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Global Corporate Insurance and Regulatory Bulletin

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ASIA

China: China Insurance Regulatory Commission raises cap for domestic investors in insurers

China Insurance Regulatory Commission ("**CIRC**") has raised the ownership ceiling for domestic investors in insurers from 20% to 51%, potentially paving the way for cash-strapped insurers to raise capital.

Insurers, including market leader China Life Insurance Co. Ltd, have seen their profits decline due to the slowing economy and investment losses incurred from a sluggish stock market. Many insurers have an urgent need for more capital, but there is a limit to how much they can raise through the debt markets.

The changes aim to encourage strategic investment, improve corporate governance and promote steady development. It is thought that by increasing the investment limit and allowing shareholders in the country's insurers to own stakes as much as 51%, this may attract strategic investors and boost the industry's capital strength. The combined holdings of a single investor and its affiliated parties can exceed 20% if the investor has held a stake in the insurer for more than 3 years and has RMB10 billion (US$1.6 billion) of total assets. In addition, investors will not be allowed to sell the shares for a period of 3 years.

It is hoped that loosening equity holding restrictions on Chinese insurers may help companies attract strategic investors, enhance shareholder responsibilities and improve the efficiency of corporate governance. The rule changes will make it easier for insurers to seek capital from existing shareholders.

China: Insurers must implement new anti-money laundering rules by 2015

The People's Bank of China ("**Central Bank**") has revamped the country's anti-money laundering rules governing financial institutions, including insurers. The new anti-money laundering rules ("**New Rules**") have not been made public but have been provided directly to the relevant insurers and banks, who must implement them by December 2015.

The media has reported that under the existing rules there have been eight million reports in a two year period and that the New Rules are designed to force financial institutions to exercise discretion.

Under the New Rules, instead of simply making a report of potential money laundering, financial institutions will be required to score their customers' risk profiles according to their geography, characteristics, business and industry from 0-100, and rate the perceived risk level from 1-5 when making a report.

Hong Kong: Effect of new data privacy rules on direct marketing by insurance companies

The provisions in Hong Kong's Personal Data (Privacy) (Amendment) Ordinance 2012 ("**Amendment Ordinance**") relating to direct marketing came into effect on 1 April 2013. The Amendment Ordinance prescribes heightened requirements for use of personal data in direct marketing.

Under the Amendment Ordinance, any data user (including insurance institutions and insurance practitioners) must, before carrying out direct marketing, inform a customer or potential customer, that their personal data will be used for direct marketing and the kind of products that they are going to market. As such, insurance institutions and insurance practitioners must not use the personal data of customers or potential customers to make a direct marketing approach, or provide such personal data to their agents for use in direct marketing, without customer consent. Guidance issued in January 2013 by the Office of the Privacy Commissioner for Personal Data makes it clear that silence is not valid consent (but that not checking a box indicating an objection, coupled with returning the form, can be valid consent).

Insurance institutions will also no longer be able to say that they intend to use all of a customer's or potential customer's personal data or that they will use personal data for general marketing purposes. Insurance institutions need to specify what personal data they want to use such as name, address, phone number, email address, marital status, employment status and / or earnings, and so on. They will also need to specify the different types of products they want to market. It follows that customers must be given a choice as to the kinds of personal data they will permit to be used for direct marketing and the specific products they will permit to be marketed to them. Thus, a customer may agree to the use of their email address but no other data, and may agree to receive marketing materials in relation to certain types of insurance products but not others.

In addition to the new requirements, insurance institutions must continue to inform a customer of his opt-out right when using his data for direct marketing for the first time, and to stop using his data for direct marketing if he opts out. The Amendment Ordinance makes it clear that a customer has the right to opt-out from direct marketing at any time, irrespective of whether he has previously consented to the use of his data for direct marketing.

Contravention of the new requirements by a data user constitutes an offence punishable by a fine of up to HK$500,000 (US$65,000) and imprisonment for up to three years.

As a result of the Amendment Ordinance, insurance institutions will have to exercise great care when drafting direct marketing notices and in setting up systems to administer their direct marketing programmes. It is also likely that insurance companies will cut back on direct marketing. This view has been echoed by the CEO of MassMutual Asia, Mr Tay Keng Puang, who has indicated in the media that insurance companies will go back to use of traditional insurance agents to sell their policies.

We have published more detailed legal updates on this topic:

1. The Amendment Ordinance

   (published in four parts); and

2. Complying with the Amendment Ordinance in the Insurance Industry

Hong Kong: Launch of Risk-Based Capital Model

Hong Kong has started a study of an appropriate risk-based capital ("**RBC**") model and is looking to implement it in 2016 at the earliest.

The Commissioner of Insurance ("**CI**") commented that 3 years will be the minimum estimate of time required for launching an RBC model in Hong Kong, as the CI first needs to prepare a draft framework for discussion (expected sometime this year). While there are other regulatory measures in the pipeline, such as the establishment of an Independent Insurance Authority and a Policyholder's Protection Fund, the CI is not in favour of pushing for consolidation of insurance companies in the market.

Under the RBC system, regulators will have the authority and statutory mandate to take preventive and corrective measures that vary depending on the capital deficiency indicated by the RBC level. These preventive and corrective measures are designed to provide for early regulatory intervention to correct problems before insolvency.

Myanmar: Update on Insurance Industry

Twelve (12) private insurers ("**Private Insurers**") won licences and have been given conditional approach from the state-owned insurer Myanma Insurance ("**MA**") and the Insurance Business Supervisory Board ("**IBSB**") to start operations from June 2013 (and must do so within 12 months). MA and IBSB received 20 applications to operate insurance companies but approved only 12 (all of which are local insurers – foreign insurers are not currently allowed to operate in Myanmar). The approved Private Insurers are as follows:

1. Apex Insurance International Company;
2. IKBZ Insurance Public Company;
3. Great Future International Insurance Company;
4. Capital Life Ltd Insurance Application;
5. Global Standard Insurance Public Company;
6. Green Asia Insurance Company;
7. Jade King and Queen Service Company;
8. Mya Wady Insurance Company;
9. Pillar of Truth Insurance Company;
10. Citizen Business Insurance Company;
11. Ayeyar Myanmar Insurance Company; and
12. Myintmo Min Insurance Company.

Of these Private Insurers, 3 plan to offer life insurance, which requires paid-up capital of Myanmar Kyat ("**MMK**") 6 billion (US$7 million), and the remaining 9 plan to offer both life and general insurance, which requires a total capital of MMK46 billion (US$53 million).

The approval given is conditional, pending the Private Insurers meeting paid-up capital requirements and depositing funds with the Myanma Economic Bank. The Myanma Economic Bank, will then check whether the relevant tax has been paid, and determine the source of the paid-up capital is legitimate. The Myanma Economic Bank will return 60 percent of the paid-up capital to the Private Insurers to allow them to use it for their operations and retain the remaining 40 percent in case the relevant Private Insurer is unable to meet its obligations.

The Myanmar financial industry is still underdeveloped and is mostly represented by banks. This is due to tight controls exercised by the government. With the commencement of the Private Insurers' operations in Myanmar, an association for insurance firms will be set up and the Myanmar Insurance Law will be amended.

Additionally, on 23 April 2013, the European Union lifted sanctions on Myanmar in recognition of a wave of political and economic reform.

Singapore: Amendments to the Insurance Act

Singapore passed the Insurance (Amendment) Act on 15 March 2013 to amend the Insurance Act (Chapter 142 of the 2002 Revised Edition) ("**Amended Act**"). The Amended Act makes some major changes to the regulatory framework with the primary aim of enhancing supervision of the insurance industry in Singapore.

Highlights of the Amended Act are:

1. The Monetary Authority of Singapore (**"MAS"**) may permit a foreign insurance regulator to inspect insurers operating in Singapore where such insurers are part of a larger group over which the foreign regulator has jurisdiction. In the future, MAS will provide information on a Singapore insurer to a regulator of the relevant insurer's head office or parent company. Likewise, MAS has new powers to inspect the overseas branches and subsidiaries of Singapore-incorporated insurers.

2. A pre-registration requirement on representative offices of foreign insurers, and MAS will exercise supervisory jurisdiction over such representative offices.

3. No person may solicit insurance business in Singapore except a licensed insurer, an authorised reinsurer or a registered foreign insurer. Solicitation may also only be made in relation to the Singapore operations of an insurer (and solicitation for an overseas head office or branch is not permitted). Conversely, a Singapore insurer may not solicit insurance to be provided by an overseas branch.

4. A new requirement for the prior consent of MAS before a licensed insurer may acquire an interest of 10% or more in another corporation.
5. A new requirement for the prior consent of MAS before a person obtains effective control (including when acting in concert with others) or a substantial shareholding (5% of the voting rights) of a licensed insurer, with the aim of ensuring that only a fit and proper person may obtain such control or shareholding.
6. Clarification that an insurance business transfer, even through novation, requires MAS' prior consent (although the transfer of a small number of policies may not constitute a business transfer, and therefore not be covered).
7. Mandatory appointment of certain key personnel and allows MAS to require the removal of an individual from such an office.
8. Prohibition on the co-branding of insurance with an unregistered insurer.
9. Changes to standardise the legal framework with other legislation administered by MAS, such as the Banking Act (Chapter 19 of the 2008 Edition) and the Securities Futures Act (Chapter 289 of the 2006 Edition), including the creation of an appeals procedure for rejected licence applications.

Singapore: Financial Holding Company Act 2013

Singapore's legislature enacted the Financial Holding Company Act 2013 (**"Act"**) on 8 April 2013. The Act introduces a regulatory framework for the Monetary Authority of Singapore ("**MAS**") to regulate financial holding companies ("**FHCs**") and the subsidiaries of an FHC ("**FHC Group**").

An FHC is a non-operating holding company that has at least one subsidiary which is a bank or insurance company incorporated in Singapore, and the financial subsidiary/subsidiaries contribute 50% or more of the assets, capital, liabilities or revenue of the FHC Group

The Act only covers designated FHCs, and sets out a list of criteria which MAS will consider in assessing whether an FHC should be designated for regulation. MAS will look to regulate an FHC where the FHC is the ultimate parent, but also where the FHC is an intermediate holding company (depending on factors including the significance of the entity in the wider FHC Group, the potential affect on the stability of the Singapore financial system, and the extent of supervision of the ultimate FHC in its home jurisdiction). Non-designated FHCs will not be directly regulated under the Act, but may be required to furnish MAS with information that is necessary to carry out MAS' surveillance and supervision function.

The Act applies a new regulatory regime to designated FHCs including requiring prior approval of the substantial and controlling shareholdings of an FHC, who must each be a fit and proper person (i.e. mirroring the controls under the recently revised Insurance Act). Other regulatory powers of MAS are also strengthened, such as the inspection and investigation of the FHC Group and requirements on group-wide capital adequacy to ensure that the FHC Group maintains financial resources commensurate with the entire group's business, placing prudent limits on lending and investment to ensure that exposure is not unduly concentrated, and requirements for regular reporting on the finances and other information on the FHC Group.

The FHC legislation is expected to be implemented in late 2013-early 2014 and the MAS has commented that it will allow an appropriate transition period for FHCs to comply.

UK/EUROPE

UK: Chief Executive of the Prudential Regulation Authority ("PRA") voices concerns over the implementation of the Solvency II directive

The Chief Executive of the PRA, Andrew Bailey, has recently expressed his concern regarding the implementation of the Solvency II directive. One of the key features of the Solvency II directive is the requirement for insurers across the EU to match the assets they hold to the risks they underwrite. However, the directive has been criticised in recent times for the long delay in its implementation and the unnecessary detail which keeps pushing this implementation date back even further.

On 30 April 2013, the House of Commons Treasury Committee published letters between the committee chairman, Andrew Tyrie MP, and Andrew Bailey. In the letters, Andrew Bailey warned the committee that the Solvency II directive had become overly detailed and extremely expensive. Mr Bailey expressed his concern that a great deal of money was being spent by companies to prepare for the directive even though there was no promise as to when, or in what form, it will be implemented. It has been estimated that the implementation of Solvency II will cost UK companies £3billion and this figure is likely to keep rising the longer this directive is delayed. UK regulators have tried to address these cost concerns by allowing companies to adopt certain elements of the directive in advance. However, this has done little to silence the criticism surrounding the directive. In his reply to Andrew Bailey, Mr Tyrie said that he took the concerns raised seriously and planned to investigate the matter in the forthcoming months.

Although most insurers support the plan to replace a patchwork of local rules with a single EU-wide standard, there are ongoing objections surrounding the practice details of the directive. One of the largest concerns is regarding the treatment of EU life insurers, which typically have a very large asset worth. The concern is that placing onerous capital charges on these products will cause a severe disruption in the capital markets. The pan-European regulator in charge of writing the standards, EIOPA, is conducting a study into how long-term guarantees in life insurance policies will be treated under the new regulations. This study is due to be completed in June. It is likely that the tackling of these objections is likely to cause even more delays in the implementation of the directive, the date of which is now estimated to be some time in 2016 at the earliest.

UK: Director of Supervision for the FCA delivers speech on the importance of culture as the driving behaviour of firms and how the FCA will assess this

In his speech at the UK Professionals Conference, Adamson highlighted 'culture' as underpinning the problem faced by firms and as the key attribute the FCA will look to assess going forward. The FCA is looking for ways to promote an ethically responsible culture. The FCA plans to assess culture through many different methods, including looking at how a firm responds to regulatory issues, what customers are actually experiencing, how a firm runs its product approval process, the manner in which decisions are made and even remuneration structures. Adamson said that by looking at all these various factors the FCA will be able to draw conclusions about the firm.

Adamson identified three principal factors which make up the 'culture' of a firm:

- **Setting the tone from the top**

  This was the idea that everyone has ownership for doing the right thing and this is established by the CEO and senior management and personally demonstrated through their actions.

- **Translating this into easily understood business practices**

  Adamson gave examples where companies had done the right thing for its customers even if this came at a cost. This consumer focused behaviour should filter down through the company so that the senior management can be sure that sound advice is being given on the ground.

- **Supporting the right behaviours through performance management, employee development and reinforcing culture through reward programmes**

  Incentivise and reward employees to encourage the right outcomes and have effective recruitment policies in place. Adamson stressed the importance in advancing the right people as by advancing someone you are telling them their behaviour in the workplace is appropriate.

These three factors reflect the overall consumer protection and market integrity focus of the FCA. This focus on culture has come off the back of the erosion of trust in financial services in recent years, namely, the miss-selling of pensions, PPI and the LIBOR scandal.

Adamson stated that in the past there had been a culture of seeing consumers as somebody to maximise profit from and therefore products were not always sold with consumer interest in mind. Adamson accepted that the FSA had not been an effective conduct regulator. In the past, the FSA had tried to tackle problems by forcing disclosures and this was often seen as enough to absolve a firm from any real responsibility and, consequently, the cultural approach of going the right thing has been lost.

In his speech, Adamson also highlighted that the FCA intends to put a greater emphasis on the scrutiny of boards and individual accountability. The FCA hope to ascertain whether the individuals understand the firms strategies for cross-selling products, how fast growth is obtained and whether the products being sold match the markets they are designed for. By focusing on boards and individuals, the FCA will be more prepared to hold these individuals to account when things go wrong.

US/AMERICAS

US: NAIC Spring 2013 National Meeting

The National Association of Insurance Commissioners ("**NAIC**") held its Spring 2013 National Meeting on **April 6-9, 2013** in Houston, Texas. Set forth below are highlights from the meeting with respect to some of the NAIC working groups.

US: Update on the NAIC Solvency Modernization Initiative (E) Task Force and its Working Groups

The NAIC's Solvency Modernization Initiative (E) Task Force (the "**SMI Task Force**") and its working groups, including the Corporate Governance (E) Working Group (the "**CG Working Group**"), the Group Solvency Issues (E) Working Group (the "**GS Working Group**") and the International Solvency and Accounting Standards (E) Working Group (the "**ISAS Working Group**"), held meetings at the NAIC Spring 2013 National Meeting.

The CG Working Group adopted the "Proposed Responses to a Comparative Analysis of Existing U.S. Corporate Governance Requirements". The document summarizes a comparative analysis of existing corporate governance standards and practices in place within the U.S. regulatory system against international standards, company best practices and regulatory needs. In addition, it sets forth proposed enhancements for corporate governance. In addition to adopting this document, the CG Working Group adopted two model law development requests in support of the enhancements included in the Proposed Responses. The document and the model law development requests will be presented to the SMI Task Force for consideration and approval.

The GS Working Group met at the NAIC Spring 2013 National Meeting to hear updates on initiatives of the International Association of Insurance Supervisors ("**IAIS**") Groups and Cross-Sectoral Subcommittee and the IAIS Joint Forum Initiative. After considering a draft memorandum with proposed changes to the Part A accreditation standards related to the *Risk Management and Own Risk and Solvency Assessment Model Act*, the GS Working Group adopted the draft. The GS Working Group exposed a draft memorandum with proposed changes to the Part B accreditation standards relating to holding company analysis for a 45-day comment period and proposed changes to the *Financial Analysis Handbook* for a 60-day comment period.

Finally, the ISAS Working Group met and discussed documents prepared by the IAIS Solvency Subcommittee regarding the development of a scenario-based approach to group capital, documents relating to ComFrame, and status reports from the IAIS Accounting and Auditing Issues Subcommittee and on the IASB March 2013 Financial Instruments: Expected Credit Losses exposure draft (the "**IASB Financial Instruments draft**") and the IASB Insurance Contracts exposure drafts (the "**IASB Insurance Contracts draft**"). The ISAS Working Group will hold a conference call to draft comments on the IASB Financial Instruments draft and expects that the IASB Insurance Contracts draft will be released by June 30, 2013.

US: Reinsurance (E) Task Force and the NAIC List of Qualified Jurisdictions

The NAIC's Reinsurance (E) Task Force (the "**RTF**") met at the NAIC Spring 2013 National Meeting to discuss revisions to RTF's draft "Process for Maintaining the NAIC List of Qualified Jurisdictions". The revisions to the draft, which has been described in our prior bulletins, include changes to the expedited review procedure for a jurisdiction to become qualified and the removal of the applicant jurisdiction self-evaluation report requirement. The latest draft of the Process document is exposed comments.

Also at the meeting, RTF received several reports, including a status update regarding the implementation of the revised *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786), related work of other NAIC groups such as the Reinsurance Financial Analysis Working Group, and international reinsurance-related issues.

US: Federal Home Loan Bank Legislation (E) Subgroup

The NAIC's Federal Home Loan Bank Legislation (E) Subgroup (the "**FHLB Subgroup**") is considering, among other things, proposed amendments to the *Insurer Receivership Model Act* ("**IRMA**") to provide certain exemptions for security agreements between insurance companies and Federal Home Loan Banks ("**FHLBs**"). The FHLBs, who often lend on a secured basis to insurance companies, are concerned about two main risks: (i) the risk that their ability to enforce their security interests could be impaired in by injunctions and orders issued at the commencement of an insurance insolvency proceeding and (ii) the risk of a "clawback" pursuant to the voidable preference and lien provisions of insurance insolvency laws. Accordingly, the proposed amendments would exempt FHLB security agreements from IRMA Section 108, Injunctions and Orders, and IRMA Section 604(C), Voidable Preferences and Liens. The FHLB Subgroup met at the NAIC Spring 2013 National Meeting to discuss the proposed amendments and receive presentations on the subject. Because the FHLB Subgroup expects the FHLB to ask state legislatures to amend state insurance receivership laws to incorporate the proposed amendments, the Subgroup approved a memo to state insurance regulators informing them about the proposed amendments and expressing the view that the states should act uniformly in addressing this legislative request, and do so only after the NAIC has fully studied the receivership considerations and has finalized a recommendation.

US: Mortgage Guaranty Insurance (E) Working Group

The NAIC's Mortgage Guaranty Insurance (E) Working Group (the "**MGIWG**") held a meeting at the NAIC Spring 2013 National Meeting to discuss the comments that the MGIWG has received on a draft document called "Concepts - List of Potential Regulatory Changes", which the MGIWG had previously exposed for comments and which sets forth the problems that the MGIWG has identified in the current regulation of mortgage guaranty insurance that might warrant changes to the NAIC's Mortgage Guaranty Insurance Model Act (the "**MGI Model Act**"). As discussed in our March 2013 bulletin, the MGIWG was created to consider what changes might be necessary, if any, to the solvency regulation of mortgage guaranty insurers in the United States and to make recommendations for any such proposed changes to the NAIC's Financial Condition (E) Committee including possible changes to the MGI Model Act.

US: President Obama's 2014 Fiscal Year Budget Proposes Deduction for Reinsurance Premiums Paid to Non-US Affiliates

The 2014 Fiscal Year Budget for the US federal government proposed by the Obama administration would end the tax deduction for reinsurance premiums paid by companies to non-US affiliates. If this change is adopted, it would affect reinsurance premiums paid with respect to reinsurance agreements issued in taxable years beginning after December 31, 2013. According to the Obama administration's budget proposal, disallowing "the deduction for non-taxed reinsurance premiums paid to foreign affiliates" would reduce the US federal budget deficit by $2.621 billion during the 2014-2018 period and $6.209 billion during the 2014-2023 period. It is uncertain at this time whether the Obama administration's proposal will be adopted by Congress in its currently proposed form, or at all.

Argentina: Amendments to Argentinean Insurance Laws

The Argentinean Superintendent of Insurance (Superintendencia de Seguros de La Nacion –"**SSN**") made relevant amendments to the General Regulation of the Insurance Activity ("**RGAA**") to increase the license operations requirements of insurance and reinsurance companies.

The relevant amendments were made to the section 7 of the RGAA which was modified through the Resolution nº 37.499. These changes are in accordance with the new rules approved by the SSN last year and the main points are set out below:

(i) Upon analysis of the request for authorization made by an insurance or reinsurance company, SSN will consider the "market convenience" of the project and the destination of the economic and human resources which must be reverted into capital investment in accordance with the evolution of the national economy, in order to boost employment and reinvest the funds generated in the country;

(ii) Foreign branch companies domiciled in countries or areas without global cooperation agreement against money laundering, in accordance with FATF (Financial Action Task Force), will not be allowed;

(iii) Companies will not be authorized to use insolvent insurance or reinsurance companies' names, or surname of natural persons (mainly if this person is a shareholder or stakeholder of the company);

(iv) The initial capital contribution must be notified in order to give evidence of company's solvency;

(v) When the requesting company is part of an economic group, reference in relation to the corporate group structuring as well as identification of all members companies and information about its operations must be provided;

(vi) Companies' premises and financial costs in this regard must be detailed;

(vii) Analysis of economical and business viability (including information related to products, risks involved, reinsurance agreements, products distribution, etc.) covering the period of 3 years must be provided;

(viii) Individual shareholders of the companies must present the last 3 income tax statements and a complete description of operations. At list 2/3 of a company's directors and officers must prove experience in insurance or reinsurance activity;

(ix) Transfer of shares or capital contribution must be previously requested and authorized by SSN and must contain its purpose description, indication of numbers of share, class, votes, nominal value, total value of the shares' transfer/ capital contribution and payment conditions.

Whilst the amendments brought by Resolution nº 37.499 in theory align the Argentinean insurance legislation with the international anti-money laundering policies, it has increased the local Government's control over the insurance and reinsurance activity.

Have you seen our Year in Review?

We have recently released our Global Insurance Industry 2012 Year in Review, which discusses some of the more noteworthy developments and trends in insurance industry transactions in 2012 in the US, Europe, Asia and Latin America, with particular focus on mergers and acquisitions, corporate finance, and the insurance-linked securities and convergence markets. A request for the 2012 Year in Review can be made here.

If you have any query in connection with anything in this Bulletin, please do not hesitate to get in touch with your usual Mayer Brown contact or one of the contacts referred to below.

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