, please also refer to the *Guidelines for the Establishment, Change and Termination of Foreign Invested Banks' Business Entity and Their Branches* by the CBIRC, available at: <http://www.cbrc.gov.cn/chinese/home/docView/8A3A4E495FCF450081AC595E95D75099.html>.

## 2. Establishing a representative office of a foreign bank

### (1) Approval Process

The establishment of a representative office of a foreign bank in China is also subject to the approval of the CBIRC. The CBIRC shall make a decision on whether or not to approve the application within six (6) months from the date of receipt of the application for the establishment of the foreign bank's representative office. Upon approval, the foreign bank's representative office shall register with the

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<sup>39</sup> Article 38 of the *Measures for the Administrative Licensing of Foreign Invested Banks*.

local administration for market regulation, obtain the business licence (company registry certificate equivalent) and make an announcement in the CBIRC designated national and local newspapers.

The representative office of a foreign bank shall move into the permanent office premises within six (6) months from the date of approval; Otherwise, the approval will expire.<sup>40</sup>

## (2) Required application materials

### A. Application stage

The application materials required for establishing a representative office of a foreign bank in China are as follows:

- (i) An application form signed by the Chairman or President (Chief Executive Officer, general manager) of the applicant addressed to the Chairman of the CBIRC, including the name and location of the proposed representative office, and name of the proposed candidate for the chief representative;
- (ii) An application statement for the establishment of representative office;
- (iii) A feasibility study report including the basic information of the applicant, and the objective and plans of the proposed representative office etc.;
- (iv) The applicant's articles of association or equivalent constitutional document;
- (v) Organisation structure chart of the applicant and its group, list of key shareholders, list of overseas branches, sub-branches, subsidiaries and affiliates;
- (vi) The applicant's annual reports for the past three years;
- (vii) The applicant's anti-money laundering system;
- (viii) Photocopy of business licence or financial business licensing document issued by the financial regulatory authorities of the applicant's home country or region, and its opinion on the

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<sup>40</sup> Article 21 of the *Regulations on the Administration of Foreign Invested Banks* and Article 19 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

application;

- (ix) The relevant materials for approval of appointment qualifications of the proposed chief representative;
- (x) For first-time establishment of a representative office, the applicant shall submit the proof document issued by a banking institution registered in China stating that it is a correspondent bank with the said foreign bank, together with the summary information of the financial system and financial regulations of the applicant's home country or region;
- (xi) Other information/materials as required by the CBIRC.<sup>41</sup>

#### B. Moving into the permanent office premises

Upon moving into the permanent office premises, the representative office of a foreign bank shall submit the following materials to the applicable CBIRC counterpart at the locality:

- (i) The registration form containing basic information on the representative office;
- (ii) A photocopy of the business registration certificate;
- (iii) Information of the internal management system, including the representative office's duties and responsibilities, internal work and internal reporting systems etc.;
- (iv) Photocopies of the lease agreement or title certificate of the office premises;
- (v) Information on the office facilities and rental of telecommunication lines from the telecom provider;
- (vi) Specimen of official seal, letterhead and business cards used by staff members;
- (vii) Other information/materials required by the CBIRC.<sup>42</sup>

For the approval process and relevant application materials for establishing a representative office

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<sup>41</sup> Article 57 of the *Measures for the Administrative Licensing of Foreign Invested Banks*.

<sup>42</sup> Article 20 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

of a foreign bank, please also refer to the *Guidelines for the Establishment, Change and Termination of Foreign Bank's Representative Office* by the CBIRC, available at: <http://www.cbrc.gov.cn/chinese/home/docView/5867B812BF0D4CBCADFB92293D731F9.html>.

### 3. Establishing a branch of a Sino-foreign joint venture bank or a wholly foreign-invested bank

#### (1) Approval Process

The establishment of a branch of a wholly foreign-invested bank or a branch of a Sino-foreign joint venture bank is divided into two stages: preparation and opening. The application for preparing the establishment of a first-tier branch (a.k.a. tier-one branch) of a wholly foreign-invested bank and the first-tier branch of a Sino-foreign joint venture bank directly supervised by the CBIRC shall be received, reviewed and decided upon by the CBIRC. The application for the preparation of establishing other branches of a wholly foreign-invested bank or Sino-foreign joint venture bank shall be received, reviewed and decided by the applicable local CBIRC counterpart where the proposed branch is registered. The specific approval process is as follows:<sup>43</sup>

#### (2) Required application materials and relevant work

##### A. Application for Establishment Preparation

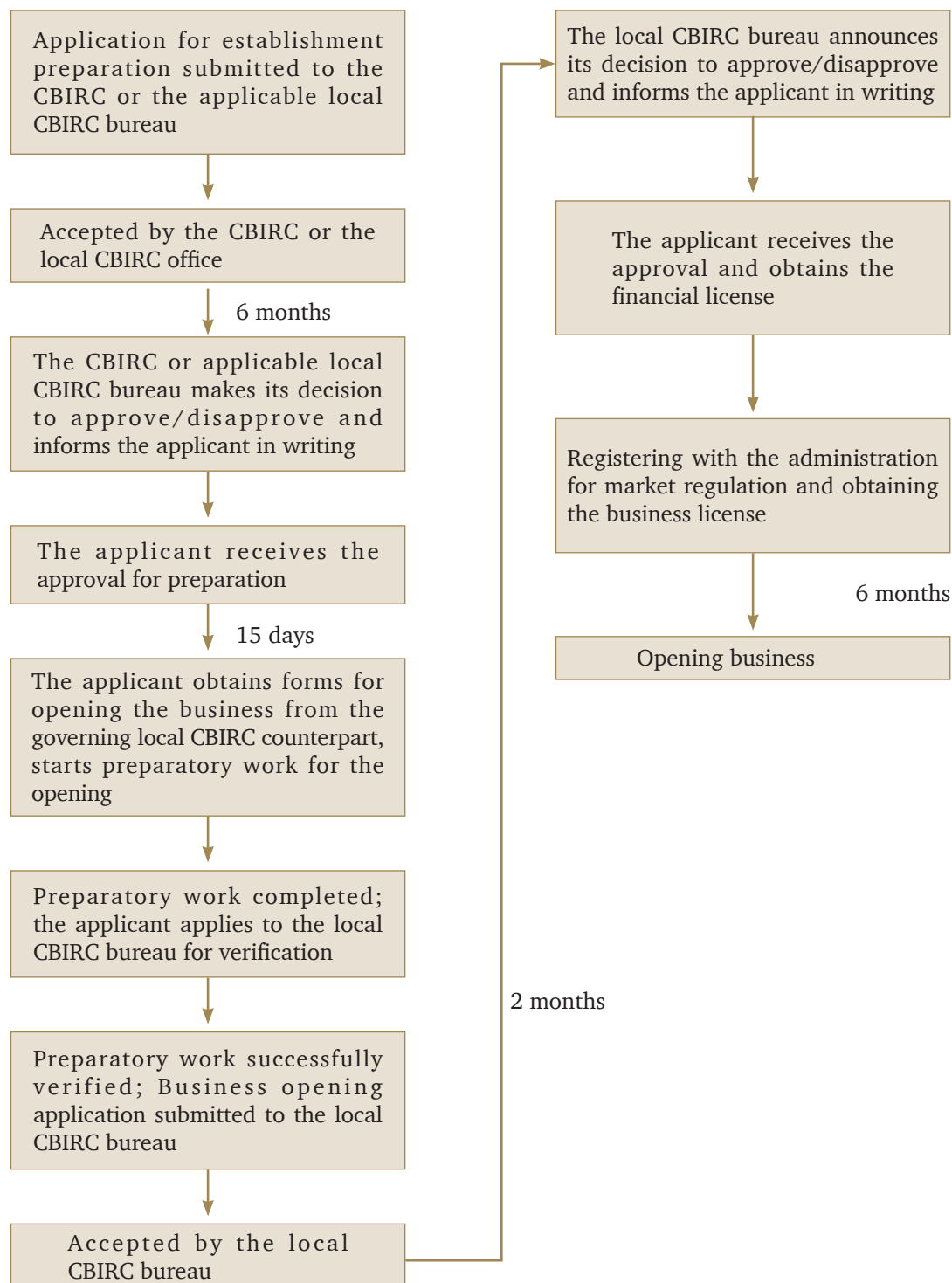
The materials required to be submitted for setting up a branch of a wholly foreign-invested bank or of a Sino-foreign joint venture bank are as follows:

- (i) An application form for preparing setting up a branch signed by the Chairman or President (Chief Executive Officer, general manager) of the applicant addressed to the Chairman of the CBIRC, which shall include the name, location, working capital, types of businesses etc of the proposed branch;
- (ii) A feasibility study report including at least the basic information on the applicant, a market prospects analysis, business development plans, organization management structure chart of the proposed branch, financial forecasts of assets and liabilities as well as profit and loss figures for the three-year period following business commencement;

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<sup>43</sup> Flow chart of approval of establishing a branch of JV bank, foreign wholly-owned bank is made according to the *Measures for the Administrative Licensing of Foreign Invested Banks*, the *Regulations on the Administration of Foreign Invested Banks* and the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

## Flow chart of the approval of establishing a branch of a JV bank or a foreign wholly-owned bank



- (iii) The applicant's articles of association;
- (iv) The applicant's annual reports;
- (v) The applicant's anti-money laundering system;
- (vi) A photocopy of the applicant's business licence;
- (vii) Board resolution of the applicant approving the setting up of the proposed branch; and
- (viii) Other information/materials required by the CBIRC.<sup>44</sup>

## B. Application for the Business Opening

The proposed branch of a wholly foreign-owned bank or a Sino-foreign joint venture bank applying for business opening shall submit the "Verification Certificate of Business Opening" together with the following application materials (in duplicate) to the applicable local CBIRC office/bureau:

- (i) "Application for Business Opening" signed by the person-in-charge of the preparatory team addressed to the Chairman of the CBIRC, which shall include the name, business address, working capital, scope of business of the proposed branch, and name of the proposed candidate of the branch manager;
- (ii) Application form for opening the business;
- (iii) The relevant materials for approval of appointment qualifications of the proposed candidate for the branch manager;
- (iv) Pre-business opening audit report, and capital verification certificate (normally issued by an accounting firm in China);
- (v) Photocopies of security and fire system certificates of the business premises, or other relevant proofing materials;
- (vi) An organization structure chart of the proposed branch, description of job duties of all job

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<sup>44</sup> Article 43 of the *Measures for the Administrative Licensing of Foreign Invested Banks*

positions, internal authorisation and reporting lines;

(vii) List, CVs and training records of the staff of the proposed branch;

(viii) Photocopies of proof of ownership, proof of use rights or lease agreement of business premises;  
and

(ix) Other information required by the CBIRC.<sup>45</sup>

For the approval process and relevant materials for establishing a branch of a Sino-foreign joint venture bank or a wholly foreign-invested bank, please refer to the Guidelines for the Establishment, Change and Termination of Foreign Invested Banks' Business Entity and Their Branches by the CBIRC, available at:

<http://www.cbrc.gov.cn/chinese/home/docView/8A3A4E495FCF450081AC595E95D75099.html>

### **(iii) Banking-related businesses**

In China, a wholly foreign-invested bank or a Sino-foreign joint venture bank may, pursuant to the scope of business approved by the CBIRC, engage in all or some of the following foreign currency and RMB businesses:

1. accepting public deposits;
2. offering short-term, mid-term and long-term loans;
3. accepting and discounting bills;
4. buying and selling government bonds, financial bonds and other securities priced in foreign currencies other than stocks;
5. providing letters of credit and guarantees;
6. processing domestic and international settlements;
7. buying and selling foreign exchange whether on its own or acting as an agent;

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<sup>45</sup> Article 46 of the *Measures for the Administrative Licensing of Foreign Invested Banks*

8. acting as an insurance agent;
9. engaging in interbank borrowing and lending;
10. engaging in bank card business;
11. providing safe deposit boxes;
12. providing credit checks and consultancy services; and
13. engaging in any other business approved by the CBIRC

In addition, wholly foreign-invested banks and Sino-foreign joint venture banks may, upon approval by the **PBOC**<sup>46</sup>, engage in the sale and purchase of foreign currencies.<sup>47</sup>

In accordance with the business scope approved by the CBIRC, **branches** of foreign banks may operate part or all of foreign exchange businesses **except bank card business** and RMB businesses for **customers other than domestic Chinese citizens** within the business scope applicable to the wholly foreign-invested banks and Sino-foreign joint venture banks.<sup>48</sup>

A **representative office** of a foreign bank may engage in **non-operational activities** such as liaison, market research and consultation related to the foreign banking business it represents.<sup>49</sup>

If a wholly foreign-invested bank, a Sino-foreign joint venture bank or a branch of a foreign bank intends to conduct any of the aforementioned businesses, it should apply to the CBIRC for administrative examination and approval. If the **securities investment fund custodian service** is involved, a relevant application shall be submitted to the China Securities Regulatory Commission ("**CSRC**"), with the CBIRC copied in.<sup>50</sup> In view of the differences in the relevant requirements, application materials and approval timelines, we will not fully elaborate on these in this Guide.

#### **(iv) Basel III and Capital Regulatory Requirements by the CBIRC**

In addition to the aforementioned approval requirements and criteria, foreign invested banks'

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46 People's Bank of China (China's central bank)

47 Article 29 of the *Regulations on the Administration of Foreign Invested Banks*.

48 Article 31 of the *Regulations on the Administration of Foreign Invested Banks*.

49 Article 33 of the *Regulations on the Administration of Foreign Invested Banks*.

50 Article 11 of the *Administrative Measures on Securities Investment Fund Custodian Business*.

business entities are also required to meet relevant capital regulatory requirements. In 2010, the Basel Committee issued Basel III: A global regulatory framework for more resilient banks and banking systems (amended in June 2011, "**Basel III**")<sup>51</sup> and required participating members to complete the formulation and amendment of relevant national regulations within two years. The new regulatory standards were implemented on 1 January 2013 and shall be fully met by 1 January 2019.

Basel III established a new financial supervision model that combines micro-prudential management with macro-prudential management, and greatly improved the capital supervision requirements for commercial banks. In this regard, the former CBRC issued the *Guiding Opinions on the Implementation of New Regulatory Standards for the Chinese Banking Industry* (the "**New Regulatory Standards**") and the *Capital Management Measures for Commercial Banks (Trial)* (the "**Capital Measures**"), which fully introduced the capital quality standards and capital supervision requirements under Basel III. Under the premise of complying with and meeting international standards and in consideration of the domestic practice of the banking sector, the New Regulatory Standards and the Capital Measures further clarify the regulatory standards of China's commercial banking industry.

According to Basel III, banks' regulatory capital is divided into Tier 1 capital (going-concern capital) and Tier 2 capital (gone-concern capital); while Tier 1 capital is subdivided into Common Equity Tier 1 and Additional Tier 1 capital. The New Regulatory Standards and Capital Measures have inherited the definition and scope of the capital, but have made minor adjustments to the composition of various types of capital.

The distinction is important because security instruments included in Tier 1 capital have the highest level of subordination. Common Equity Tier 1 capital includes equity instruments that have discretionary dividends and no maturity, while additional Tier 1 capital comprises securities that are subordinated to most subordinated debt, have no maturity, and their dividends can be cancelled at any time. Tier 2 capital consists of unsecured subordinated debt with an original maturity of at least five years.

With regard to the limits and proportions of regulatory capital, Basel III provides that 1) Common Equity Tier 1 capital must be at least 4.5% of risk-weighted assets; 2) Tier 1 Capital must be at least

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<sup>51</sup> In December 2017, Basel III was revised again, the new version will be implemented from 1 January 2022.

6.0% of risk-weighted assets; and 3) Total Capital must be at least 8.0% of risk-weighted assets; while the New Regulatory Standards and the Capital Measures are more stringently stipulate that 1) Common Equity Tier 1 capital adequacy ratio must be at least 5%; 2) Tier 1 Capital adequacy ratio must be at least 6%; and 3) Total Capital adequacy ratio must be at least 8%.

In addition, the New Regulatory Standards and Capital Measures have also inherited the regulatory requirements of Basel III with respect to capital conservation buffer and countercyclical buffer. The capital conservation buffer is designed to ensure that banks establish capital buffers outside periods of stress which can be drawn down as losses are incurred. Basel III stipulates that the capital conservation buffer of 2.5%, comprised of Common Equity Tier 1 capital, is established above the regulatory minimum capital requirement. The Capital Measures also require commercial banks to accrue reserve capital on the basis of minimum capital requirements. The capital reservation is required to be 2.5% of risk-weighted assets, which are comprised of Common Equity Tier 1 capital. Countercyclical buffer aims to ensure that banking sector capital requirements take account of the macro-financial environment in which banks operate. Basel III stipulates that banks should be subject to a countercyclical buffer that varies between zero and 2.5% to total risk-weighted assets. The requirement for counter-cyclical buffer can only be comprised of Common Equity Tier 1 Capital or other capital with full loss absorbing capital. The Capital Measures stipulates that countercyclical buffer accounts for 0-2.5% to risk-weighted assets, which are comprised of Common Equity Tier 1 capital. The rules for the accrual and application of countercyclical buffer shall be separately prescribed by the CBIRC.

## **(v) The history and current status of foreign banks in China**

In the last four decades, the Chinese banking sector's liberalization has steadily broadened and deepened, forming an important part of China's reform and opening up. By means of investing in domestic Chinese banks, foreign investment in China's banking sector can be traced back to 1997 when the Asian Development Bank invested in China Everbright Bank and acquired the latter's shares. China Everbright Bank then became the very first joint-stock commercial bank in China with an international financial institution as its shareholder. In the following years, IFC helped expedite the transformation of China's commercial banks: between 1999 and 2009, IFC made equity investments in eight Chinese commercial banks totaling \$471.7 million.

Foreign invested banks are now integrated into the Chinese financial system. Foreign invested banks in China have sufficient capital, stable liquidity, good asset quality, and have maintained

stable operations. As of June 2018, the **total number** of foreign invested banks' business entities in China was 1,005, a nearly five-fold increase over the past 15 years, with an average annual growth rate of 13%. The **total assets** of foreign invested banks in China have increased by 7.56% year-on-year, and the overall development has been relatively stable. The number of entities and asset value have increased steadily, and the asset quality remains good. In 2017, the accumulated net profits of foreign invested banks in China was equivalent to ten times that of 2002. At the end of the same year, the registered capital of foreign invested banks had increased by more than six times over the figure for the end of 2002.

In this context, China is speeding up the opening of the banking sector. The CBIRC has clearly stated that it will make all possible efforts to reduce the number of administrative licensing requirements, simplify the licensing process, and improve the access to the banking sector as much as possible, further unifying the standards for market access for Chinese and foreign investors, and strengthening careful supervision. China has now lifted the restrictions on the foreign shareholding in the banking sector, and continues to encourage foreign investment in China.

With the promotion of China's Belt and Road Initiative and international cooperation, China offers a great number of cross-border financial business opportunities for foreign banks in China, boosting the confidence of foreign banks to enter the Chinese market. Recently, four foreign banks have opened branches in Shanghai. These are the Shoko Chukin Bank, Ltd. Shanghai Branch, United Arab Emirates Joint Stock Company Shanghai Branch, Tai Fung Bank Co., Ltd. Shanghai Branch, Kasikorn Bank (China) Limited Company Shanghai Branch. In addition, Thailand's Siam Commercial Bank has received approval for establishing a Shanghai branch.

## V. Foreign Investment in the Insurance Sector

In China there are four main forms in which foreign investors can invest in the insurance sector:

- (1) Foreign invested insurance company, reinsurance company;
- (2) Foreign invested insurance intermediary institutions;
- (3) Foreign invested insurance asset management institutions;
- (4) Representative offices of foreign insurance companies.

We will briefly introduce the historical development of the opening up of the insurance sector and the features of the above four forms.

## **(i) The history and current status of the liberalization of China's insurance sector**

Over the past 40 years of China's reform and opening up, liberalization has always been the keynote of China's insurance market. It can be roughly divided into the following three phases:

### **Phase I: Preparation Period (1980-1992)**

During this period, foreign insurance companies began to set up representative offices in China to strengthen exchanges and communication between domestic and foreign players. At the same time, foreign insurance companies gradually gained a better understanding of China's insurance market and made necessary preparations for entering the market.

### **Phase II: Pilot Period (1992-2001)**

In 1992, the State Council picked Shanghai as China's first pilot city for opening the insurance sector to foreign investment. In September 1992, the PBOC adopted the *Interim Measures for the Administration of Foreign-invested Insurance Institutions in Shanghai*. Immediately afterwards, in October 1992, AIA set up its Shanghai branch which marked the official entry of a foreign insurance company into the Chinese market. Since then, insurance companies from Japan, Canada, France, the United Kingdom and Australia have also entered China. The investments made in China were no longer limited to setting up wholly owned subsidiaries but there also emerged Sino-foreign joint ventures. The pilot areas also expanded beyond Shanghai, for example to Guangzhou (in the south) and Beijing (in the north). Before China's accession to the WTO in 2001, 29 foreign insurance companies from 12 countries and regions established business entities in China. Among them were 16 Sino-foreign joint venture insurance companies and 13 branches of foreign insurance companies. In 2001 the premium income of foreign insurance companies in China reached RMB 3.28 billion.<sup>52</sup>

### **Phase III: Material Liberalization Period (2001 up to the present)**

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<sup>52</sup> Shanghai Securities News, Opening Up Promotes the Rapid Development of the Insurance Sector, [EB/OL]. <http://finance.sina.com.cn/roll/20041008/080228929t.shtml>

The most important event at that time was China's accession to the WTO. With China becoming part of the WTO, foreign insurance companies continued to come in droves, and China's insurance sector entered a period of material liberalization. Foreign insurance companies kept expanding their businesses in China and now covered Beijing, Tianjin, Suzhou, Chengdu, Chongqing, Xiamen, Ningbo, Shenyang, Wuhan, Fuzhou and other cities.

On the regulatory side, in December 2001, the *Regulations on the Administration of Foreign Invested Insurance Companies* were announced, which set up the basic regulatory framework for foreign-invested insurance companies in the post-WTO era. In 2004, the *Implementation Rules of the Regulations on the Administration of Foreign Invested Insurance Companies* were published, which provided a clearer legal basis for the market access and operation of foreign-invested insurance companies in China.

11 December 2004, according to the WTO accession agreement, the transition period of the insurance sector ended, and China materially liberalized its insurance sector including:

- ✧ allowing foreign life insurance companies to provide health insurance, group insurance and pension/annuity insurance services;
- ✧ abolishing the geographical restrictions on the establishment of foreign invested insurance companies;
- ✧ canceling most restrictions on foreign investment in life insurance companies, apart from the fact that the shareholding percentage of foreign investors in a life insurance company should not exceed 50% and that some specific requirements for the establishment of life insurance companies continued to be effective;
- ✧ relaxing the foreign shareholding in a Sino-foreign joint venture insurance brokerage company to 51%;
- ✧ removing the compulsory reinsurance requirements imposed on foreign invested insurance companies in respect of non-life insurance, personal accident and health insurance;
- ✧ easing down the minimum total asset requirement (from US\$ 500 million to US\$ 200 million) for foreign insurance brokerage companies applying for setting up insurance brokerage companies in China.

In April 2018, at the Bo'ao Asia Forum, President Xi Jinping exclaimed that China would speed up the opening of the insurance sector. On 27 April 2018, the CBIRC, as regulator, issued the *Measures of CBIRC to Accelerate the Implementation of the Opening Up of the Banking and Insurance Sectors* which provides that CBIRC intends to:

- ✧ raise the upper limit of foreign shareholding in a life insurance company to 51% and this upper limit will be lifted completely in three years' time;
- ✧ allow eligible foreign investors to come to China to operate insurance agencies as well as insurance survey businesses;
- ✧ liberalize the business scope of foreign invested insurance brokerage companies in line with peer Chinese domestic players on the market (national treatment).

In the latest version of the *Implementation Rules of the Regulations on the Administration of Foreign Invested Insurance Companies* (Draft for Consultation) issued by the CBIRC in early July 2018, the above-mentioned liberalization measures have been drafted; however this draft has not yet been officially enacted by the CBIRC. Although other relevant Chinese authorities, such as the MOFCOM and NDRC,<sup>53</sup> have explicitly recognized the critical foreign shareholding increase from 50% to 51% for life insurance companies, the stance of the main regulator CBIRC needs to be firmed up or tested; in fact from last April to now no 51% approval has been obtained. In any event, we are confident that, along with the materialization of those measures, China's insurance sector will certainly flourish with more dynamic market players.

## **(ii) Foreign Invested Insurance Company**

### **1. Market Access**

Foreign insurance companies applying for the establishment of foreign-invested insurance companies shall meet the following conditions<sup>54</sup>:

- (1) having operated in the insurance business for more than 30 years;
- (2) having already established representative offices in China for more than two years;

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<sup>53</sup> See footnote 6

<sup>54</sup> Article 8 of the *Regulations on the Administration of Foreign Invested Insurance Companies*

- (3) one year before making the application, having had total assets of no less than US\$ 5 billion by the end of the year;
- (4) the country or region where the foreign insurance company is located shall have a sound insurance regulatory system, and the foreign insurance company has been effectively regulated and supervised by the competent authority in its home jurisdiction;
- (5) having complied with the applicable solvency standards in its home jurisdiction;
- (6) having obtained its home jurisdiction regulator's consent in respect of submitting application in China;
- (7) other precautionary conditions as stipulated by the CBIRC

Currently the CBIRC is taking action to ease market access for foreign insurance companies and the latest regulatory movements have shown that by the end of this year, it is likely that **Chinese regulator will abolish the prerequisite 2-year representative office requirement before foreign investors can apply to set up an insurance operating company in China**. That CBIRC intends to do this was clearly reflected in the *Implementation Rules of the Regulations on the Administration of Foreign Invested Insurance Companies* (Draft for Consultation). It must be stressed that the draft rules have not yet been enacted and there are still some uncertainties. We suggest that overseas investors interested in entering China's insurance market remain stay alerted to any imminent updates in order to take appropriate action in good time.

## 2. Shareholding Ratio

According to the currently effective CBIRC regulation<sup>55</sup>, a foreign insurance company's shareholding in a joint venture insurance company operating life insurance business ("**Joint Venture Life Insurance Company**") is still capped at **50%**.

This limit has always been one of the biggest constraints on foreign investors in the life insurance sector. To date, except for a few companies such as AIA, Manulife and Allianz, which established their Joint Venture Life Insurance Companies in China with more than 50% shareholding before

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<sup>55</sup> Particularly Article 3 of the *Implementation Rules of the Regulations on the Administration of Foreign Invested Insurance Companies*

China's accession to the WTO, foreign investors' equity interest in the Joint Venture Life Insurance Companies has been limited to 50% or less.

As mentioned earlier, the market has been longing for the 50% cap to be raised to 51%; in three years' time we can hope that the shareholding limit will be completely lifted as promised by the Chinese government and regulator. From a practical point of view, it is critical to closely watch when the relaxation of the relevant rules and regulations can actually come into force.

It can be expected that when the above policies come to fruition, market players will adjust their shareholding percentage in the Joint Venture Life Insurance Companies as soon as practically possible. More and more foreign investors will seek control of Chinese life insurance companies. This will optimize the corporate governance structure of the existing Joint Venture Insurance Companies, increase foreign investors' investment appetite in the insurance sector, and significantly improve their market competitiveness in China.

It is worth noting that on 25 November 2018, the CBIRC officially approved Allianz's application for establishing Allianz China Insurance Holdings Co., Ltd. This is the very first foreign invested insurance holding company approved in China. Following that, on 27 March 2019, the CBIRC approved three other applications for market access and the expansion of the licensed business operating region, these being:

- ✧ Heng An Standard Life (HASL), a joint venture between Standard Life Aberdeen and Tianjin TEDA International, has been granted permission to establish a pensions insurance company in China which is only the ninth insurance company, and the first joint venture business, to have received this approval;
- ✧ ACE's increased shareholding in ACE Huatai has been approved; and
- ✧ AIA China Beijing branch office has received approval to begin preparations for the establishment of sales and service centres in Tianjin and Shijiazhuang, Hebei Province. This approval was granted in accordance with the pilot programme on promoting insurance integration under the Beijing-Tianjin-Hebei Integration Plan.

The above listed regulatory approvals, as positive signals made by the CBIRC, demonstrate the regulator's determination to encourage the further liberalization of the insurance sector. It is believed that more foreign insurance companies will be interested in entering the Chinese market.

### (iii) Foreign Invested Insurance Intermediaries

#### 1. Insurance Agency Business

Establishment of a professional insurance agency company shall satisfy the following criteria (equally applicable to both domestic Chinese and foreign investors):<sup>56</sup>

- ✘ the shareholder(s) have a good reputation and have no record of material violations of law within the past three years;
- ✘ its registered capital amounts to RMB 50 million;
- ✘ the company's articles of association comply with relevant regulations;
- ✘ the chairman, executive director and senior management personnel meet the relevant qualifications;
- ✘ it has a sound organizational structure and management system;

it has suitable business premises compatible with the scale of the business;

it has computer hardware and software facilities for business and finance that are suitable for business development;

other conditions that are stipulated by laws, regulations and CBIRC.

According to the *Notice of the CBIRC on Allowing Foreign Investors to Operate Insurance Agency Businesses in China*<sup>57</sup>, with foreign investors as a particular concern, those who can apply for the insurance agency licence include:

- ✘ insurance agencies established in China by a foreign insurance agency that have operated their agency businesses for more than three years;

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<sup>56</sup> Article 6 of the *Regulations on the Supervision of Professional Insurance Agencies (2015)*

<sup>57</sup> *Notice of the CBIRC on Allowing Foreign Investors to Operate Insurance Agency Businesses in China*, CBIRC [2018] No. 30, issued on 19 June 2018.

- ✘ insurance agencies established in China by a foreign invested insurance company that have operated in China for more than three years.

As an exception, according to the *Supplementary Agreement IV of the Closer Economic Partnership Arrangements (CEPA) for the Mainland China, Hong Kong and Macao*, since 1 January 2008 qualified Hong Kong and Macao insurance agency companies are allowed to set up wholly-owned insurance agency companies in the Mainland China.

## 2. Insurance Brokerage Business

Establishment of an insurance brokerage company shall satisfy the following criteria (equally applicable to both domestic Chinese and foreign investors):<sup>58</sup>

- ✘ Shareholders are in compliance with the relevant regulatory requirements, and the capital contributed is from shareholder's own legitimate funds and no bank loans or any other forms of non-self-owned funds for investment;
- ✘ The registered capital shall satisfy the minimum requirements,<sup>59</sup> and shall make custodian arrangement according to the CBIRC's relevant requirements;
- ✘ The business scope recorded in its business license complies with the permissions granted by the CBIRC;
- ✘ The company's articles of association comply with relevant regulations;
- ✘ The company name meets the regulatory requirements;
- ✘ Senior managers are eligible and qualified;
- ✘ There is a suitable corporate governance structure and an effective internal control system, and the business model is rational, reasonable and practical;

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<sup>58</sup> *Regulations on the Supervision of Insurance Brokers*, Decree of the former CIRC, issued on 1 February 2018.

<sup>59</sup> Article 10 of the *Regulations on the Supervision of Insurance Brokers* provides the minimum registered capital of an insurance brokerage company operating beyond its local region (provincial level) shall be RMB50 million; the minimum registered capital of shall be RMB10 million if it only operates locally within the province.

- ✘ There is suitable business premises compatible with the scale of the business;
- ✘ There is a competent business and financial information management system;
- ✘ Other requirements set out by applicable laws, regulations and the CBIRC.

With foreign investor as a particular concern, those who can apply for establishing a foreign invested insurance brokerage company in China include:

- (a) A foreign shareholder who is an insurance company with more than 30 years<sup>60</sup> history in a member state of the WTO;
- (b) A foreign shareholder who has set up a representative office in China for more than two years;
- (c) A foreign shareholder with total assets worth than US\$ 200 million<sup>61</sup> at the end of the year before the application is submitted.

According to the *Notice of the CBIRC on Relaxing Restrictions on the Business Scope of Foreign Invested Insurance Brokerage Companies*<sup>62</sup>, after obtaining the insurance broker licence from the CBIRC, a foreign invested insurance brokerage company is allowed to operate the following businesses in China:

- (a) Proposing insurance plans, selecting insurers, and going through procedures of insurance applications for policyholders;
- (b) Assisting the insured or the beneficiary in making claims;
- (c) Reinsurance brokerage business;
- (d) Providing the client with disaster prevention, loss prevention or risk assessment and risk management consulting services;

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60 According to the Head of CBIRC Guo Shuqing's statement on 1 May 2019 (see Annex 2 for details), the 30-year requirement is expected to be cancelled.

61 According to the Head of CBIRC Guo Shuqing's statement on 1 May 2019 (see Annex 2 for details), the total assets requirement is expected to be cancelled.

62 *Notice of the CBIRC on Relaxing Restrictions on the Business Scope of Foreign Invested Insurance Brokerage Companies*, CBIRC [2018] No. 19, issued on 27 April 2018.

(e) Other business permitted by the CBIRC.

In the past, particularly after China's accession to the WTO in 2001, foreign invested insurance brokerage companies' business was mainly limited to large cross-border commercial brokerage, insurance brokerage for international shipping, aviation and transportation, reinsurance brokerage and providing "blanket policy" brokerage on the basis of national treatment. These types of business are generally targeted at large commercial bodies, transportation companies and large national infrastructure projects, while the insurance brokerage business for small and medium-sized enterprises and individuals was severely restricted.

With the liberalization of the business scope of the foreign invested insurance brokerage companies, brokerage services geared towards small and medium-sized enterprises and individuals will be open for foreign players as well, which should have far-reaching effects on the market.

### 3. Insurance Survey Business

The insurance survey business in China includes assessing, appraising, investigating, estimating and adjusting losses, and conducting relevant risk assessment of insured subjects or insurance accidents.

An insurance surveyor shall meet the following conditions in order to operate an insurance survey business in China (equally applicable to both domestic Chinese and foreign investors):<sup>63</sup>

- ✧ Investor(s) are in compliance with the relevant regulatory requirements, and the capital contributed is from investor's own legitimate funds and no bank loans or any other forms of non-self-owned funds for investment;
- ✧ Based on its business development plan, it has necessary operating capital for daily operations and risk taking. The operating capital of a national entity shall be more than RMB 2 million, and for a regional entity, it shall be more than RMB 1 million;
- ✧ The working capital shall be placed with a custodian;

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<sup>63</sup> *Regulations on the Supervision of Insurance Surveyor and Loss Assessor*, Decree of the former CIRC [2018] No. 2, issued on 1 February 2018.

- ※ The business scope recorded in its business license does not go beyond the regulatory permitted scope, i.e.
- ※ pre- and post-underwriting inspection, valuation and risk assessment for the insured object;
- ※ survey, inspection, loss adjustment after loss occurred, as well as salvage value processing for the insured object;
- ※ risk management consulting; and
- ※ any other businesses permitted by the CBIRC<sup>64</sup>
- ※ The company's articles of association or partnership agreement are in compliance with relevant regulations;
- ※ The name meets the regulatory requirements;
- ※ The chairman, executive director and senior management personnel are eligible and qualified;
- ※ There is a suitable corporate governance structure and an effective internal control system, and the business model is rational, reasonable and practical;
- ※ There is suitable business premises compatible with the scale of the business;
- ※ There is a competent business and financial information management system;
- ※ Other requirements set out by applicable laws, regulations and the CBIRC.

According to the *Notice of the CBIRC on Allowing Foreign Investors to Operate Insurance Surveyor and Loss Assessment Business in China*<sup>65</sup>, with foreign investors as a particular concern, those who can apply for the insurance survey licence include:

- ※ insurance surveyors established in China by a foreign insurance surveyor that have operated their survey businesses for more than three years;

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<sup>64</sup> Article 43 of the *Regulations on the Supervision of Insurance Surveyor and Loss Assessor*

<sup>65</sup> *Notice of the CBIRC on Allowing Foreign Investors to Operate Insurance Surveyor and Loss Assessment Business in China*, CBIRC [2018] No. 29, issued on 19 June 2018.

✂ insurance surveyors established in China by a foreign invested insurance company that have operated in China for more than three years.

Nowadays, qualified foreign investors are allowed to come to China to operate an insurance survey business, i.e. the foreign shareholding restriction has been completely removed.

In short, the relaxation of the foreign shareholding restriction in the sector of insurance intermediaries will provide much more flexibility for potential foreign investment. Foreign players may seek a controlling stake in a joint venture company, or even operate a wholly-owned subsidiary in China. Improved market competition will stimulate market efficiency and eventually consumers will significantly benefit.

#### **(iv) Foreign Invested Insurance Asset Management**

On 2 May 2018 the CBIRC officially granted ICBC-AXA Life permission to set up an asset management business – the proposed ICBC-AXA Asset Management Company; this will be the first joint venture insurance asset management company to be approved by the Chinese regulator since China proposed to speed up the opening of the insurance sector at the Bo'ao Forum.

ICBC-AXA Assets Management Company, registered in Shanghai with a registered capital of RMB 100 million, is a subsidiary wholly-owned by ICBC-AXA LIFE. The company's business scope includes management of RMB and foreign currency funds entrusted by clients; management and investment of its own RMB and foreign currency funds; development the business of insurance assets management products, and other businesses approved by the CBIRC and other authorities.

A little while later, on 20 July 2018, the CBIRC granted BoCommLife Insurance permission to set up an asset management subsidiary; on 18 September 2018, the CBIRC also granted CITIC Prudential Life Insurance to initiate the establishment of CITIC Prudential Asset Management Limited. It can be expected that more foreign investors will now enter the insurance asset management market, bringing new vitality to the insurance asset management sector.

At present, the main regulation particularly applicable to insurance asset management companies is the former CIRC's *Interim Provisions on the Administration of Insurance Asset Management Companies* (2004) and its amendments in 2011. According to these, in order to establish an insurance asset

management company, at least one of the shareholders or founders shall be an insurance company or an insurance holdings (group) company and such insurance company or insurance holdings (group) company shall meet the following requirements:

- ※ has been operating insurance business for more than five years;
- ※ in the past three years, no administrative penalty imposed for violating the regulations with respect to the utilization of funds;
- ※ solvency shall be no less than 150%; total assets shall be no less than RMB 10 billion, and in case of the insurance holding (group) company, total assets of no less than RMB 15 billion;
- ※ solvency requirements prescribed by the CBIRC are satisfied;
- ※ there are a sound corporate governance structure and internal control;
- ※ there are established departments for asset-liability matching management and risk control, with comprehensive investment information management system;
- ※ the proportion of the company's total assets which are mainly utilized and managed by the fund utilization department shall be no less than 50%, of which the proportion for those operating life insurance business shall be no less than 80%;
- ※ other requirements as prescribed by the CBIRC.

It is believed that in the future, with a greater involvement by international insurance asset management companies in the Chinese market, more mature international practice will inevitably be adopted and China's regulatory environment in this particular asset management sector will also evolve and improve.

## **(v) Representative Office of a Foreign Insurance Company in China**

Not only foreign insurance companies, reinsurance companies, insurance intermediaries, but also insurance associations and other organizations registered outside of China, can all set up representative offices in China which can be engaged in non-operational activities such as liaison and market research etc.

Foreign insurance institutions shall meet the following requirements to apply for establishing a representative office in China:<sup>66</sup>

- ✘ The institution is of good standing and has sound business operations;
- ✘ It has been operating an insurance business for more than 20 years; or it has more than 20 years history since establishment;
- ✘ No material violations of laws and regulations in the past three years;
- ✘ Other precautionary conditions prescribed by the CBIRC.

The detailed application requirements and approval procedures as well as other relevant materials can be found in the *Service Guidelines for Examination and Approval of Establishment and Material Changes of the Representative Offices of Foreign Insurance Institutions in China* published by the CBIRC on its official website.

<http://xzsk.circ.gov.cn/f/circ/guide/index>

## (vi) Licensing Authority and Application Procedures

### 1. Licensing Authority

After the 2018 institutional reform, the CBIRC's **International & Foreign Investment Supervision Department** (Office of Hong Kong, Macau and Taiwan affairs)<sup>67</sup> has been responsible for foreign affairs management, international cooperation and affairs related to Hong Kong, Macao and Taiwan; admission management of the foreign invested banks and insurance institutions; off-site monitoring and inspection, risk analysis and regulatory ratings; conducting necessary on-site investigations, forming up and taking measures on individual case's risk control and market exit. Therefore, this Department, within the CBIRC, is the specific licensing authority responsible for the administrative examination and approval of foreign investment.

### 2. On-line Applications and Flowchart

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<sup>66</sup> *Regulations on the Administration of Representative Offices of Foreign Insurance Institutions in China*, the former CIRC [2006] No. 5, issued on 12 July 2006, amended by *Decision of the former CIRC on Amending Four Regulations including Rules for the Implementation of the PRC Regulations*, issued on 13 February 2018.

<sup>67</sup> In Chinese 银保监会国际合作与外资机构监管部 (港澳台办公室)

The online application procedures and timeline are illustrated in the flowchart below for reference:<sup>68</sup>

(1) List of application materials for preparing the establishment of a wholly foreign owned insurance company

- A. Application form for the establishment signed by the legal representative of the applicant;
- B. Feasibility study report;
- C. Establishment preparation proposal;
- D. Relevant materials relating to the person in charge of the preparation work;
- E. Draft articles of association of the wholly foreign owned insurance company;
- F. Notice/Certificate of the name pre-approval;
- G. Relevant materials relating to the foreign investor(s);
- H. Business licence/company registration certificate or equivalent (duplicate), the certificate to certify the foreign applicant is in compliance with the solvency standards and a consent letter regarding its application issued by the competent authority of applicant's home jurisdiction;
- I. Articles of association and the foreign applicant's annual reports for the last three years;
- J. Other documents that may be requested by the CBIRC.

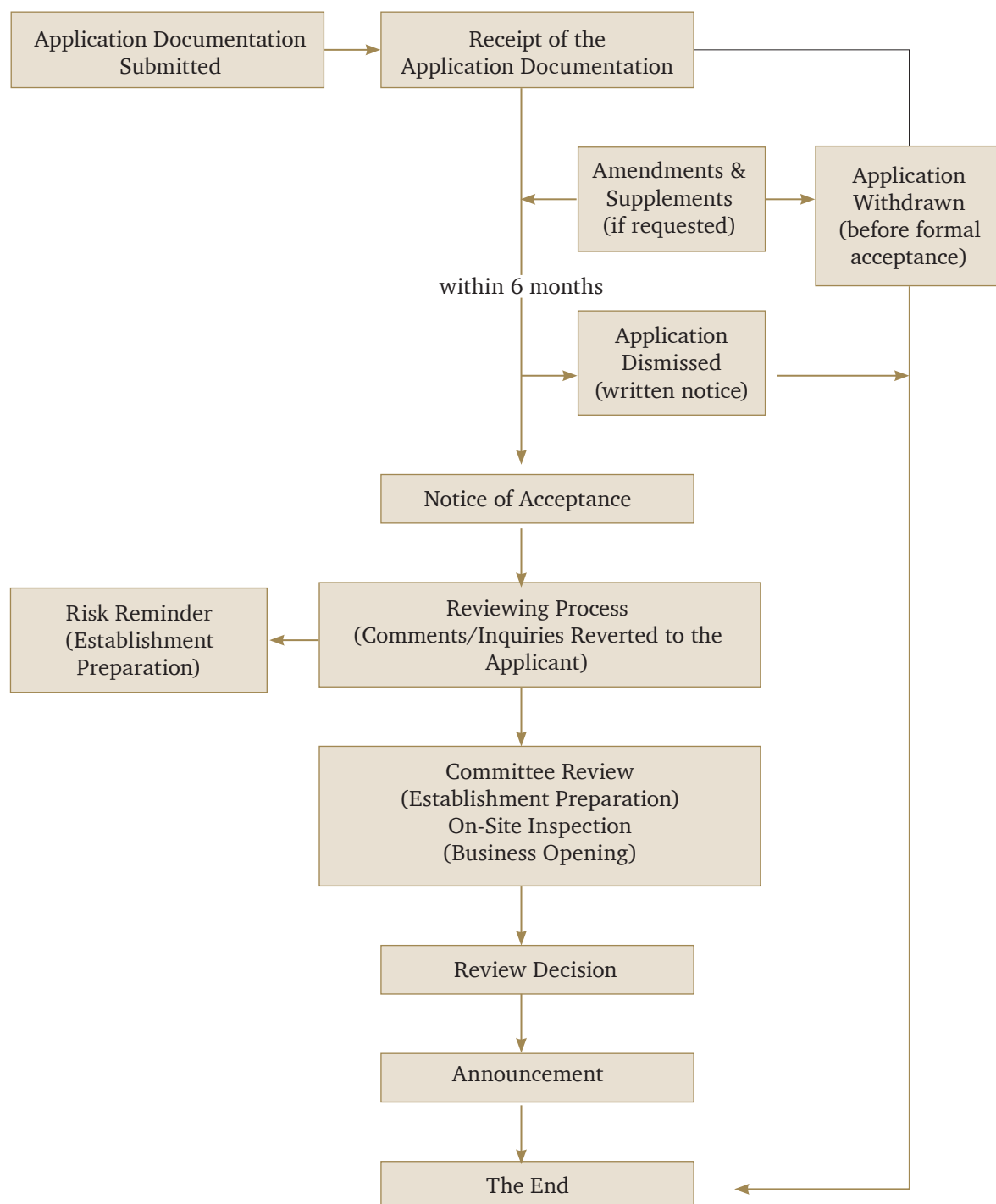
(2) List of application materials for the business opening of a wholly foreign owned insurance company

- A. Application form for the opening;
- B. Resolutions of the founding assembly;
- C. Articles of association of the wholly foreign owned insurance company;

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<sup>68</sup> The application process flowchart has been prepared in accordance with the *PRC Insurance Law*, the *PRC Regulations on the Administration of Foreign Invested Insurance Companies*, and its *Implementation Rules*, as well as the materials provided by the former CIRC on its official website for its administrative licensing services.

## Application Process for Establishing a Wholly Foreign Owned Insurance Company



- D. Capital verification report;
- E. Business development plan;
- F. CVs and relevant supporting documents for the proposed director(s), supervisor(s) and senior management personnel;
- G. Corporate governance structure/organization chart of the company;
- H. Custodian agreement;
- I. Documents in respect of the business premises;
- J. IT report;
- K. Internal management regulations;
- L. Notice/Certificate of the name pre-approval;
- M. Relevant materials relating to the foreign investor(s);
- N. Power of attorney for the proposed senior executive(s) of the company;
- O. The company's business plan and reinsurance plan for the next three years;
- P. The insurance policy clauses, premium rates and calculation specifications of the liability reserve fund for the insurance products to be offered in China.

The detailed application requirements and approval procedures as well as other relevant materials can be found in the *Service Guidelines for Examination and Approval of Establishment of Insurance Companies and their branches, Termination (dissolution, bankruptcy) of Insurance Companies* published by the CBIRC on its official website.

<http://xzsk.circ.gov.cn/f/circ/guide/index>

## VI. Continuous Compliance

Setting up financial institutions, such as banks or insurance companies, in China and obtaining the relevant licences are highly demanding processes. That is why many foreign investors feel relieved once these challenges have been overcome and their China presence has been successfully established and business commenced. Needless to say, once a foreign invested bank or insurance company has been established and licensed to operate regulated business in China, continuous compliance obligations are inevitable and these can be equally challenging, if not more so, given the scope of compliance requirements in China has been constantly increasing in recent years.

In addition to the general requirements such as reporting and filing obligations that all foreign invested business entities need to meet, businesses operating in the regulated sectors (this includes banks and insurance companies) are subject to industry specific regulatory requirements set out by the relevant financial regulatory authorities and updated from time to time.

### (i) General Obligations

Please note that the following general reporting/filing obligations are usually discharged in conjunction with the regulatory approval, registration and/or filing procedures. For instance, where any registrable item(s) change, the relevant foreign invested bank or insurance institution shall apply to the governing regulatory authority (the CBIRC or its local counterpart) for approval, registration and/or filing of the change(s), and then make the relevant registration and/or filing with the applicable AIC/AMR (companies' house equivalent government agency in China from company registry point of view).<sup>69</sup>

#### 1. Company Administrative and Reporting Duties

All foreign invested banks and insurance companies are generally treated in essence as foreign invested enterprises ("FIEs") or representative offices in China. Therefore, they are subject to the supervision and administration of the AIC/AMR which is responsible for all market participants in China.

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<sup>69</sup> According to the reform of China's government authorities, the administration of industry and commerce (AIC) governing the company registration is in the process of changing names and transforming itself into the administration of market regulation (AMR) with more comprehensive management functions. Such reform is for the purpose of simplifying various administrative filing procedures to effectively supervise and serve the market entities.

The *Foreign Investment Law*, which will come into effect on 1 January 2020, specifies once again that China establishes a reporting framework for foreign investment information, with the information submitted to/shared with the relevant government departments through the AIC/AMR enterprise registration system; these public records are accessible by the general public except those bearing a privacy nature or commercially confidential or sensitive. Before the detailed implementation rules for the foreign investment information reporting framework have materialized and been published, foreign invested banks and insurance institutions shall discharge their reporting obligations in line with all other FIEs.

The main items that must be registered are listed below and any change to them shall be timely reported/filed with the applicable AIC/AMR:<sup>70</sup>

- (1) **Name:** Foreign invested banks and insurance institutions registered in China must use and can only use one Chinese name. The name shall include the term of "bank" or "insurance". If the name needs to be changed, an application for change shall be submitted to the competent registration authority;
- (2) **Registered address:** Any enterprise registered in China shall have a registered address which shall specify the detailed floor or house/building number. If the registered address needs to be changed, an application for a change shall be timely submitted and the relevant lease agreement, property ownership certificate of the new office premises shall also be provided;
- (3) **Legal representative:** In China, the legal representative, a natural person, refers to the legally authorized signatory who exercises the rights and functions on behalf of a company. If the legal representative changes, a foreign invested bank or insurance company must submit an application for a change and provide the new legal representative's identity document and relevant appointment documents. For a representative office, its chief representative is equivalent to the legal representative of a company. For a branch of a foreign bank, the person in charge (branch manager) is equivalent to the legal representative of a company;
- (4) **Business scope:** Foreign invested banks and insurance institutions shall engage in business activities within their registered scope of business and shall comply with the corresponding regulatory requirements. The business premises, operating facilities, registered capital and

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<sup>70</sup> The PRC Regulations on Administration of Company Registration, adopted on 6 February 2016.

personnel of a foreign invested bank and insurance institution shall meet the general needs of the business within its registered scope and the applicable requirements prescribed by the regulatory authority;

- (5) **Legal form:** A foreign invested bank or insurance institution is required to specify its legal form (e.g. limited liability company or company limited by shares, general partnership or limited partnership, representative office or others). If it intends to change its legal form, regulatory approval and change of registration are necessary;
- (6) **Registered capital:** Where registered capital changes (increase or decrease), a change of registration application documents shall include relevant board/shareholder(s)' resolutions and relevant supporting documents; regulatory approval is also required. In case of a registered capital reduction, in order to provide necessary protection to third-party creditors, the registration authority requires more documents to be submitted, including a balance sheet and a list of assets, etc. Statutorily requirement procedures such as notifying the creditors and obtaining consent are applicable, and in such cases, the review process of the registration authority usually lasts longer;
- (7) **Terms of operation:** A fixed or indefinite term can be registered with the registration authority. The term can be extended or terminated early (winding up). To extend the terms of operation, in practice, it is generally necessary to submit an application one month before the expiration of the term. For a representative office, the maximum approved term of operation is three years, so it is necessary to apply for an extension every three years, and the application must be made 60 days before the expiration date;
- (8) **Directors, supervisors and senior management personnel:** Any change, new appointment, removal, replacement or resignation, to the registrable senior personnel shall be filed and registered with the registration authority;
- (9) **Shareholders:** If a shareholder or a shareholder's equity holding percentage changes, in most cases, regulatory approval is also required, filing and registration with the registration authority shall be completed in a timely manner. The relevant transaction documents (if applicable) and approving resolutions are usually required as part of the application documents.

Generally speaking, when submitting applications to the registration authority for a change to the

aforementioned items, resolutions of the relevant decision-making body (the shareholders' meeting or board of directors) shall be provided, as well as other documents requested by the authority. In practice, the specific requirements of different registration authorities may vary. Where filing and registration are not completed in good time, administrative penalties, such as a warning, fines or even confiscation of illegal incomes, might be imposed. Also relevant publicly accessible records might show irregularities in the official online system.

## 2. Annual Report Filing

Since March 2014, AICs have begun to implement an annual inspection filing regime for all business entities registered in China. Foreign invested banks and insurance institutions shall submit their annual reports for the previous year to the AICs/AMRs during the period 1 January to 30 June of each year.<sup>71</sup> Some of the core information of the annual report may be disclosed to the public.

The content of an annual report generally includes the following basic information:

- (1) A business entity's contact details such as correspondence address, postal code, phone number, email address, etc.;
- (2) A business entity's current standing such as normal business operation, suspension, liquidation;<sup>72</sup>
- (3) Its subsidiary(ies) and/or branch(es);
- (4) For a limited liability company or a company limited by shares, the subscribed capital commitment and paid-in capital contribution of its shareholders, capital contribution date(s), and capital contribution by cash or made in kind, etc.;
- (5) Share transfer and the corresponding change(s) of shareholding;
- (6) Company website, and the name, website address, etc. of its online store engaged in online business (if applicable); and
- (7) Total staff numbers, total amounts of assets, liabilities, securities and guarantees provided to other parties, total amount of the net assets, gross operating income, revenue generated by the

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<sup>71</sup> In China the fiscal year is statutorily fixed as the calendar year.

<sup>72</sup> *Provisional Regulations on Enterprise Information Disclosure*, State Council Order No. 654, adopted on 7 August 2014.

core business operation, gross profits, net profits, tax liabilities, etc.

AICs/AMRs conduct random checks on the content of an enterprise's annual report. If there has been any inaccurate disclosure, a correction shall be made. Failure to file the annual report before the competent AIC/AMR in a timely manner, or any untrue disclosure and intentional fabrication of the annual report, may result in an "irregularity" tag and being listed among the abnormal operations and/or being subject to the relevant administrative or even criminal penalties for failing to duly discharge its compliance obligations.

For a representative office of a foreign bank or a foreign insurance institution, an annual report shall be submitted and filed during the period 1 March to 30 June each year.<sup>73</sup> The annual report of a representative office shall include the latest status of the foreign entity, the business activities carried out by the representative office, the expenditures and income of the representative office audited by a Chinese certified public accountant, etc. If the annual report is not duly filed, the representative office may be fined anything between RMB 10,000 and RMB 30,000. If any disclosure in the annual report is found to be untrue or is intentionally fabricated, the representative office may be fined between RMB 20,000 and RMB 200,000. In serious cases, the registration certificate of the representative office may be revoked.

### 3. Financial Related Matters

#### (1) Financial statements and audit requirements

According to China's accounting standards, a complete set of financial statements shall include:<sup>74</sup>

A. Balance sheet;

B. Income statement;

C. Cash Flow statement;

D. Statement of owner's equity.

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<sup>73</sup> *Administrative Regulations on Registration of Representative Offices of Foreign Enterprises*, adopted on 18 July 2013. Amended by the *Decisions of the State Council on Amending Some Administrative Regulations*, State Council Order No. 703, adopted on 18 September 2018.

<sup>74</sup> *Accounting Standards for Business Enterprises – Basic Standards*, adopted on 23 July 2014.

When foreign invested banks and insurance institutions report monthly to the tax authorities and other regulatory authorities, they are only required to provide a balance sheet and an income statement. Complete financial statements are required to be provided once a year. Foreign invested banks and insurance institutions are required to hire an accounting firm registered and certified in China to conduct annual audit.

China has its own requirements for accounting methods, accounting language, and length of record keeping. It is advisable for the foreign investor to seek professional advice before entering into the Chinese market and ensure compliance in respect of financial and accounting matters.

## (2) Bank account

In China, each enterprise is required to open a basic RMB account. For foreign currency accounts, according to China's regulations on foreign exchange, an enterprise can hold a capital account and a current account (a.k.a trading account).

## 4. Cyber Security and Data Compliance

Foreign invested banks and insurance institutions rely to a great extent on the network support and IT systems for their normal business operations. They are network operators under the *PRC Cyber Security Law* and are subject to the legal obligations under China's legal system of cyber security and data compliance.

### (1) Cyber security

In accordance with the relevant requirements of the network security level protection system, a business entity shall perform relevant security protection obligations which focus on formulating internal rules and regulations, adopting security technical measures, monitoring and recording technical measures, data classification, important data backup and encryption measures, and keeping network logs for no less than six months in accordance with relevant regulations, and formulate emergency plans for network security incidents. When any incident endangers network security the plan shall be immediately activated and appropriate remedial measures shall be taken; then a report shall be made to the competent authority in accordance with relevant regulations.

People who are the operators of the key information infrastructure shall, on the basis of the above requirements, set up special posts, provide regular education and training to its relevant members of staff

and provide recovery backups of important systems and databases in case of disaster; execute confidentiality agreements when purchasing network products and services (if national security is of concern, a national security review is required); conduct regular safety inspections and assessments and report the results of the assessment to the authorities in charge of the key information infrastructure protection.

Foreign invested insurance institutions shall meet the minimum disaster recovery capability as required by the *Insurance Sector Information System Disaster Recovery Management Guidelines*<sup>75</sup>.

## (2) Personal information protection

The collection and use of personal information shall comply with the principles of legality, justifiability and necessity, and the regulations on public collection and use, expressly indicate the purpose, manner and scope of the collection and use of information, and obtain the consent of the information provider.

No personal information unrelated to the services provided by the collector shall be collected, and the personal information preserved by the collector shall be handled in accordance with the provisions of laws and regulations and any agreements between the collector and the user.

No personal information collected by the collector shall be disclosed, tampered with or destroyed; No personal information shall be provided to others without the consent of the information provider; and the personal information collected shall be deleted or corrected at the request of the subject of personal information.

Technical measures and other necessary measures shall be taken to ensure the security of personal information collected.

## (3) Data compliance

Foreign invested banks shall establish a data governance organizational structure in accordance with the *Guidelines for Data Governance of Banking Financial Institutions*; this specifies the responsibilities of the board of directors, the board of supervisors, senior management personnel and internal departments; they stipulate the formulation and implementation of systematic supervisions, procedures and methods.

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<sup>75</sup> *Guidelines for Disaster Recovery Management of Insurance Information System*, adopted on 21 March 2008.

Foreign invested banks and insurance institutions that are key information infrastructure operators shall store important data and personal information they have collected and generated in China. If such data and information needs to be exported because of business needs, a safety assessment according to the law shall be conducted. For those that are not key information infrastructure operators, whether such rules apply to them needs to be further stipulated by relevant laws and regulations to be enacted in the future.

## 5. Other Compliance Issues

China's corporate compliance regime has significantly evolved in recent years. Government/regulators' efforts have been shifting from the "prerequisite approval focus" to the "ongoing supervision" based on market participants' self-reporting duties. With a more stringent compliance environment and more effective law enforcement, major compliance cases/scandals emerge from time to time.

Foreign investors need to pay sufficient attention to the compliance issues in respect of the following: anti-trust, anti-unfair competition, anti-commercial bribery and corruption, labor employment, data security and privacy protection, white-collar crime and safety, health and environmental protection.

It is also worth noting that the *Foreign Investment Law* will come into effect on 1 January 2020. Relevant rules still need to be refined and implementation rules in the near future will have a significant impact on the establishment and operational compliance of foreign invested banks and insurance institutions.

### (ii) Compliance in the Banking Industry

#### 1. Internal control and risk management

##### (1) Corporate governance

Wholly foreign-invested banks and Sino-foreign joint venture banks shall, in accordance with the *Guidelines for Corporate Governance of Commercial Banks* and relevant laws and regulations, formulate the articles of association of commercial banks as the basic document of corporate governance, and clarify the duties and responsibilities and meeting rules for the shareholders, board

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<sup>76</sup> Article 8 of the *Guidelines for Corporate Governance of Commercial Banks*, Article 42 of the *Regulations on the Administration of Foreign Invested Banks* and Article 10 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

of directors, board of supervisors, and senior management officers. The articles of association shall contain the content as required by laws and regulations, and shall be continuously improved<sup>76</sup>. The amendments to the articles of association of the wholly foreign-invested bank and the Sino-foreign joint venture bank shall be submitted to the CBIRC for approval.

With regards to the officeholder, the directors, senior management officers and chief representative of the foreign-invested bank, their qualifications shall be verified by the CBIRC or its applicable local counterpart; no one shall perform their duties before the approval is granted<sup>77</sup>. If the director, senior management officer or chief representative is replaced, the replacement needs to be reported to the CBIRC or its applicable local counterpart for approval.

In addition, where a non-full time employee of a foreign-invested bank in China works in the said bank for more than 20 days consecutively or works for more than 30 days cumulatively within a 90-day period, the foreign-funded bank shall report to the applicable local CBIRC branch.<sup>78</sup>

## (2) Audit mechanism

In addition to the pre-opening audit that the foreign invested bank's business entity is required to conduct and submit to the applicable local CBIRC branch, the entity is still subject to continuous supervision by the CBIRC on auditing during the follow-up period. The audit includes both an internal and an external audit.

As far as the **internal audit** is concerned, a wholly foreign-invested bank and a Sino-foreign joint venture bank should set up an independent internal audit department and an independent financial accounting system<sup>79</sup>. For details of the structuring, responsibilities and regulatory evaluations related to the internal audit, reference can be made to the *Internal Auditing Guidelines for Commercial Banks*. After the internal audit of the foreign invested bank's business entity is completed, the internal audit report shall be submitted to the applicable local CBIRC branch<sup>80</sup>.

With regard to the **external audit**, wholly foreign-invested banks, Sino-foreign joint venture banks, foreign banks with two or more branches shall engage qualified Chinese accounting firms at the end

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77 Article 40 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

78 Article 68 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

79 Article 50 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks* and Article 54 of *Regulations on the Administration of Foreign Invested Banks*.

80 Article 51 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

81 Article 69 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

of each fiscal year to conduct external audits. They are required to conduct consolidated audits of all their operating institutions in China<sup>81</sup>.

The annual audit of a wholly foreign-invested bank or a Sino-foreign joint venture bank shall include<sup>82</sup>:

- ✧ Adequacy of capital;
- ✧ Asset quality;
- ✧ Status of corporate governance;
- ✧ Status of internal controls;
- ✧ Profitability;
- ✧ Liquidity; and
- ✧ Risk management, etc.

The annual audit of a foreign bank's branch should include<sup>83</sup>:

- ✧ Financial statements;
- ✧ Risk management;
- ✧ Operation controls;
- ✧ Status of compliance; and
- ✧ Asset quality, etc.

After the completion of the audit, the audit report and management report shall be submitted to the

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<sup>82</sup> Article 71 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

<sup>83</sup> Article 71 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

<sup>84</sup> Article 69 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

applicable local CBIRC branch within four months after the end of the fiscal year<sup>84</sup>.

### (3) Risk management

According to relevant regulations, a foreign invested bank's business entity shall establish a **comprehensive risk management system and a comprehensive risk reporting system**. The wholly foreign-invested banks and Sino-foreign joint venture banks shall set up an independent risk management department and an independent risk management system<sup>85</sup>. A foreign invested bank's business entity shall, in accordance with the provisions and requirements of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*, formulate risk management strategies, set risk preferences, formulate major risk management policies and procedures, and report them to the CBIRC (or its applicable local counterpart).

The main elements of the **comprehensive risk management system** are<sup>86</sup>:

- ✧ Risk management structure;
- ✧ Risk management strategy, risk preferences and risk limit;
- ✧ Risk management policies and procedures;
- ✧ Management information systems and data quality control mechanisms; and
- ✧ Internal control and audit systems.

The content of the **comprehensive risk management report** includes at least<sup>87</sup>:

- ✧ Overall risk and overall status of various risks;
- ✧ Execution of the risk management strategy, risk preferences and risk limit;
- ✧ The distribution of risks by industry, region, customer, product, etc.; and

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<sup>85</sup> Article 50 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks* and Article 54 of *Regulations on the Administration of Foreign Invested Banks*.

<sup>86</sup> Article 5 of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*.

<sup>87</sup> Article 31 of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*.

✂ Comprehensive risk management reports on the ability of capital and liquidity towards risk.

The comprehensive risk management report must be submitted to the CBIRC (or its applicable local counterpart) at least annually.

#### (4) Internal control

In addition to the **internal control system and operational procedures** that shall be set up by foreign invested bank's business entity during the preparation for establishment stage, it shall continually assume such reporting obligations as long as it engages in business operations.

The foreign invested bank's business entity shall submit the revised **internal control system** and business operation procedures to the local CBIRC branch before the end of March each year<sup>88</sup>.

A wholly foreign-invested bank and a Sino-foreign joint venture bank shall set up an independent internal control system, but it is not mandatory to set up an independent internal control department<sup>89</sup>.

In addition, it should be noted that if a foreign invested bank's business entity applies for RMB business or subsequently expands its customer scope of the RMB business service, it shall formulate relevant internal control systems and operating procedures for the proposed business operation, and submit its plan along with other materials to the CBIRC or its applicable local counterpart<sup>90</sup>.

A foreign invested bank's business entity and its branches shall also perform their reporting obligations for the launch of new products within their business scope, that is, they shall submit written reports to the CBIRC or its applicable local branch including introduction to its new products, risk features, internal control systems and operating procedures no more than five days after the launch<sup>91</sup>.

#### (5) Compliance risks

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88 Article 49 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

89 Article 54 of the *Regulations on the Administration of Foreign Invested Banks*.

90 Article 32 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*. According to the Head of CBIRC Guo Shuqing's statement on 1 May 2019 (see Annex 2 for details), such RMB business restriction is to be cancelled.

91 Article 38 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

92 Article 8 of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*.

A foreign invested bank's business entity shall establish a **compliance risk management system** that is compatible with its business scope, corporate governance structure and business scale<sup>92</sup>. A wholly foreign-invested bank or a Sino-foreign joint venture bank shall set up an independent **compliance management department**. The foreign bank's branch shall designate a special department or personnel to be responsible for compliance<sup>93</sup>. The responsibilities of the board of directors, the board of supervisors and the senior management officers and compliance management departments can be found in the *Guidelines for Commercial Banks' Compliance Risk Management*.

The **compliance risk management system** should include the following elements<sup>94</sup>:

- ✧ Compliance policies;
- ✧ Structure and resources of the compliance department;
- ✧ Compliance risk management plans;
- ✧ Procedure of compliance risk recognition and management; and
- ✧ Compliance training and education.

Of these, internal regulations such as compliance policies, compliance management procedures and compliance guidelines shall be filed with the CBIRC, and the foreign invested bank's business entity shall submit the compliance risk management plan and compliance risk assessment report to the CBIRC in a timely manner<sup>95</sup>.

## (6) Liquidity risk

### A. Monitoring and regulatory indicators of liquidity risks

A foreign invested bank's business entity should include the indicators of liquidity risks (liquidity gap, liquidity gap ratio, core debt ratio, inter-bank ratio, maximum ten household deposit ratio,

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<sup>93</sup>Article 50 of the *Rules for the Implementation of the Regulations on the Administration of Foreign Invested Banks*.

<sup>94</sup>Article 8 of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*.

<sup>95</sup>Article 26 of the *Guidelines for Comprehensive Risk Management of Banking Financial Institutions*.

<sup>96</sup>Article 51 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

maximum ten inter-sector integration ratio, excess reserve ratio, liquidity coverage ratio of important currencies and deposit-loan ratio) in its the internal liquidity risk management framework, and timely monitor the changes of indicators and regularly report them to the CBIRC (or its applicable local branch)<sup>96</sup>.

At the same time, branches of foreign banks should ensure that the ratio of their liquid assets balance to the balance of liquid liabilities is no less than 25%<sup>97</sup>.

If the monitoring indicators of the foreign invested bank's business entity fluctuate greatly, change rapidly or continuously one-way, or the regulatory indicators have been or will soon fall below the minimum regulatory standards, the foreign invested bank's business entity should analyze the reasons and the underlying risks, and immediately report to the CBIRC (or its applicable local counterpart)<sup>98</sup>.

In case of the following, the relevant institution shall report to the CBIRC (or its local branch) within two working days: a wholly foreign-invested bank or a Sino-foreign joint venture bank holds less local and foreign currency assets than its local and foreign currency liabilities, or its net outflow ratio of cross-border funds within the group exceeds 25%, or the net outflow ratio of cross-border funds of a branch of foreign bank exceeds 50%<sup>99</sup>.

#### B. Liquidity risk management report and liquidity risk stress report

In addition to the aforementioned indicators, the foreign invested bank's business entity shall also submit the liquidity risk management report of the previous year to the CBIRC (or its applicable local counterpart) before the end of April each year<sup>100</sup>.

The liquidity risk management report mainly covers<sup>101</sup>:

- ※ Liquidity risk preferences;
- ※ Liquidity risk management strategy;

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97 Article 46 of the *Regulations on the Administration of Foreign Invested Banks*.

98 Article 50 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

99 Article 57 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

100 Article 55 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

101 Article 55 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

- ※ Main policies and procedures;
- ※ Internal risk management indicators and limit; and
- ※ Contingency plans and testing results of these plans, etc.

If the liquidity risk preferences, liquidity risk management strategy, policies and procedures are materially adjusted, the foreign invested bank's business entity shall report in writing such adjustments to the CBIRC (or its applicable local counterpart) within one month.

In addition, the foreign invested bank's business entity shall submit a liquidity risk stress test report to the applicable CBIRC branch on a quarterly basis, including the scenarios, methods, processes and results of the stress test. In the event of intense market volatility, the frequency of stress test reports should be increased accordingly<sup>102</sup>.

### C. Report of important issues

It should be noted that in the event of any major events that may adversely affect the liquidity or management of a foreign invested bank's business entity, it shall be reported to the CBIRC (or its applicable local counterpart) in a timely manner<sup>103</sup>:

- ※ The credit rating of this institution has been significantly lowered;
- ※ The institution sells assets on a large scale to make up for liquidity;
- ※ The important financing channels of this institution will be limited or invalid;
- ※ A bank run;
- ※ Significant adverse changes in the operating conditions, liquidity status, and credit rating of the parent company or other institutions within the group;
- ※ Significant adverse changes in market liquidity conditions;

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102 Article 56 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

103 Article 57 of the *Measures for the Liquidity Risk Management of Commercial Banks*.

- ✘ Cross-border or cross-institutional liquidity transfer policies which have brought about major adjustments having an adverse effect on liquidity risk management;
- ✘ Significant adverse changes taking place in the political and economic conditions of the parent company or in the home jurisdiction where the group operates; and
- ✘ Other significant events that may adversely affect their liquidity risk level or management status.

#### (7) IT risk

A foreign invested bank's business entity shall establish a sound IT risk management system, set technical standards and operational procedures, and regularly update and publicize them<sup>104</sup>. The wholly foreign-invested banks and Sino-foreign joint venture banks shall set up independent IT management systems<sup>105</sup>.

The board of directors or other business decision-making bodies of foreign invested bank's business entity shall review and submit annual reports on its IT risk management to the CBIRC and its local branch every year, and report in a timely manner the major IT accidents or emergencies to the CBIRC and its local branch, and promptly respond to the relevant contingency plans<sup>106</sup>.

In addition, foreign invested bank's business entity should be extra cautious in implementing important outsourcing<sup>107</sup>. **Important outsourcing** includes<sup>108</sup>:

- ✘ Whole outsourcing of the IT work;
- ✘ Whole outsourcing of the data center or the disaster recovery center;
- ✘ Outsourcing of sensitive information such as customer information and transaction data of banking industry financial institutions to service providers for analysis or processing;

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104 Article 17 of the *Guidelines on the Information Technology Risk Management of Commercial Banks*.

105 Article 54 of the *Regulations on the Administration of Foreign Invested Banks*.

106 Article 7 of the *Guidelines on the Information Technology Risk Management of Commercial Banks*.

107 Article 56 of the *Guidelines on the Information Technology Risk Management of Commercial Banks*.

108 Article 76 of the *Notice of the China Banking Regulatory Commission on Issuing the Regulatory Guidelines for the Risks in the Information Technology Outsourcing of Banking Financial Institutions*.

- ※ Outsourcing of business transaction systems if implemented in the form of non-resident and central storage of customer data;
- ※ Affiliated outsourcing; and
- ※ Cross-border IT outsourcing.

The foreign invested bank's business entity shall report to the CBIRC or its local branch 20 working days before the execution of the outsourcing contract.

When the following **major events** occur in the IT outsourcing activities, the foreign invested bank's business entity shall **report** to the CBIRC or its local branch within two working days<sup>109</sup>.

- ※ Leakage of sensitive data such as customer information held by banking financial institutions;
- ※ Data corruption or disruption of important business operations;
- ※ The outsourcing services of several banking financial institutions are interrupted due to force majeure or major business and financial problems of service providers; and
- ※ Other major illegal acts conducted by service providers.

## 2. Anti-Money Laundering

### (1) Annual report of anti-money laundering

The foreign invested bank's business entity shall abide by the anti-money laundering regulations, establish a supporting work system for the annual anti-money laundering report, draft an anti-money laundering report annually, and submit the report and schedules to the relevant authority (**People's Bank of China** or its applicable branch) within 20 days after the end of each year.

The annual report of anti-money laundering covers<sup>110</sup>:

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109 Article 77 of the *Notice of the China Banking Regulatory Commission on Issuing the Regulatory Guidelines for the Risks in the Information Technology Outsourcing of Banking Financial Institutions*.

110 Article 11 of the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

- ✘ The overall situation and institutional overview of anti-money laundering;
- ✘ The establishment of an anti-money laundering mechanism;
- ✘ Performance of the legal obligations against money laundering;
- ✘ Coordination and effectiveness of anti-money laundering activities; and
- ✘ Other anti-money laundering work, problems and suggestions.

The anti-money laundering annual report and its schedules shall refer to the template and forms of Annexes II and III of the *Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*, subject to the approval and signature of the person-in-charge. At the same time, the foreign invested bank's business entity should also identify the contact person and his/her contact details for the annual report on anti-money laundering, and inform the same to the People's Bank of China or its applicable branch in a timely manner<sup>111</sup>.

## (2) Report of important issues

The following important circumstances of a foreign invested bank's business entity shall be reported to the People's Bank of China or its applicable branch within ten working days after the occurrence of such events<sup>112</sup>.

- ✘ Revision to the major internal control of anti-money laundering;
- ✘ Adjustment and changes to the anti-money laundering department and person in charge or the contact details of the person in charge;
- ✘ Major risks involving the anti-money laundering work of the institution;
- ✘ Self-risk-assessment report of money laundering or other relevant risk analysis materials; and

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<sup>111</sup> Notice on Issuing the Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation).

<sup>112</sup> Article 11 of the Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation).

✂ Other matters related to anti-money laundering that are explicitly requested to report immediately to the People's Bank of China.

### (3) Self-assessment of money laundering risks

The foreign invested bank's business entity should also establish a self-assessment system, conduct regular analysis and judgment of its internal and external money laundering risks in a risk-based manner, evaluate the effectiveness of its risk prevention and control mechanism, identify risk loopholes and weaknesses, and take effective risk response measures<sup>113</sup>.

The foreign invested bank's business entity shall timely report the self-assessment results and relevant information to the People's Bank of China or its applicable branch<sup>114</sup>, and shall ensure the timeline of the risk assessment and reasonably determine the time frequency of the assessment<sup>115</sup>. The foreign invested bank's business entity should take the initiative in conducting risk assessments in case of major changes to products and business, major adjustments to internal control, or major changes of regulatory policies governing anti-money laundering.<sup>116</sup>

The foreign invested bank's business entity can also conduct specific risk assessments for specific products and businesses.<sup>117</sup>

### (4) High-value transaction report

The foreign invested bank's business entity is obliged to report high-value transactions and submit the report of high-value transactions to the China Anti-Money Laundering Monitoring and Analysis Center<sup>118</sup>.

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113 Article 37 of the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

114 Article 37 of the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

115 Notice on Issuing the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

116 Notice on Issuing the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

117 Notice on Issuing the *Measures for the Anti-Money Laundering Supervision and Administration of Financial Institutions (for Trial Implementation)*.

118 Article 3 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

119 Article 5 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

The high-value transactions to be reported are as follows<sup>119</sup>:

- ※ **Cash receipts or payments** of RMB 50,000 (including RMB 50,000) or equivalent to US\$10,000 in foreign currency (including US\$10,000) in a single or cumulative transaction on the same day in form of cash deposits, cash withdrawals, cash settlements and sale, cash exchange, cash remittances, cash bill settlement or other forms;
- ※ **Money transfers** in single or cumulative transactions of RMB 2,000,000 (including RMB 2,000,000) or equivalent to US\$ 200,000 in foreign currency (including US\$ 200,000) on the same day between the account of a **non-natural person customer** and other bank accounts;
- ※ **Domestic money transfers** in single or cumulative transactions of RMB 500,000 (including RMB 500,000) or equivalent to US\$ 100,000 in foreign currency (including US\$ 100,000) on the same day between the account of a **natural person customer** and other bank accounts;
- ※ **Cross-border money transfers** in single or cumulative transactions of more than RMB 200,000 (including RMB 200,000) or equivalent to more than US\$ 10,000 (including US\$ 10,000) on the same day between the account of a **natural person customer** and other bank accounts.

A foreign invested bank's business entity shall submit a high-value transaction report electronically within five working days from the occurrence date of the transaction, and the separate reports shall be submitted for transactions that meet two or more standards of high-value transactions<sup>120</sup>.

#### (5) Suspicious transaction report

A foreign invested bank's business entity shall formulate its own transaction monitoring standards, including but not limited to the identity and behavior of customers, abnormal situations in the source of funds, amount, frequency, direction of cash flow and nature of transactions, etc<sup>121</sup>. If the transaction is confirmed as suspicious as per its internal operating procedures, the entity

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120 Article 8 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

121 Article 12 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

122 Article 15 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

123 Article 16 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

shall submit electronically the report to the China Anti-Money Laundering Monitoring and Analysis Center within five working days<sup>122</sup>. If the transaction is both a high-value and suspicious transaction, the high-value transaction report and suspicious transaction reports shall be submitted separately<sup>123</sup>.

If a transaction is clearly suspected of being linked to criminal activities such as money laundering or terrorist financing, or seriously endangers national security or affects social stability, or if there are other serious or urgent situations, the foreign invested bank's business entity shall report in electronic or written form to the People's Bank of China or its applicable branch where it is located and cooperate with anti-money laundering investigations while submitting a suspicious transaction report to the China Anti-Money Laundering Monitoring and Analysis Center<sup>124</sup>.

The foreign invested bank's business entity shall also conduct real-time monitoring of the list of terrorist organizations and terrorists. If there are reasons to suspect that the client or the counterparties of a transaction, funds or other assets are related to a person/entity on the name list, the institution shall immediately submit the suspicious transaction report to the China Anti-Money Laundering Monitoring and Analysis Center and report in electronic or writing form to the applicable local branch of the People's Bank of China<sup>125</sup>.

### 3. Incidence Prevention and Control

The foreign invested bank's business entity shall, in accordance with the provisions of the *Measures for Assessment and Evaluation of Case Prevention and Control of Banking Financial Institutions*, formulate specific systems for case risk investigation, report, handling, accountability, rectification and post-evaluation.

The foreign invested bank's business entity shall promptly organize and summarize the self-assessment of case prevention, draft a self-assessment report on the prevention and control of case, and submit it to the CBIRC (or its applicable local counterpart) before the end of February each year<sup>126</sup>.

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124 Article 17 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

125 Article 18 of the *Measures for the Administration of Financial Institutions' Reporting of High-Value Transactions and Suspicious Transactions*.

126 Article 8 of the *Measures for the Assessment of the Case Prevention and Control Work of Banking Financial Institutions*.

In addition, a foreign invested bank's business entity should also prepare case risk investigation reports in accordance with the *Measures for the Management of Case Risk Investigation of Banking Financial Institutions*, including basic information, results achieved, problems discovered, measures taken and further suggestions for work, and submit the report regularly to the CBIRC (or its local branch), which should be issued by the bank governor (general manager, chairman).

### **(iii) Compliance in Insurance Sector**

Alongside the comprehensive opening up of the insurance sector, the regulatory authorities have set out requirements that are more complete and prudent, also based on the national treatment principle.

In the *Implementation Rules for the Administration Regulations of Foreign Invested Insurance Companies (Draft for Consultation)*, Article 5 provides a major shareholder of a foreign invested insurance company shall not transfer its shareholding less than five years after the acquisition date. This requirement is actually in line with the equity lock-up period for the controlling shareholders of domestic insurance companies, which is required by the *Equity Management Measures for Insurance Companies*<sup>127</sup>.

Article 6 of the Draft further specifies the obligation on the major shareholders of a foreign invested insurance company to make a full contribution to the subscribed registered capital, and stipulates that if a major foreign shareholder intends to reduce its shareholding or withdraw from the Chinese market, it shall duly discharge its shareholder obligations and, if necessary, replenish capital in a timely manner to ensure that the insurance company's solvency meets the relevant regulatory requirements. The above regulations are in the interests of maintaining the stability of business operations of foreign invested insurance companies and safeguarding consumers' rights and interests. It also reflects the regulator's stance in respect of actively promoting the liberalization while at the same time exercising cautious supervision.

Specifically, the continuous compliance requirements imposed on insurance institutions by the regulatory authorities mainly concern the following aspects:

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<sup>127</sup> *Equity Management Measures for Insurance Companies*, China Insurance Regulatory Commission Order [2018] No. 5, promulgated on 2 March 2018.

<sup>128</sup> *Guidelines on Regulating the Governance Structure of Insurance Companies (Trial)*, China Insurance Regulatory Commission Order [2006] No. 2, adopted on 5 January 2006.

## 1. Corporate Governance and Compliance

### (1) Corporate governance

Articles of association represent the fundamental constitutional document for a foreign invested insurance company and shall comply with relevant laws and regulatory requirements<sup>128</sup>. Based on and in addition to the Articles of Association, relevant corporate governance documents and regulations shall set out the organization structure, duties and responsibilities of the statutory bodies such as the shareholders' meeting, board of directors, board of supervisors, and senior management. The articles of association and its amendments shall be submitted to the CBIRC for approval.

With regard to the officeholders, the appointment of the directors, supervisors, senior management personnel and the chief representatives of the foreign invested insurance companies/representative offices shall be approved by the CBIRC or the applicable local counterpart. Relevant officeholders shall not perform their duties before obtaining the necessary qualifications. If any director, senior management officer or a chief representative is to be replaced, it is mandatory to report this to the CBIRC or its applicable local counterpart for approval.

### (2) Compliance

According to the *Administrative Measures for the Compliance of Insurance Companies*<sup>129</sup> and other laws, regulations and regulatory requirements, foreign invested insurance companies shall, through the establishment of a compliance governance mechanism, establish and implement compliance policies, and conduct measures such as a compliance review, compliance inspections, compliance risk monitoring, compliance assessment and compliance training to prevent, identify, assess, report and respond to compliance risks.

Foreign invested insurance companies shall establish a compliance management framework with three lines of defense to ensure that each of the three lines of defense functions effectively and coordinates with each other.

※ All the internal departments and branches of a foreign invested insurance company shall act as the first line of compliance safeguard bearing the most direct and foremost responsibility.

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<sup>129</sup> *Administrative Measures for the Compliance of Insurance Companies*, China Insurance Regulatory Commission Order [2016] No. 116, adopted on 30 December 2016.

The person in charge shall diligently discharge his/her duties, with the part-time compliance officer assisting the person in charge.

- ✧ The compliance management department shall act as the second safeguard line. This department and its compliance personnel shall provide compliance support to the business operations of all departments, units and branches, organize, coordinate and supervise internally.
- ✧ The internal audit department shall be the third line carrying out a regular independent audit and safeguard the company's compliance.

## 2. Risk Management

According to the *Guidelines on Risk Management of Insurance Companies (Trial)*<sup>130</sup> and other laws, regulations and regulatory requirements, foreign invested insurance companies shall clearly specify their risk management objectives, establish and improve risk management systems, standardize risk management process, adopt advanced risk management methods and maximize commercial benefits at a proper risk level.

A foreign invested insurance company shall establish a risk management system covering all business units and lines; this system is directly under the management, ultimately responsible to the board of directors.

The risk management committee of the board of directors shall fully understand the major risks and management conditions faced by the company, supervise the effectiveness of the operation of risk management systems, review the following matters and provide opinion and suggestions to the board of directors:

- ✧ The overall objectives, basic policies and working process of risk management;
- ✧ The setting and responsibilities of the risk management bodies;
- ✧ Risk assessment of major decisions and corresponding solution plans; and

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<sup>130</sup> Notice of China Insurance Regulatory Commission on the Issuance of Risk Management of Insurance Companies (Trial), China Insurance Regulatory Commission Order [2007] No.23, adopted on 6 April 2007.

✧ Making an annual risk assessment report.

Foreign invested insurance companies shall identify and assess various major risks faced in the course of their operations, including: insurance risk, market risk, credit risk and operational risk, etc. On the basis of extensive information collection, foreign invested insurance companies should conduct risk assessments for business activities and operational work flow.

The risk assessment comprises three parts: risk identification, risk analysis and risk assessment. If necessary, an independent consulting professional can be engaged to assist.

For different types of risks, appropriate risk management tools can be used such as risk aversion, reduction, transfer or retention to ensure that the risks are controlled within relevant limits. Risk solution plans shall be formed in accordance with the overall risk management strategy and mainly include the specific objectives to be achieved, the management and operation work flow to be involved, the conditions and resources to be required, the specific measures to be taken and effective risk management tools.

### 3.Incidence Prevention and Control

According to the requirements of the *Regulations on Emergency Response to the Major Accidents in the Insurance Sector*<sup>131</sup> and other laws, regulations and regulatory documents, foreign invested insurance companies shall promptly revise the contingency plan according to changes in major emergencies and the problems discovered during implementation, bolster the content of the contingency plan and improve the scientification and operability of the contingency plan. Foreign invested insurance companies shall establish a coordination and communication mechanism with relevant departments, and establish a monitoring and early warning information network for major emergencies, to ensure the early detection, early reporting and timely reaction and so try to avoid or reduce the losses incurred. Emergency drills shall be carried out, and training shall be enhanced, defects and loopholes shall be identified and rectified in time.

If any of the following circumstances occurs, reports shall be promptly submitted to the General Office of the CBIRC:

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<sup>131</sup> *Regulations on Emergency Response to Major Accidents in the Insurance Sector*, Insurance Regulatory Commission Order No.3, adopted on 18 December 2003.

- ※ Serious natural disasters such as floods, typhoons, earthquakes, or serious accident with respect to fire, production safety, traffic safety, resulting in losses of insured property of more than RMB 50 million or casualty compensation of more than RMB 30 million;
- ※ Public health incidents such as a widely-spread disease and major alimentary intoxication which has caused a significant social impact and may trigger extensive insurance claims;
- ※ An insurance company has a payment crisis in cash flow or a sudden deterioration in solvency that may lead to bankruptcy;
- ※ Systematic malfunction of the IT system resulting in the loss of a large amount of customer data;
- ※ A collective petition, protest or other radical behavior from more than 100 policyholders or insurance salesmen; if fewer than 100 involved but a situation possibly leading to a material negative impact;
- ※ More than 100 insurance policy holders collectively applying for policy cancellation and refund or filing a lawsuit against the insurance company;
- ※ Serious violation of laws and regulations committed by the company in the process of insurance underwriting or utilization of funds which attracts significant publicity;
- ※ The foreign shareholder company has experienced a serious crisis, which materially affects its business operations in China; or
- ※ The senior management suddenly and collectively submits its resignation, disappears, encounters a major accident or is involved in any criminal investigation.

#### 4. Solvency Management

The former CIRC issued the *Construction Plan for the Second China Risk Oriented Solvency System*<sup>132</sup> ("C-ROSS 2") in early 2012, which proposed to set up a solvency supervision regime that was not only compatible with the international standards but also suitable for the current development

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<sup>132</sup> *Construction Plan for the Second China Risk Oriented Solvency System*, Insurance Regulatory Commission Order [2012] No.24, adopted on 29 March 2012.

stage of China's insurance sector. The system would be used to monitor the solvency of insurance companies. Solvency is a core indicator in the supervision of insurance companies by insurance regulatory authorities, which is similar to the supervision for the capital adequacy ratios of banks by the former CBRC.

C-ROSS 2 was initiated in 2012. After three years of hard work, in February 2015, the former CIRC issued the *Regulations on the Solvency of Insurance Companies (No. 1 - No. 17)*<sup>133</sup>, and C-ROSS 2 entered its implementation transition period. On 1 January 2016, the former CIRC announced that the "C-ROSS 2" regulatory system was officially implemented. An insurance company is only required to submit the C-ROSS 2 report to the insurance regulatory authority and is no longer required to formulate solvency reports in accordance with the solvency regulatory system (i.e. the "C-ROSS 1").

*The Regulations on the Solvency of Insurance Companies (No. 1 - No. 17)* consists of 17 documents. Documents No. 1 - No. 9 are mainly about quantitative capital requirements, which require insurers to evaluate actual capital and minimum capital, calculate the core solvency adequacy ratio and the comprehensive solvency adequacy ratio, and conduct stress tests.

Documents No. 10 - No. 12 are mainly qualitative regulatory requirements, which require insurers to establish and improve their own solvency and risk management systems, and to strengthen the identification, assessment and management of various risks. The former CIRC (now the CBIRC) regulates the risks of insurance companies by means of the C-ROSS integrated risk rating (IRR), the solvency aligned risk management requirements assessment (SARMRA), regulatory analysis and inspections.

Documents No. 13 - No. 16 are mainly about market restraint mechanism of solvency. Document No.13 of the *Regulations on the Solvency of Insurance Companies: Public Disclosure of Solvency Information* requires an insurance company to disclose a summary of the solvency report on its official website on a quarterly basis, and demonstrate its solvency and comprehensive risk rating to its consumers, shareholders, creditors and other relevant stakeholders in their daily activities such as underwriting, bidding, capital increase, equity change and bond issuance.

Document No.14 of the *Regulations on the Solvency of Insurance Companies: Information Exchange*

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<sup>133</sup> *Regulations on the Solvency of Insurance Companies (No. 1 - No. 17)*, Insurance Regulatory Commission Order [2015] No.22, adopted on 13 February 2015.

of *Solvency Information* stipulates that the insurance regulatory authority will regularly publish solvency regulatory information, and gradually establish a continuous and two-way interactive solvency information communication mechanism with insurance consumers, shareholders, credit rating agencies, sector analysts, news agencies and media as well as other stakeholders to strengthen the market constraint mechanism of C-ROSS 2.

Document No.15 of the *Regulations on the Solvency of Insurance Companies: Credit Rating of Insurance Companies* encourages insurance companies to take the initiative in appointing credit rating agencies and disclose the rating results to the public.

Document No.16 of the *Regulations on the Solvency of Insurance Companies: Solvency Report* requires insurance companies to submit solvency quarterly reports, quarterly brief and interim reports to the insurance regulator.

Document No.17 of the *Regulations on the Solvency of Insurance Companies: Insurance Group Companies* mainly stipulates the regulatory requirements for insurance group companies. It requires the insurance group companies to assess the actual capital and minimum capital of the entire group, calculate the core solvency adequacy ratio and comprehensive solvency adequacy ratio, and continuously improve the system and process of solvency risk management and enhance their capabilities for risk management.

With the rapid development of China's insurance sector, the complex and volatile risks in the insurance market and the construction and implementation of C-ROSS 2, the former CIRC initiated the revision of the current *Regulations on Solvency Management of Insurance Company* after the official implementation of C-ROSS 2 in 2016, which later formed the *Regulations on the Solvency Management of Insurance Companies (Draft for Consultation)*<sup>134</sup>.

The *Regulations on the Solvency Management of Insurance Companies (Draft for Consultation)* further specifies the regulatory indicator standards for C-ROSS 2.

✂ The eligibility standard for core solvency adequacy is 50%;

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<sup>134</sup> *Regulations on the Solvency Management of Insurance Companies (Draft for Comment)*, Document of Insurance Regulatory Office [2017] No.374, adopted on 30 September 2017.

- ✘ The eligibility standard for comprehensive solvency adequacy is 100%; and
- ✘ The eligibility standard for risk comprehensive rating is B level or above.

A company complying with the solvency standard must meet all of the above three eligibility standards; if any of the above three eligibility standards is not satisfied, the company is not considered solvent.

For an insurance company with a core solvency adequacy ratio of less than 60% or a comprehensive solvency adequacy ratio of less than 120% and other insurance companies whose solvency situations are highly risky, the insurance regulator will conduct off-site inspections of solvency data, establish a regular on-site inspection mechanism; at the same time the regulator strengthens its supervision of auditing firms, actuarial advisory firms, credit rating agencies and other intermediaries to ensure that the solvency data is true and reliable.

## 5. Asset and Liability Management

Asset and liability management refers to the process in which insurance companies continuously develop, implement, monitor and improve relevant strategies on assets and liabilities within the constraint of risk preferences and other restrictive conditions. Asset and liability management capability is a basic core capability of insurance companies. Sound asset and liability management is the cornerstone of the sustainable development of the insurance sector. It is also an important guarantee supporting the stable development of the insurance sector and the prevention of systemic risks in a risky environment which is getting more complex each day.

Prior to 2018 the Chinese insurance regulator had never formulated clear regulatory standards for the asset and liability management of insurance companies. Since 2017, in order to prevent the risk of asset and liability mismatches in the insurance sector and improve the management capabilities of insurance companies, the former CIRC initiated the establishment of the insurance asset and liability management supervision system, and officially issued the *Assets and Liabilities Management Regulations No. 1- No.5*<sup>135</sup> ("**New Regulations**") on 28 February 2018. It marked the start of the "tough constraints" era for the management of insurance assets and liabilities by the CBIRC.

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<sup>135</sup> *Assets and Liabilities Management Regulations No. 1-No.5*, China Insurance Regulatory Commission Order [2018] No.27, promulgated on 28 February 2018.

The New Regulations established a unified asset-liability management regulatory system covering capacity assessment and quantitative assessment in the insurance sector, which clearly defines asset-liability management structure, process tools, and various regulatory indicators, stress tests and scoring methods. In the New Regulations, No. 1 and No.2 are about the capability assessment and quantitative evaluation rules for the asset and liability management of property insurance companies; No. 3 and No.4 are for personal insurance companies; and No. 5 is about the content of the asset and liability management report.

In the rules of asset-liability management supervision and evaluation, the quantitative evaluation section mainly scores the matching and impact of the asset and liability management of insurance companies through the quantitative calculation of specific indicators; the capability evaluation section mainly assesses the asset and liability management capability of a company from its organization structure, process control, model tools, performance assessment and regular reports.

The scores of the above two evaluations make up the overall score. Based on the results of the comprehensive scoring, the CBIRC puts insurance companies into four categories: A, B, C, and D, and implements differentiated supervision regimes to each. For A-class companies with a high capability and good asset-liability matching, appropriate supporting regulatory policies will be given. For C-class and D-class companies with lower capability or poor asset-liability matching, targeted regulatory measures will be taken. It is helpful to gradually build a continuous and effective mechanism with the coordination and interaction of business supervision, fund utilization supervision and solvency supervision.

The formulation of this New Regulation draws on advanced experience abroad and fully considers the actual situation of the domestic Chinese insurance sector. Before the adoption of the New Regulation, a few rounds of advance research and testing in the whole insurance sector had been carried out. The official release of the New Regulations has filled in the regulatory gap, the lack of specific regulatory rules in the asset and liability field, which means that the asset and liability management in the insurance sector has been switched from "soft constraints" to "hard constraints".

## **VII. Foreign Exchange**

### **(i) Introduction to China's Foreign Exchange Regulatory System**

According to the provisions of the *PRC Regulations on Foreign Exchange Control*, foreign institutions

and individuals conducting direct investment in China shall complete foreign exchange registration after obtaining approval from the relevant regulatory authorities and shall comply with relevant foreign exchange management regulations under capital projects. At the same time, foreign institutions and individuals conducting direct investment in China shall also comply with the relevant provisions of the *Regulations on Domestic Foreign Exchange Control* on foreign exchange accounts and the opening and use of foreign exchange accounts. Since 2010, the State Administration of Foreign Exchange ("SAFE") has introduced a number of specific policies to simplify and adjust the foreign exchange management supervision for capital projects. The main effective policies related to foreign direct investment are as follows:

*1. Notice of the State Administration of Foreign Exchange on the Issuance of Regulations on Foreign Exchange Control of Foreign Investors' Direct Investment in China and Relevant Supporting Documents* (Huifa [2013] No. 21) ("**No. 21 Document**")

The issuance of No. 21 Document basically established an institutional framework based on "registration management" for managing the foreign exchange element of foreign investors' direct investment. By clarifying the foreign exchange management model based on "registration management", it simplifies the operating procedures of foreign exchange management, such as foreign exchange registration, account opening and use, reception of funds and payments as well as foreign currency settlement, removes most of the pre-approval matters in the regular business, which significantly simplifies the existing foreign exchange management system.

*2. Notice of the State Administration of Foreign Exchange on Further Simplifying and Improving Foreign Exchange Management Policies for Direct Investment* (Huifa [2015] No. 13) ("**No. 13 Document**")

No. 13 Document further simplifies the foreign exchange registration system of foreign investment established by No. 21 Document. Its core content is to decentralize most of the foreign exchange registration procedures to banks. In the event banks perform audit, statistical monitoring and reporting responsibilities within the scope of its authority, SAFE only reserves the right to register certain special matters. The main contents of No. 13 Document include: (1) canceling the foreign exchange registration approval under foreign direct investment in China and under Chinese companies' overseas direct investment; (2) simplifying the handling procedures for some foreign direct investment business; (3) improving banks' awareness of compliance in handling the foreign

exchange registration of direct investment; (4) strengthening the training guidance and post-event supervision of banks by SAFE.

### *3. Notice of the State Administration of Foreign Exchange on Reforming the Management Method of Foreign Exchange Capital Settlement of Foreign Invested Enterprises (Huifa [2015] No. 19) ("No. 19 Document")*

No. 19 Document specifies: to implement a nationwide reform of foreign exchange capital settlement by foreign invested enterprises. The main content of the reform are as follows: (1) to implement discretionary settlement for foreign exchange capital of FIEs; (2) to include the RMB funds obtained by an FIE from its discretionary settlement of foreign exchange capital in the account pending for foreign exchange settlement and payment; (3) Capital funds of FIEs should be used within the scope of the business; (4) to facilitate the domestic equity investment made by the funds obtained from foreign exchange settlement of FIEs; (5) to regulate the payment management of the funds obtained from foreign exchange settlement.

### *4. Notice on Expanding the Applicable Scope of the Temporary Waiver for Withholding Income Tax on Foreign Investors' Direct Investment Made by Distributed Profits (Fiscal and Tax [2018] 102) ("No. 102 Document")*

No. 102 Document specifies: in all projects and fields where foreign investment is not prohibited, withholding income tax shall be temporary waived for domestic direct investment made by foreign investors using the profits distributed from Chinese domestic resident enterprises (FIEs). No.102 Document specifies the conditions, operating and filing procedures for the temporary waiver for withholding income tax for foreign investors. At the same time, it also clarifies the situations under which paid tax is refunded and the situations required to apply for deferred tax payments. According to No.102 Document, those who are found during the follow-up management by tax authorities to be unable to meet the required conditions shall be deemed to be foreign investors who fail to submit income tax returns in accordance with the regulations, provided that such incompliance responsibility shall be attributed to the corporate body which distributes the profits.

In particular, if foreign institutions or individuals purchase real estate or invest in the real estate sector in China, additional attention shall be drawn to complying with the foreign exchange management policies and regulations on real estate investment adopted by SAFE and other relevant regulatory authorities.

## (ii) Foreign Exchange Management - Foreign Investment in the Banking Sector

### 1. Inception period

As mentioned above, foreign institutions that conduct direct investment in China need to apply for registration for foreign exchange management. Since the foreign exchange management reform in 2015, according to the requirements of Document No. 13, the authority to approve and handle foreign exchange registration has been delegated by SAFE to banks. SAFE stipulates that the registration for foreign exchange management of financial institutions set up by foreign investors by means of new establishment, mergers or acquisitions shall be handled according to the regulations and policies for the establishment of FIEs or projects. This Guideline will not elaborate further here.

### 2. Operation period

#### (1) Foreign invested bank's business entity

##### A. Make short-term, medium-term and long-term loans

##### (a) **Offshore** commercial loan

According to the relevant provisions, a foreign invested bank's business entity may directly provide offshore commercial loans within the approved scope of business, and shall register in accordance with SAFE's provisions<sup>136</sup>. But at present, SAFE has not yet enacted specific regulations and rules on this. It is suggested that the local SAFE branch should be further consulted with on the specific registration process.

##### (b) **Onshore** commercial loan

China once included foreign exchange funds borrowed by the borrowing units from foreign banks and Sino-foreign joint venture banks registered in China in the scope of foreign debts<sup>137</sup>. At present, the foreign debt with the character of international commercial loans only includes credit loans borrowed by domestic institutions from offshore institutions and natural persons and non-permanent institutions established in China<sup>138</sup>. Commercial loans made by a foreign invested bank's

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<sup>136</sup> Article 20 of the *Regulations of the People's Republic of China on Foreign Exchange Control*.

<sup>137</sup> Article 3 of the *Provisional Regulations on Statistics and Supervision of Foreign Debts*.

<sup>138</sup> Article 5 of the *Interim Provisions on the Management of Foreign Debts*.

business entity in China is no longer considered as foreign debt, nor does it involve SAFE registration procedures.

## B. Provide guarantees

In China, cross-border guarantees are mainly supervised and regulated by SAFE. Cross-border guarantees mean guarantee performances made in writing by the guarantor to the creditor, which is a legally binding promise to perform the payment obligations as stipulated in the guarantee contract and may result in cross-border receipts and payments of funds or cross-border asset transfers and other international revenue and expenditure transactions<sup>139</sup>. Foreign invested bank's business entity which provide or accept different forms of cross-border guarantees need to go through different foreign exchange management procedures in accordance with the relevant provisions.

### (a) Nei Bao Wai Dai (内保外贷)

*Nei Bao Wai Dai* ("内保外贷" in Chinese) refers to those cross-border guarantees in which the guarantor is registered in China and the debtor and creditor are registered abroad. The main way for foreign invested bank's business entity to participate in *Nei Bao Wai Dai* is to provide cross-border guarantees as guarantor.<sup>140</sup>

#### i. Registration for Nei Bao Wai Dai

For this type of business, the foreign invested bank's business entity shall obtain the corresponding qualification as guarantor, and submit relevant data to SAFE through data interface or other means<sup>141</sup>. As guarantor for this type of business, a foreign invested bank's business entity shall examine and verify the debtor's qualifications, the use of funds under guarantee, the expected source of repayment funds, the possibility of performance of the guarantee and the relevant transaction background, conduct due diligence on whether it conforms to relevant laws and regulations at home and abroad, and supervise whether the debtor uses funds under the guarantee in accordance with its stated purposes<sup>142</sup>.

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<sup>139</sup> See Article 2 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>140</sup> See Article 3 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>141</sup> See Article 2 and Article 3 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>142</sup> See Article 8 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

It should be noted that SAFE has strict requirements on the purpose of funds of this type of business, that is, the funds involved in Nei Bao Wai Dai should only be used for the relevant expenditure incurred within the debtor's normal business scope, and cannot be used for payment beyond the debtor's business scope. No sham transaction should be made for arbitrage, and other forms of speculative trading are also prohibited.<sup>143</sup>

The repatriation of funds under Nei Bao Wai Dai was once restricted, that is, without the approval of SAFE, the debtor could not repatriate the funds under Nei Bao Wai Dai directly or indirectly to the PRC for use such as domestic lending, equity investment or securities investment<sup>144</sup>. However, in 2017, SAFE eased the restrictions, allowing the debtor to repatriate funds under Nei Bao Wai Dai directly or indirectly back for domestic use such as domestic lending or equity investment<sup>145</sup>.

## ii. Performance of guarantee

Where a foreign invested bank's business entity has performed its obligation of guarantee, it may make external payments thereunder by itself. Its funds of performance of guarantee may come from its advances of foreign exchange provided earlier to the counter-guarantor, the deposits deposited by the counter-guarantor in the form of foreign exchange or RMB, or other payments made by the counter-guarantor. The counter-guarantor may directly purchase or pay for the foreign exchange with the certificate of performance of guarantee<sup>146</sup>.

## iii. Registration of external debt

Where the guarantee obligation is performed under Nei Bao Wai Dai, the foreign invested bank's business entity which becomes a creditor to an external debt shall register the external debt, i.e. submit the relevant information of the external debt through the capital account information system<sup>147</sup>.

In addition, if the debtor (or counter-guarantor) under the guarantee performs its obligation to repay to the foreign invested bank's business entity on its own initiative, the debtor (or counter-

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<sup>143</sup> See Article 11 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>144</sup> See Article 11 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>145</sup> See Article 2 of *Notice of the State Administration of Foreign Exchange on Further Promoting the Reform of Foreign Exchange Administration and Improving the Examination of Authenticity and Compliance*.

<sup>146</sup> See Article 6 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>147</sup> See Article 7 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

guarantor) and the guarantor may handle payment and receipt procedures on their own. If the debtor (or counter-guarantor) is unable to perform the payment obligation on its own initiative for various reasons, the foreign invested bank's business entity may handle the relevant foreign exchange procedures on behalf of the debtor (or counter-guarantor) in case the currency it has received from the debtor (or counter-guarantor) by legal means is inconsistent with the currency under the original performance of guarantee<sup>148</sup>.

#### iv. De-registration of Nei Bao Wai Dai

After the guarantor's payment responsibility under Nei Bao Wai Dai expires, the debtor pays off the debts under the guarantee or the guarantee obligation is performed, the foreign invested bank's business entity shall go through de-registration from Nei Bao Wai Dai, and may submit the updated data relating to Nei Bao Wai Dai to SAFE's capital account system through the data interface or other means.

#### (b) Wai Bao Nei Dai ( 外保内贷 )

*Wai Bao Nei Dai* ( 外保内贷 in Chinese) refers to the cross-border guarantee where the guarantor is registered abroad, the debtor is a non-financial institution registered and operated in China, and the creditor is a financial institution registered and operated in China. This concerns loans in domestic or foreign currency (excluding entrusted loan) or cross border guarantees with binding commitments provided by the financial institution<sup>149</sup>. The main way for foreign invested bank's business entity to participate in Wai Bao Nei Dai is to provide loans or commitment as creditors.

#### i. Registration for Wai Bao Nei Dai

In terms of Wai Bao Nei Dai engaged in by domestic debtors, a foreign invested bank's business entity that provide loans or commitment is in charge of submitting the data thereof to SAFE<sup>150</sup>.

#### ii. Performance of guarantee

Where the obligation of guarantee has been performed under Wai Bao Nei Dai, the domestic debtor shall go to the local SAFE branch within 15 working days for registration of short-term foreign debts

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148 See Article 7 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

149 See Article 3 and Article 17 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

150 See Article 18 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

and the filing of relevant information<sup>151</sup>. The foreign invested bank's business entity may directly handle the payment receipt of performance of guarantee with the overseas guarantors<sup>152</sup>.

It should be noted, however, that if the funds provided for performance of guarantee differ from the currency of the loan under the guarantee which results in settlement or purchase of foreign exchange, the foreign invested bank's business entity shall make the application with SAFE. Specifically, the branch or head office of the bank shall, after summing up the applications for settlement (or purchase) of foreign exchange arising from the payment of guarantee of performance of its own and its subordinate branches, make the application with the local SAFE branch<sup>153</sup>.

#### (c) Other cross-border guarantees

A foreign invested bank's business entity that provides or accepts cross-border guarantees other than by means of Nei Bao Wai Dai and Wai Bao Nei Dai may, in principle, sign the cross-border guarantee by itself. Unless specified otherwise, the guarantor and debtor do not need to register or file the cross-border guarantee with SAFE<sup>154</sup>.

### C. Inter-bank borrowing and offshore borrowing

#### (a) Administrative model

China exercises total control over the foreign debts of a domestic foreign invested bank's business entity. The foreign debts of a domestic foreign invested bank's business entity include offshore borrowing, offshore inter-banking, offshore inter-bank deposits, dealings with offshore branches and affiliates (debtor), and non-resident deposits and other forms of foreign liabilities<sup>155</sup>.

Before 2016, the management of short-term foreign debt (with a contract term of less than one year) was mainly based on short-term foreign debt balance indicators. That is to say, before the end of February every year, the domestic foreign invested bank's business entity had to report to the NDRC or the SAFE about its medium term and long-term foreign debt or short-term foreign debt balance occurred in the current year; and SAFE was required to examine and approve the short-term foreign

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151 See Article 4 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

152 See Article 3 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

153 See Article 5 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

154 See Article 25 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

155 See Article 3 of *Measures for the Administration on Foreign Debts of Foreign-funded Banks in China*.

debt balance of the domestic foreign invested bank's business entity in the current year<sup>156</sup>. The short-term foreign debt balance of the domestic foreign-invested bank's business entity at any point in the year shall not exceed the balance approved by SAFE.

From 2016 onwards, China began to gradually implement a macro-prudential pilot management program for full-covered cross-border financing. In 2017, the *Notice of the People's Bank of China on Matters related to Macro-prudential Management of Full-Covered Cross-border Financing* ("**No. 9 Document**") was officially introduced. According to the provisions of Document No. 9, under the macro-prudential management model, the domestic foreign invested bank's business entity carrying out cross-border financing shall calculate the risk-weighted balance (which means the outstanding balance unrepaid); and the risk-weighted balance shall not exceed the upper limit, that is, the risk-weighted balance of cross-border financing shall be less than the upper limit of the risk-weighted balance of cross-border financing. Specifically, the risk-weighted balance of cross-border financing =  $\sum$ the balance of domestic and foreign currency for cross-border financing \* term risk conversion factor \* category risk conversion factor +  $\sum$ the balance of foreign currency for cross-border financing \* exchange rate risk conversion factor; the upper limit of risk-weighted balance of cross-border financing = assets or net assets \* cross-border financing leverage rate \* macroprudential adjustment parameter<sup>157</sup>.

Since 12 January 2018, a foreign invested bank's business entity has automatically applied the macro-prudential management model under the No. 9 Document.

#### (b) Business operations

Before a foreign invested bank's business entity first engages in cross-border financing business, it shall calculate the risk-weighted balance of cross-border financing and the upper limit of the risk-weighted balance of cross-border financing according to the leverage rate of cross-border financing and macro-prudential adjustment parameters stipulated in No. 9 Document, as well as the latest audited capital data of the foreign invested bank's business entity, and submit the detailed procedure of calculation to the People's Bank of China and SAFE<sup>158</sup>.

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<sup>156</sup> See Article 5 and Article 6 of *Measures for the Administration on Foreign Debts of Foreign-funded Banks in China*

<sup>157</sup> See Article 3 and Article 5 of No.9 Document.

<sup>158</sup> See Article 11 of No.9 Document.

A foreign invested bank's business entity may engage in cross-border financing if the risk-weighted balance of the financing is within the upper limit. As such, the foreign invested bank's business entity may sign a financing contract with the overseas institution<sup>159</sup>.

Before performing the executed cross-border financing contracts, the foreign invested bank's business entity shall submit to the People's Bank of China and SAFE information on the amount of capital and cross-border financing contracts, and after withdrawal of the funds, they shall submit information on cross-border income in local and foreign currencies as required, and information on cross-border expenditure in local and foreign currencies after payment of interest and repayment of principal. If there is any change to the audited capital, the foreign creditors involved in the financing contract, the borrowing period, the amount and the interest rate concerned, the domestic foreign invested bank's business entity shall update the relevant information in the system in time<sup>160</sup>.

A foreign invested bank's business entity shall report to the People's Bank of China and SAFE the occurrence of cross-border financing in local and foreign currencies and changes in their balances occurred last month within five working days from the beginning of each month. All cross-border financing business materials shall be kept for reference for a period of five years from the end of the cross-border financing transaction<sup>161</sup>.

The funds extended to the foreign invested bank's business entity can be used to supplement capital, serve the development of the real economy, and shall be in conformity with the macro-control of national industries. With the approval of SAFE, the foreign invested bank's business entity can settle and use the financing foreign exchange funds<sup>162</sup>.

#### D. Settlement and sale of foreign exchange

In addition to the qualifications mentioned above, when a foreign invested bank's business entity applies for new qualifications for spot settlement and sale of foreign exchange, SAFE will also verify its comprehensive position limit for foreign exchange sales<sup>163</sup>.

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159 See Article 11 of No.9 Document.

160 See Article 11 of No.9 Document.

161 See Article 11 of No.9 Document.

162 See Article 11 of No.9 Document.

163 See Article 47 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

The local SAFE Branch shall be responsible for verifying the position limit of a foreign invested bank's business entity and adjusting it annually. If the volume of settlement and sale of foreign exchange in the previous year is less than US\$100 million, and if qualifications for settlement and sale of foreign exchange are newly obtained, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$50 million and the lower limit is US\$-3 million; if the volume of settlement and sale of foreign exchange in the previous year is between US\$100 million and US\$1 billion, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$300 million and the lower limit is US\$-5 million; if the volume of settlement and sale of foreign exchange in the previous year is above US\$1 billion, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$1 billion and the lower limit is US\$-10 million. In addition, if the comprehensive position cap of settlement and sale of foreign exchange approved in accordance with the aforementioned standards cannot meet the actual needs of foreign invested bank's business entity, the institutions may apply to the SAFE branch office according to their actual needs, and the SAFE branch office may raise the cap appropriately<sup>164</sup>.

For foreign banks with more than two branches in China, the head office or regional headquarters of the foreign bank may authorize a domestic branch (the "**Centralized Management Bank**") to manage the positions of the domestic branches. After the centralized management of the positions of branches of foreign banks has been implemented, the positions of all branches in China will be integrated into the position management of the Centralized Management Banks and traded and managed by the Centralized Management Bank in a unified manner. After the centralized management of the positions of branches of foreign banks is implemented, the daily management shall be carried out in accordance with the positions quota approved by SAFE. The aggregated data of all branches of the foreign bank shall be used for the calculation of business<sup>165</sup>.

E. Overseas financial management service on behalf of clients and Custodian service of overseas financial management on behalf of clients

(a) Overseas financial management service on behalf of clients

As mentioned above, a foreign invested bank's business entity needs to obtain the permission of the CBIRC or the local banking regulatory bureau to carry out the business of overseas financial

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164 See Article 45 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

165 See Article 49 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

management service on behalf of clients. If a foreign invested bank's business entity is entrusted by an investor to purchase foreign exchange with RMB, it shall apply to SAFE for the purchase quota of overseas financial management service on behalf of clients. (However, if a foreign invested bank's business entity is entrusted by an investor to make overseas financial investment through the investor's own foreign exchange, the amount entrusted by the investor shall not be included in the purchase quota of foreign exchange for investment approved by SAFE)<sup>166</sup>.

The net amount of foreign exchange purchased by a foreign invested bank's business entity engaged in overseas financial management service on behalf of clients shall not exceed the purchase limit of foreign exchange approved by SAFE<sup>167</sup>. Within the approved quota for foreign exchange purchase, the foreign invested bank's business entity may issue foreign financial management products denominated in RMB to investors, and uniformly handle the procedures of foreign exchange purchase for raising RMB funds<sup>168</sup>. After the repatriation of overseas financial management funds, the foreign invested bank's business entity shall pay the investment principal and revenue to the investors. Where an investor purchases foreign exchange in RMB, the foreign invested bank's business entity shall pay the investor after the settlement of the foreign exchange; if an investor invests in foreign exchange, the foreign exchange shall be repatriated to the investor's original account by the foreign invested bank's business entity; if the original account has been closed, it may be repatriated to the account designated by the investor<sup>169</sup>.

(b) Custodian service of overseas financial management on behalf of clients

Commercial banks engaged in overseas financial management on behalf of clients may entrust a foreign invested bank's business entity with custody qualifications approved by the CBIRC as custodians of offshore financial management on behalf of clients<sup>170</sup>. The foreign invested bank's business entity shall fulfil their regular reporting obligations to the CBIRC and SAFE, including<sup>171</sup>:

- ※ Reporting to the CBIRC and SAFE within five working days from the date of opening domestic custody accounts, overseas settlement accounts for the use of foreign exchange funds and securities custody accounts of commercial banks;

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166 See Article 13 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

167 See Article 17 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

168 See Article 15 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

169 See Article 16 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

170 See Article 19 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

171 See Article 21 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

- ✘ Reporting the remittance and repatriation of the relevant funds to SAFE within five working days;
- ✘ Reporting the revenue and expenditure of the domestic custody account of the commercial bank to SAFE within five working days from the end of each month;
- ✘ Reporting the overseas utilization of foreign exchange funds of the commercial bank in the previous year to SAFE within one month after the end of each fiscal year;
- ✘ Reporting to the CBIRC and SAFE in a timely manner if it finds that the commercial bank's investment instructions are illegal or irregular;
- ✘ Other reporting matters as stipulated by the CBIRC and SAFE.

A foreign invested bank's business entity shall, in accordance with the principle of prudence, select an offshore financial institution as its overseas custody agent in accordance with risk management requirements and business practices, and open a commercial bank foreign exchange fund utilization settlement account and securities custody account with the overseas custody agent for funds settlement and securities custody with overseas securities registration and settlement institutions<sup>172</sup>.

### (iii) Foreign Exchange Management - Foreign Investment in the Insurance Sector

According to legal and regulatory requirements, including the *Guidelines for Foreign Exchange Management of Insurance Business*<sup>173</sup>, the foreign exchange supervision of the insurance sector mainly involves the following:

#### 1. Market Access Management of the Foreign Currency Insurance Business

The foreign currency insurance business that insurance companies and their branches can carry out mainly includes:

- ✘ Foreign currency property insurance;
- ✘ Foreign currency life insurance;

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<sup>172</sup> See Article 24 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

<sup>173</sup> *Guidelines for Foreign Exchange Management of Insurance Business*, Hui Fa [2015] No. 6, adopted on 19 January 2015.

※ Foreign currency reinsurance.

The foreign currency property insurance business shall meet one of the following conditions:

- ※ The insured subject matter is property and related interests are outside the PRC;
- ※ The insured subject matter is property and related interests which are moved between the PRC and overseas territories;
- ※ The insured subject matter or the insured risks are full or partial liability risks, credit guarantee risks which exist or occurred outside the PRC;
- ※ The insured subject matter is an overseas insured person, or the property and related interests of an overseas insured person; or
- ※ Other circumstances stipulated by laws and regulations.

The foreign currency life insurance business shall meet one of the following conditions:

- ※ Cross-border short-term health insurance and accident insurance of domestic individuals;
- ※ Short-term health insurance and accident insurance of overseas individuals; or
- ※ Other circumstances stipulated by laws and regulations.

The foreign currency reinsurance business shall meet one of the following conditions:

- ※ Reinsurance in China for foreign currency property insurance and foreign currency life insurance pursuant to Article 7 and Article 8 of this guide; or
- ※ Other circumstances stipulated by laws and regulations.

## 2. Foreign Exchange Account Management

Opening, change, use and closing of foreign currency business accounts and foreign currency funds operation accounts by insurance institutions and their branches pursuant to the relevant provisions may be handled directly by the financial institution and the approval from the foreign exchange

bureau is not required, except for first-time account openings where the insurance institution is required to present materials including the official business license, organization code certificate pursuant to relevant provisions to complete the basic information registration formalities with the handling financial institution or the local foreign exchange bureau.

The scope of income and expenditure of a foreign currency capital funds account of an insurance institution shall be: foreign currency capital funds (foreign currency working capital) remitted inwards and remitted outwards in the event of capital reduction (divestment) pursuant to laws by shareholders (overseas parent company), fund transfers under the operation of domestic and overseas foreign currency funds, receipt and payment of foreign currency funds due to cancelled transactions, exchange settlement and usage pursuant to relevant provisions, foreign currency expenditure under current account, and foreign currency income and expenditure of capital projects stipulated by the foreign exchange bureau.

The scope of receipts and payments of a foreign currency business account of an insurance institution shall be: foreign currency income and expenditure under foreign currency insurance, fund transfers under the operation of domestic and overseas foreign currency funds, investment income, income from entrusted management fee, exchange settlement and usage pursuant to relevant provisions, foreign currency income and expenditure under current account projects, and foreign currency income and expenditure under capital projects stipulated by the foreign exchange bureau.

The scope of receipts and payments of a foreign currency funds operation account opened in a custodian financial institution and used for custodian purposes shall be: transfer of foreign currency funds to and from foreign currency capital funds account, foreign currency business account, designated foreign currency account for overseas listing or another foreign currency funds operation account, income and expenditure pertaining to sale and purchase of foreign currency financial assets and any other foreign currency income and expenditure stipulated by the foreign exchange bureau.

The scope of receipts and payments of any other foreign currency funds operation accounts shall be: transfer of foreign currency funds to and from the foreign currency funds operation account used for custodian purposes, income and expenditure pertaining to sale and purchase of foreign currency financial assets and any other foreign currency income and expenditure stipulated by the foreign exchange bureau.

### 3. Foreign Currency Income and Expenditure Management

Foreign currency income and expenditure under current accounts from cross-border insurance, cross-border reinsurance of insurance institutions and their branches shall be handled pursuant to foreign exchange management regulations on current accounts of domestic institutions.

Foreign currency income and expenditure under capital projects from direct investments, external borrowing and lending, overseas listing, external guarantees and operation of overseas funds of insurance institutions shall be handled pursuant to foreign exchange management regulations on capital projects.

For the indemnification, charge back, recovered expenses under insurance policies transferred by the insured person to a third party in China or overseas, and where the transfer between the insured and the third party complies with the foreign exchange management regulations, the insurance institution may process the transfer of the insurance payout funds based on the insured's endorsement or written instruction.

For cross-border payments and receipts between an insurance institution and an overseas rescue and aid organization or medical institution for the rescue, aid or medical treatment rendered to the insured person, the handling financial institution shall examine and verify at least one item of the proof materials such as contracts, invoices, payment notices, payment lists, etc.

## **VIII. Tax**

The categories of taxes closely related to financial institutions mainly include corporate income tax and value-added tax ("VAT"). Due to limited space, we will only briefly introduce corporate income tax and value-added tax that are related to the business of Foreign invested banks and insurance institutions. In view of the complexity of tax issues, we recommend that foreign invested banks, foreign invested insurance institutions and investors from other financial institutions consult professional tax advisors or tax authorities for more details.

### **(i) Corporate Income Tax (CIT)**

Since the 1980s, foreign invested banks have enjoyed preferential corporate income tax policies which allow the corporate income tax of foreign invested banks to be exempted completely or reduced by a half. After the adoption of the *Corporate Income Tax Law* in 2008, tax policies have changed. Since then, foreign invested banks and insurance institutions are

subject to the same corporate income tax rate as applied to Chinese- invested commercial banks and insurance institutions<sup>174</sup>.

## **(ii) VAT**

On 1 May 2016, China begun to roll out a pilot reform and fully implement VAT nationally replacing business tax. Taxpayers have changed from paying business tax to paying value-added tax. Foreign invested banks and insurance institutions are no exception.

According to the *Notice on the Comprehensive Reform of Levying VAT instead of Business Tax*, the applicable VAT rate on financial services is currently 6%<sup>175</sup>.

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174 Article 4 of the *PRC Corporate Income Tax Law*.

175 Article 15 of the *Notice on the Comprehensive Reform of Levying VAT instead of Business Tax*.

## Disclaimer

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**Annex 1: Opening-up Schedule of China's Financial Sectors****(i) Banking**

No.	Sectors	Liberalization	Timeline
1	Commercial Banks	(1) To remove the limit on foreign ownership in commercial banks, and offer equal treatment between foreign invested and domestic banks (2) To allow foreign banks to open both subsidiaries and branches in China in parallel	30 June 2018
		(3) To substantially expand the business scope of foreign invested banks	31 December 2018
2	Subsidiaries of Banks	To remove the limit on the maximum foreign ownership in financial assets investment companies and wealth management companies newly established by commercial banks	31 December 2018
3	Non-bank Financial Institutions	To encourage foreign investments in banking finance sectors, including trusts, financial leasing, auto finance, currency brokerage and consumer finance	31 December 2018
4	Asset Management Companies	To remove the limit on foreign ownership, and offer equal treatment between foreign and domestic investments	30 June 2018

**(ii) Insurance**

No.	Sectors	Liberalization	Timeline
1	Insurance Companies	To remove the requirement that a representative office operates for at least two years before foreign invested insurance companies may be opened in China	31 December 2018
2	Life Insurance Companies	The limit on foreign ownership raised to 51%	30 June 2018
3	Insurance Agents	To allow eligible foreign investors to operate insurance agency business in China	30 June 2018
4	Insurance Surveyors and Adjusters	To allow eligible foreign investors to operate insurance surveyor and loss adjusting businesses in China	30 June 2018
5	Foreign Invested Insurance Brokerage Firms	To remove the limit on the business scope of foreign invested insurance brokerage firms, and offer equal treatment between foreign and domestic investments	30 June 2018

**(iii) Securities and Funds**

No.	Sectors	Liberalization	Timeline
1	Securities Companies	(1) The limit on foreign ownership raised to 51% - The limit on foreign ownership to be removed after three years (2) To remove the requirement of at least one Chinese securities firm as a domestic shareholder in Sino-foreign joint venture securities firms	30 June 2018
		(3) To remove the limit on the scope of business of the Sino-foreign joint venture securities firms, and offer equal treatment between foreign and domestic investments	31 December 2018
2	Fund Management Companies	The limit on foreign ownership raised to 51% - The limit on foreign ownership to be removed after three years	30 June 2018
3	Futures Companies	The limit on foreign ownership raised to 51% - The limit on foreign ownership to be removed after three years	30 June 2018

**(iv) Stock Connect and QDII**

No.	Sectors	Liberalization	Timeline
1	Stock Connect between Mainland and Hong Kong	To increase the quota of Stock Connect between Mainland and Hong Kong to four times of the original. The daily southbound quotas for each of the Shanghai-Hong Kong and Shenzhen-Hong Kong Stock Connect to be increased from RMB 10.5 billion to RMB 42 billion, and the daily northbound quota, which allows investors in Hong Kong to buy Mainland stocks, to be increased from RMB 13 billion to RMB 52 billion - The increase of the daily quota is related to A-share inclusion into the MSCI - To expedite the implementation of the securities account “look through” regime by the Mainland and Hong Kong authorities	May 1, 2018
2	Shanghai-London Stock Connect	To launch the Stock Connect between Shanghai and London	December 31, 2018 (Not achieved yet)
3	Qualified Domestic Institutional Investor (QDII)	To further improve the macro prudent management of QDII regime	/

## **Annex 2: CBIRC Unveils 12 New Measures for Opening of Chinese Banking and Insurance Sectors**

1. The simultaneous cancellation on ceilings on shareholdings by a single Chinese-invested or a single foreign-invested bank in a Chinese commercial bank, in accordance with the national treatment principle;
2. The cancellation of the USD\$10 billion total assets requirement for foreign banks establishing foreign invested legal person banks in China, and the US\$20 billion total assets requirement for foreign banks establishing branches in China;
3. The cancellation of the US\$1 billion total assets requirement for offshore financial institutions investing in the equity of trust companies;
4. Allowing offshore financial institutions to invest in the equity of foreign-invested insurers in China;
5. The cancellation of the requirement that insurance brokers engaging in insurance brokerage operations in China have been in operation for at least 30 years, and have total assets of no less than US\$200 million;
6. Loosening of restrictions on Chinese shareholders in Sino-foreign joint-venture banks, and the cancellation of the requirement that the sole or primary Chinese shareholder be a financial institution;
7. Encouraging and supporting foreign financial institutions to engage in equity, operational and technical cooperation with privately controlled banking sector and insurance sector institutions;
8. Allowing foreign insurance group companies to invest in the establishment of insurance institutions;
9. Allowing foreign-invested insurance group companies in China to establish insurance institutions with reference to the qualification requirements for Chinese-invested insurance group companies;
10. The simultaneous loosening of entry policies for Chinese-invested and foreign-invested financial institutions to invest in and establish consumer finance companies, in accordance with the national treatment principle;
11. The cancellation of examinations and approvals for foreign-invested banks to handle RMB operations, and allowing foreign-invested banks to engage in RMB operations when they do business; and
12. Allowing foreign-invested banks to engage in agency collection and payments operations.

Guo Shuqing said that further opening of the banking and insurance sectors is necessary for the independent growth of the Chinese economy and finance, and will be of benefit to enriching market

participants, stimulating market vitality, and improving the management level and competitive capability of the financial sector. Financial regulators will "uphold consistency in treating domestic and foreign [parties], provide fair treatment to domestic and foreign applicants, and form 'multi-victory' circumstances."

## Annex 3: CBIRC's Departments and their Responsibilities

No.	CBIRC's current Departments	Former CBRC counterpart	Former CIRC counterpart	Responsibilities
1	General Office (Communist Party Committee Office)	General Office	General Office (Communist Party Committee Office)	Responsible for the daily operations of the organization, handling information, security, confidentiality, application for audiences, publicity of government affairs, information technology, news releases and other work.
2	Policy Research Bureau	Policy Research Bureau	Policy Research Office	Undertaking policy research and implementation work of reform and opening-up in the banking and insurance sectors. This bureau conducts systematic studies of domestic and foreign economic and financial situations, the reform and development trend of international banking and insurance supervision, the supervision methods and operation mechanism, and provides suggestions for banking and insurance sectors' supervision policies.
3	Legal and Regulation Department	Legal and Regulation Department	Legal and Regulation Department	Drafting other laws and regulations for the banking and insurance sectors and formulating relevant regulations; undertaking legal reviews and providing legal advisory services; undertaking administrative reviews, responses to administrative lawsuit and imposing administrative punishments, etc.
4	Department of Statistics and Information and Risk Monitoring	Department of Information Technology	Department of Statistics and Information	Undertaking preparation and publicity of the regulatory statistical system and regulatory reports of the banking and insurance sectors, and responsible for the risk monitoring, analysis and early warning in the sectors. Undertaking construction of information networks and responsible for information security, as well as risk supervision of information technology used in banking and insurance institutions.
5	Finance and Accounting Department (Supervision Department on Solvency)	Finance and Accounting Department	Finance and Accounting Department (Supervision Department on Solvency)	Responsible for financial management, compiling the annual financial budget and final accounts. Responsible for establishing an index system for solvency supervision and supervising its implementation. Supervising the use of insurance guarantee funds.
6	Inclusive Financing Department	Inclusive Financing Department	/	Coordinating and promoting inclusive finance in the banking and insurance sectors; formulating relevant policies and regulations and ensuring their implementation. Guiding banking and insurance institutions in providing financial services to small and micro enterprises, agriculture, rural areas and special groups.

7	Supervision Department of Corporate Governance	/	Department of Development and Reform	Formulating regulatory rules for corporate governance of banking and insurance institutions. Coordinating the function supervision of equity management and corporate governance. Guiding banking and insurance institutions to strengthen equity management and standardize shareholders' behavior and improve corporate governance structure.
8	Inspection Agency of Banking Institutions	On-site Inspection Agency	/	Formulating the on-site inspection plan for banking institutions and conducting on-site inspections. Undertaking project establishment, implementation and post-evaluation functions of on-site inspection. Providing suggestions on rectification, supervision and administrative punishment.
9	Inspection Agency of Non-banking Institutions	Separated from the On-site Inspection Agency of the former CBRC, taking over the responsibility of the Inspection Agency of the former CIRC		Drawing up on-site inspection plans for insurance, trust and other non-banking financial institutions and coordinating the implementation. Undertaking project establishment, implementation and post-evaluation functions of on-site inspections. Providing suggestions for rectification, supervision and administrative punishments.
10	Material Risk Events and Case Handling Agency (Security Agency for Banking and Insurance Sectors)	/	/	Formulating rules for the investigation of cases in violation of laws and regulations of banking and insurance institutions. Organizing and coordinating the investigation and handling of material and cross-regional risk incidents and illegal cases in the banking and insurance sectors. Guiding and inspecting the safety and security work of banking and insurance institutions.
11	Supervision Department for Innovation Business	Innovation Department	/	Coordinating the supervision of banking and insurance institutions' asset management businesses and other functions. Providing guidance and support for the daily supervision of innovative business in banking and insurance sectors. Undertaking research on new regulatory strategies for the banking and insurance sectors, such as fin-tech.
12	Consumer Rights Protection Agency	Consumer Rights Protection Agency	Insurance Consumer Rights Protection Agency	Studying and formulating the overall planning and implementation methods for the protection of consumer rights in the banking and insurance sectors. Investigating and handling cases that damage consumer rights and dealing with consumer complaints. Carrying out publicity and education about these issues.

13	Anti-Illegal Financial Activities Agency	Office Handling Wrongdoing	/	Cracking down on the unauthorized establishment of illegal financial institutions or financial institutions doing business in disguised form. Undertaking the identification, punishment and elimination of illegal fund-raising entities and the relevant coordination work. Reporting cases of illegal fund-raising to relevant departments. Carrying out relevant publicity and education, policy interpretation and business guidance.
14	Supervision Department of Policy Banks	Policy Banks Department		Managing the market access of policy banks and development banks. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
15	Supervision Department of Large Commercial State-owned Banks	Large-scale Banks Department	/	Managing the market access of large commercial state-owned banks. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
16	Supervision Department of National Joint-stock Commercial Bank	Joint-stock Banks Department		Managing the market access of national joint-stock commercial banks. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
17	Supervision Department of Urban Commercial Banks	Urban Banks Department		Managing the market access of urban commercial banks and private banks. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
18	Supervision Department of Rural Small and Medium-sized Banks	Rural Finance Department		Managing the market access of rural small and medium-sized banks. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.

19	Supervision Department of International Cooperation and Foreign Invested Institutions (Office of Hong Kong, Macau and Taiwan affairs)	Foreign Invested Banks Department International Department	International Department (Office of Hong Kong, Macau and Taiwan affairs)	Handling foreign affairs, international cooperation and matters related to Hong Kong, Macao and Taiwan. Managing the market access of foreign invested banks and insurance institutions. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
20	Supervision Department of Property Insurance (Supervision Department of Reinsurance)	/	Supervision Department of Property Insurance (Supervision Department of Reinsurance)	Managing the market access of property insurance companies and reinsurance companies. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
21	Supervision Department of Life Insurance		Supervision Department of Life Insurance	Managing the market access of life insurance institutions. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
22	Supervision Department of Insurance Intermediary		Supervision Department of Insurance Intermediary	Managing the market access of insurance intermediary institutions. Setting the behavioral norms and qualification requirements of practitioners of insurance intermediary institutions. Inspecting and regulating the market behavior of insurance intermediary institutions. Investigating and imposing penalties on activities that violates laws or regulations.
23	Supervision Department of Insurance Fund Use		Supervision Department of Insurance Fund Use	Establishing a risk assessment, early warning and monitoring system for the use of insurance funds. Managing the market access of the insurance funds utilization organizations. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.

24	Supervision of Trust Institutions	Trust Department		Managing the market access of trust institutions. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation. Guiding the operation and management of the trust protection funds.
25	Supervision Department of Other Non-banking Financial Institutions	Non-banking Department	/	Managing the market access of financial asset management companies, corporate group finance companies, financial leasing companies, auto finance companies, consumer finance companies, currency brokerage companies and other institutions. Conducting off-site monitoring, risk analysis and regulatory ratings, and on-site investigations based on needs for risk monitoring. Proposing measures case by case for risk monitoring and market exit, and organizing the detailed implementation.
26	HR Department (Party Organization Department)	HR department	HR and Education Department	In charge of HR management, organization planning, wage arrangements and training and education for personnel of government organs, dispatched agencies and directly affiliated units. Guiding the building up of talents in the sector. Guiding the organizational construction of the Communist Party and training and systematic education for communist party members.
27	Party Committee (Party Committee Publicity Department)	Party Committee Publicity Department	Party Committee Publicity Department (Party Committee and United Public Department)	Responsible for the work between the communist party members and the public of the organs and units directly under the management of the organ in Beijing; responsible for the ideological construction and publicity work of the system.