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China Regulators Remove Restrictions on Insurance Fund Investment

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On November 12, 2020, the China Banking and Insurance Regulatory Commission (“**CBIRC**”) issued a new rule with regard to removing industry restrictions on financial equity investment by insurance companies. The newly released *Notice on Matters Related to Insurance Fund Financial Equity Investment* (the “**Notice**”) took effect on November 12, 2020 and is consistent with the speech made by China Premier Li Keqiang on July 15, 2020, calling for the “cancellation of industry restrictions for insurance funds undertaking financial equity investment.” Chinese insurance companies are some of the biggest in the world by market capitalization. This new Notice is undoubtedly good news to relevant industries and companies.

The Notice includes 10 articles and mainly revises the scope of industries in which the insurance companies can invest. Previously, such scope was stipulated in the *Notice of China Insurance Regulatory Commission on Promulgation of the Provisional Measures on Equity Investments Using Insurance Funds*, China Insurance Regulatory Commission, September 5, 2010 (“**Circular 79**”); the *Notice on Issues Relating to the Investment in Equity and Real Property with Insurance Funds*, China Insurance Regulatory Commission, July 16, 2012 (“**Circular 59**”); and the *Notice on Promulgation of the Rules for Implementing the Interim Measures for the Administration of Overseas Investment with Insurance Funds*, China Insurance Regulatory Commission, October 10, 2012 (“**Circular 93**,” and together with Circular 79 and Circular 59, collectively, the “**Current Laws**”). After the Notice became effective, the Current Laws’ limitation on the scope of industries in which insurance companies can invest will be abolished. However, the process for equity investments and other limitations under the Current Laws will be maintained. In other words, the Notice only expands the scope of industries in which insurance companies can invest.

Differences between the Notice and the Current Laws

Before the Notice took effect, the Current Laws only regulated the scope of industries in which the insurance companies can invest as follows:

Inbound Investment	Outbound Investment
Circular 79, Circular 59	Circular 93
Direct inbound equity investments using insurance funds shall be limited to equities of insurance enterprises, non-insurance financial enterprises and pension, and medical and automobile service enterprises related to the insurance business.	Direct outbound equity investments using insurance funds shall be limited to finance, pension, medical treatment, energy, resources, automobile services and modern agriculture.

The Notice broadens the industries in which insurance funds can be invested. Under the Notice, investments of insurance funds are regulated through a “*Positive Guidance + Negative List*” mechanism rather than a listing of the specific industry allowed for investment in the Current Laws:

1. **Positive Guidance** – the Notice does not list the industries in which insurance funds can be invested. Instead, the Notice takes a principle-based approach and mandates that insurance funds can be invested into equity investments that (i) are safe, liquid and profitable, when comprehensively considering factors such as solvency, risk preference, investment budget, assets and liabilities; and (ii) represent an equity investment into a target enterprise that is registered and legally established in accordance with the law and has high developmental potential (i.e., in a promising phase, a mature phase or a strategic emerging industry, or have a clear IPO intention and high M&A value).
2. **Negative List** – the Notice specifies 10 situations/companies in which insurance funds are strictly prohibited from investing. In general, insurance funds are not allowed to make investments into a target company that:
 - (i) does not have a stable cash flow return expectation and a definite dividend return track record, or does not have some form of competitive advantage or value proposition in the areas of market access, technology or resources;
 - (ii) has experienced a material breach of contract (e.g., litigation or administrative penalty) in the last three years;
 - (iii) is facing or experiencing major adverse changes such as the loss of core management and business personnel, loss of target market or loss of core business competitiveness;
 - (iv) has controlling shareholders or senior managers who have experienced severe punishment by the Chinese government or the Chinese judiciary authorities in the past three years, or have been included in the List of Dishonest Enforcees (失信被执行人名单);¹
 - (v) is involved in material civil employment compensation disputes or other major legal disputes, or has material deficiencies in its ownership structure that may cause ownership disputes;
 - (vi) has related-party transactions with investment consultants, legal service providers, financial auditing service providers, or asset evaluation and other professional service institutions engaged by the insurance company;

¹ “List of Dishonest Enforcees (失信被执行人名单)” is a fairly broad concept in China. Article 255 of the *Civil Procedure Law of the PRC* (Standing Committee of the National People’s Congress, Jul.1, 2017) stipulates that if a litigant fails to fulfill the obligations specified in a legal document or a legal judgment, the relevant people’s court may adopt certain measures to encourage enforcement, including listing such person in a “List of Dishonest Enforcees,” restricting person on such list from departure from the country, putting such listed in the relevant social credit systems and publishing such listed person’s information and failure to meet his obligations through the media.

- (vii) belongs to the Negative List for Foreign Investment Access (National Development and Reform Commission, Ministry of Commerce, July 23, 2020), negative industries list or other such similar lists;
- (viii) belongs to industries with high pollution, high energy consumption, overcapacity and low technical added value, or has failed to meet energy conservation and environmental protection standards;
- (ix) directly engages in real estate development and construction, including the development or sale of commercial residences;
- (x) meets any other conditions prescribed by the CBIRC.

Conclusion

According to the CBIRC, as of the end of September 2020, Chinese insurance companies have made equity investments totaling RMB 2 trillion (i.e., approximately US\$2,985.1 billion) in both Chinese companies and overseas companies, accounting for 10% of the funds under management by insurance companies in China. It is anticipated that the assets under management by Chinese insurance companies will continue to grow and need to be deployed. The Notice substantially loosens restrictions on Chinese insurance companies' ability to invest and generate a healthy return, but also puts the onus on the insurance industry to self-regulate, given the relative vagueness of the "Positive Guidance + Negative List" mechanism. We anticipate that the Chinese insurance industry will embrace this loosening with gusto, but there might be bumps along the way. Companies that would like to attract insurance company investments should conduct a self-analysis to see if they fall into any of the 10 negative list categories.

For more information, please see the following resources:

- [China Updates page](#)
- [China Adopts Interim Provisions on the Review of Concentrations of Business Operators for the Anti-Monopoly Law](#), November 30, 2020
- [China Releases Draft Personal Data Protection Law for Comments](#), November 12, 2020
- [China Adopts Export Control Law](#), November 5, 2020
- [China Releases New QFII/RQFII Rules](#), October 27, 2020
- [China Releases Provisions on Strengthening the Supervision of Private Equity Investment Funds \(Draft\)](#), October 15, 2020
- [China Releases Provisions on the Unreliable Entity List](#), October 5, 2020
- [China Releases Revised Measures on Handling Complaints of Foreign-Invested Enterprises](#), September 23, 2020
- [China Releases Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies](#), September 10, 2020
- [China Releases Draft Data Security Law](#), September 8, 2020
- [China Releases Circular on Further Stabilizing Foreign Trade and Foreign Investment](#), August 24, 2020
- [China Releases Draft Measures for the Administration of Imported and Exported Food Safety](#), August 18, 2020
- [U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options](#), July 30, 2020

- [China Passes Controversial Hong Kong National Security Law](#), July 9, 2020
- [China's Relaxed Financial Sector May Aid Foreign Investors](#), June 18, 2020
- [Is There a Law in China Similar to the US Defense Production Act?](#), May 8, 2020
- [Coronavirus Brings Force Majeure Claims to LNG Contracts](#), March 4, 2020
- [The Rise of China](#), March 4, 2020
- [Coronavirus Fears Cast Cloud Over Dealmaking](#), February 27, 2020
- [Is Your China Chemical Plant in Danger of Being Shut Down?](#), December 2019

Additional questions? Please contact Haynes and Boone lawyers, [Liza L.S. Mark](#) and [Jasmine Yang](#).