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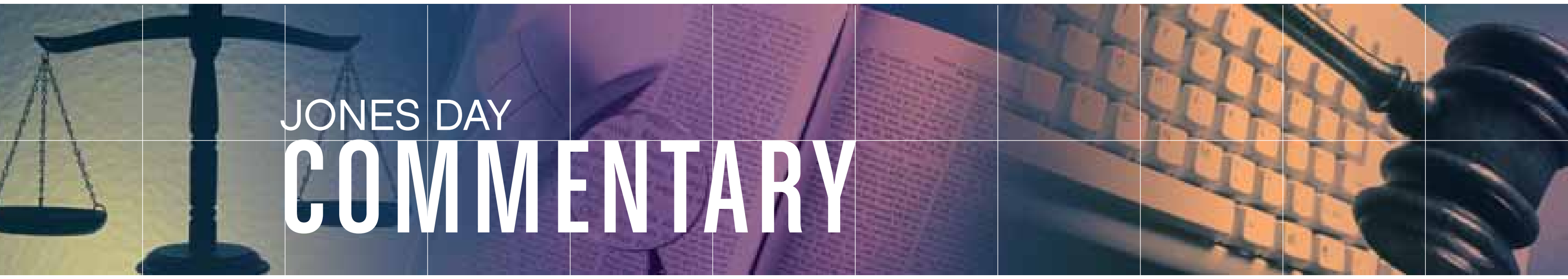

CHINA AMENDS ITS INSURANCE LAW

On February 28, 2009, the Standing Committee of the National People's Congress of China adopted the long-awaited amendment to the current insurance law (the "New Insurance Law"). The new law will come into effect on October 1, 2009.

We summarize below some key features of the New Insurance Law that may likely have an impact on the investment in and operation of insurance companies in China and may resolve outstanding problems that the current insurance law was unable to address and clarify earlier.

BACKGROUND

China's insurance law was first enacted in 1995. The insurance law was subsequently amended in 2002 to accommodate China's commitments to the World Trade Organization. The New Insurance Law is the result of seven years' extensive debate and consultation since the 2002 amendment. Although the full impact of the amendment remains to be seen, the New Insurance Law has the following main legislative aims: to provide more protection to legitimate rights of the insured; to strengthen regulatory supervision of insurance companies and ensure that insurance companies remain financially sound financial institutions; to broaden the business scope of insurance companies; and to establish a higher standard for the industry.

LAW TO PROVIDE MORE RIGHTS FOR THE INSURED

The New Insurance Law attempts to maintain a balance between the right of the insured to have his claims settled fairly and promptly and the insurance company's effective use of its resources.

One of the important things the new law does is to streamline the timeline within which an insurance claim should be settled by an insurance company. Under the current law, there is no clear and specific deadline within which an insurance company should settle the insured's claims. There have been many complaints from insureds about this lack of mandatory time limits and resulting abuses by insurance

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companies. The new law provides that an insured's claim shall be settled within a reasonably limited period of time. Under the New Insurance Law, when the insured files his claim with supporting documents, the insurance company may request additional information only once, if it believes that the file is not complete. In the past, the insurance company could effectively delay the claim process by asking the insured to provide additional documents again and again. The insurance company must complete its verification process within 30 days after receipt of the insured's claim and must pay the insurance money in 10 days after the agreement with the insured. If the insurance company decides to turn down the insured's claim, it shall inform the insured of the decision with reasons within three days after the verification process.

The new law also imposes a *non-estoppel* provision on insurance companies. In the past, an insurance company could unconditionally refuse to pay a claim if the insured had failed to disclose relevant facts or preexisting conditions. A new article in the New Insurance Law provides that if the insurance company knows about the facts or preexisting conditions that the insured fails to disclose at the time of issuing the insurance policy, the insurance company cannot terminate the insurance contract under the principle *of non-estoppel*. When the insurance company knows about the facts or preexisting conditions that the insured fails to disclose intentionally or negligently after the issuance of the insurance policy, it has the right to terminate the insurance contract within 30 days after it has knowledge of the relevant facts or preexisting conditions. The insurance company can exercise this termination right within two years after the issuance of the insurance policy. After two years, the insurance company will be barred from terminating the insurance contract.

On the other hand, the new law has placed a bar on stale claims with the aim of preventing insurance companies from wasting valuable resources to deal with old claims. The New Insurance Law in effect shortens the statute of limitations from four years to two years within which an insured must file his claim from the day when he knows or should have known the occurrence of the insured incident.

LAW TO BROADEN INVESTMENT OPTIONS AND EXPAND BUSINESS SCOPE

Under the current law, insurance funds can be invested only in a very limited set of investment options. In the past, treasury bonds were essentially the only securities in which insurance companies could invest. The limitation resulted in a huge amount of insurance funds remaining uninvested. The New Insurance Law will significantly expand investment options for insurance companies, which will be permitted to invest in securities, such as bonds, stocks, and funds, and in real property. This is intended to maximize the value of insurance funds as well as bring additional liquidity to the securities and asset market.

On the other hand, the business scope of insurance companies is significantly expanded by the new law. Under the New Insurance Law, the scope of personal insurance is to include life insurance, health insurance, accidental injury insurance, etc. Property insurance is expanded to include property loss insurance, liability insurance, credit insurance, guarantee insurance, etc. With the expanded business scope, insurance companies will play an increasingly important role in the current fundamental reform on China's social security and health insurance system.

LAW TO STRENGTHEN REGULATORY SUPERVISION ON INSURANCE COMPANIES

The New Insurance Law aims to strengthen regulatory supervision of insurance companies and take measures to prevent financial risks. Certain new provisions empower the China Insurance Regulatory Commission ("CIRC") to establish an effective supervisory system to monitor those insurance companies that are on the verge of insolvency. If an insurance company is financially unstable, it will be put on probation for correction by CIRC. Meanwhile, CIRC may impose certain mandatory measures on an insurance company. For example, CIRC may ask an insurance company to increase its registered capital and be restricted from distributing dividends to its shareholders. CIRC may even take over an insurance company if it is in serious financial difficulties.

Over the years, transactions between insurance companies and their shareholders have caused serious conflict of interest problems. CIRC has been increasingly tightening its supervision on affiliated transactions between insurance companies and their shareholders. The New Insurance Law recognizes such supervisory powers by requiring an insurance company to set up an effective management and disclosure system for affiliated transactions. The new law also requires that when a shareholder of an insurance company has seriously damaged the well-being of such insurance company through affiliated transactions that are harmful to the solvency of the company, CIRC can order such shareholder to take affirmative corrective actions. Under the new law, CIRC could also impose restrictions on the shareholder exercising its shareholder's rights and may even compel the assignment or sale of its shares in the insurance company to a third party if the shareholder fails to make the requested correction.

Meanwhile, the new law also sets up a higher standard on the qualifications of shareholders and senior management of an insurance company. Under this higher standard, insurance companies are expected to become more professional and competitive.

SOME OBSERVATIONS

On the whole, the New Insurance Law is reasonably expected to have met its intended legislative goals. It remains to be observed how the new law will be effectively implemented and enforced in reality. It is expected that a set of well-thought and effective implementation rules will be adopted to make the new law work effectively.

It is generally recognized that the New Insurance Law has sought to reasonably balance the interests of insurance companies and insureds, and it has opened the door for insurance companies to become more professional and competitive and to provide a greater variety of competitive insurance products to the market.

However, the new law is still quite general in many places. It remains to be seen how the enabling implementation rules will make the new law work effectively. Issues such as how to resolve conflicts between the old and new laws, and how and where the new law will be applied retroactively remain to be resolved, most likely through judicial interpretations on particular issues by the Supreme People's Court.

Finally, CIRC has been granted even greater regulatory powers under the new law. It remains to be seen whether it will have sufficient expertise and manpower to do the job that the legislature has intended it to do.

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