

A NEW INSURANCE LAW FOR CHINA

A major revision of the law governing insurance in China is expected to offer better protection for insureds and reinforce controls on insurers when it goes into effect October 1, 2009. The changes should mostly benefit international companies doing business and insuring their interests in China, although some aspects of the increased supervision of local insurance companies by the government may bring price increases.

The recent revision comes more than six years after the last, and many experts say it amounts to a new law that will bring significant changes in the way insurance business will be conducted in China. They also note the Chinese Insurance Regulatory Commission (CIRC) is expected to issue further revisions as well as clarification on how the law will be implemented between now and October.

Many of the changes involve contract certainty, timeliness and claim handling. Here are some highlights of interest to multinational companies:

- Insurance contracts will be deemed final when the insurer fully accepts the insured's insurance application, unless both parties agree that there are specific matters yet to be settled before the policy is bound. This may help prevent uncertainty after parties have entered into an agreement to bind, but before any policy has been issued.
- Rules are clarified for specific lines of insurance.
 - Property: The insured must have insurable interest at the time of loss.
 - Marine Cargo: A shipowner may purchase cargo insurance for the consignee. (This is implied by the new law).



- Life: The applicant must have insurable interest at the time the policy is bound; employers are explicitly allowed to purchase Life insurance for employees.
- The right of insurers to rescind policies for nondisclosure or misrepresentation has been restricted. Insurers may only claim their right of rescission within 30 days of first learning of the breach and only up to two years after binding. Moreover, if the insurer is aware of any nondisclosure at the binding of the policy, that nondisclosure cannot be grounds for claim denial or policy rescission.
- The CIRC intends to more closely examine insurer wordings and rates, which may limit the use of manuscripted wordings.

The apparent goal is to help prevent arbitrary restrictions of coverage. Supervision of rates is intended to “mitigate irrational competition.” As a result, rates could rise in lines where competition has been strong.

- Insurers will be obliged to explain the terms and conditions of insurance contracts prior to binding, if the insurer’s standard form is used. This appears to put the burden of proof of clarity upon the insurer.
- After a claim is submitted, the insured is “encouraged” to notify the insurer in a timely fashion to commence the claims process and protect their rights. Insurers will be obliged to request data pertaining to the loss in one aggregated list and to respond to the claim within 30 days. Grounds for denial, if any, must be in writing.
- The time limit for submitting a claim will be two years for non-Life claims and five years for Life claims after the insured is (or should have been) aware of the loss.

CIRC supervision of insurers will increase in several ways:

- Insurers on the verge of insolvency will be more closely monitored, with the CIRC having the right to force them to add capital, restrict the scope of their business, or modify the way profits or monies flow to both shareholders and managers.
- The CIRC will also more closely monitor transactions among affiliated insurers to protect the interests of the insurance company. At the same time, insurers will have more latitude in the kinds of investments (securities, properties) they are allowed to make.
- Major shareholders in new insurers will have to demonstrate their assets and credit-worthiness.
- The requirement that all permitted reinsurance must first be offered to reinsurers registered in China has been formally abolished. Some experts have noted that as of October 1, there will be no restrictions on reinsurance of Chinese risks, but others caution that the authorities may well revise reinsurance regulations prior to the implementation of the new law.

Although a good deal of uncertainty surrounds implementation of the new law, the Chinese insurance authorities seem intent on greater clarity in transactions between the insurer and the insured. As multinational companies further expand their operations in China, the new rules should grant them greater confidence in the certainty and fairness of insurance contracts.

We will publish more alerts as further revisions or clarifications are issued.

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