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China Newsletter | Winter 2018/Issue No. 37

February 2018

CIRC Issued Guidance on Articles of Association for Insurance Companies

Following the general principles on the articles of association for insurance companies set out in the Company Law and the Opinions on Regulating the Bylaws of Insurance Companies issued by the China Insurance Regulatory Commission (CIRC), CIRC issued the Guidance on Articles of Association for Insurance Companies (the Guidance《保险公司章程指引》) in April 2017, illustrating a concrete and detailed model of articles of association for joint-stock insurance group (holding) companies, insurance companies, and insurance asset management companies. With the intention to regulate the corporate governance of insurance companies, the Guidance will play an important role. In addition to the clauses required by the Company Law, the Guidance requires that insurance companies include the following clauses in their articles of association:

Shareholder Rights and Obligations

- The minimum amount of equity that entitles shareholder(s) to nominate directors or supervisors;
- The statutory functions and powers of the shareholders' general meetings, especially the powers to deliberate and approve the company's establishment of legal person agency, material investment, material asset purchase, material asset disposal and writing-off, and material asset mortgage, among other things. Such statutory functions and powers must not be delegated to the board of directors, other institutions, or individuals.
- Shareholders may report any violations of law,regulation, or the company's articles of association by directors, supervisors, or senior officers directly to CIRC.;
- Shareholders shall cooperate with regulatory agencies when the company is involved in any major violation;

- Shareholder shall pledge not to harm the interests of other shareholders and the insurance company. The voting rights shall not be granted to the pledgee or its affiliates.

Directors and the Board

- Independent directors shall have the power to review material related to party transactions;
- The functions and powers of the board of directors shall be exercised by the board as a whole. Generally speaking, statutory functions and powers of the board of directors shall not be granted to the chairman, directors, or other institutions or individuals. When such authorization is necessary, it may only be granted on a case-by-case basis.

Shareholders, Directors, and Controlling Shareholders who are Related Parties to the Company

- Such shareholders and directors shall abstain from voting on matters relating to related party transactions;
- Cumulative voting system shall apply to the election of directors and supervisors where a single shareholder holds more than 50 percent of a company's equity.

Special Corporate Governance Matters

- The substitution/successor mechanism shall be introduced into the articles of association. In case the chairman, vice chairman, or general manager is not able to perform his/her duties, this person shall be designated to them;
- If a deadlock has led to governance failure of a company and cannot be rectified by internal procedures, the company, shareholders holding more than one third of the company's shares in aggregate, or a majority of directors may apply to the CIRC to supervise and guide the company.

MOT Issued Supplementary Provisions to the Provisions on Foreign Investment in the Civil Aviation Industry (VI)

Three government agencies including the Ministry of Transportation (MOT) issued the Supplementary Provisions to the Provisions on Foreign Investment in the Civil Aviation Industry (VI) (《外商投资民用航空业规定》的补充规定（六）, Provisions VI), which came into effect May 1, 2017. Provisions VI have further reduced the restrictions on foreign investment in the civil aviation industry. Provisions VI reflect the effort of the Chinese government to further open up the civic aviation industry to foreign investors.

Treatment of Hong Kong and Macau Investors

- Under the CEPA arrangements, Hong Kong and Macau investors may establish wholly owned enterprises providing aircraft maintenance, inflight food, air cargo warehousing, parking lots, and ground services (excluding safety protection);
- The requirement that a Hong Kong or Macao investor must pass an economic demand test to incorporate a Computer Reservation System (CRS) joint venture is cancelled.

Treatment of Foreign Investors in Free Trade Zones

- Foreign investors may establish wholly owned air transportation sales agencies and project companies for air cargo warehousing, ground services, inflight food, and parking lots by means of sole proprietorship within Free Trade Zones such as Shanghai Pilot Free Trade Zone;

- Foreign investors may establish equity joint ventures or contractual joint ventures in maintenance of aircrafts and such ventures are no longer required to be controlled by Chinese shareholders.

CIRC Updated Four Regulations and Rules including Detailed Rules for the Implementation of the Administrative Regulations on Foreign-funded Insurance Companies

On April 24, 2017, in order to reduce unnecessary paper work in routine business of insurance companies, CIRC updated four regulations and rules to cancel certain requirements on document submissions. CIRC cancelled:

- The requirement for the notarization of relevant materials for incorporating a foreign-funded insurance company (previous Article 26 of Detailed Rules for the Implementation of the Administrative Regulations of the People's Republic of China on Foreign-funded Insurance Companies);
- The requirement for the notarization of relevant materials for incorporating a representative agency of a foreign insurance institution (previous Article 6 of Administrative Measures for the Representative Agencies of Foreign Insurance Institutions in China);
- The requirement for a legal opinion rendered by a law firm on an insurance company's issuance of private placement subordinated debts, as well as the audited financial statements and solvency report for the last three years and latest quarter (Previous Article 12 and 14 of Administration Measures for the Subordinated Term Debts of Insurance Companies);
- The requirement for the notarization of the Chinese translation of employment-related materials for directors, supervisors, and senior management personnel of insurance companies (previous Article 50 of Provisions on the Administration of the Employment Qualifications of Directors, Supervisors and Senior Management Personnel of Insurance Companies).

Comments Sought on Measures for Evaluating Security of Transmitting Personal Information and Important Data Overseas

On April 11, 2017, Cyberspace Administration of China (CAC) issued a draft of Measures for Evaluating the Security of Transmitting Personal Information and Important Data Overseas (Draft for Comment or Draft).

Background of the Legislation

Following a series of laws and regulations intended to tighten the supervision of cyberspace and information security, this draft provided detailed regulations on personal information and evaluations of data security on the outbound transmission of personal information. Before the issuance of the Draft, China had enacted the Decision of the Standing Committee of the National People's Congress on Strengthening Network Information Protection (Standing Committee of the National People's Congress, 2012), Cyber Security Law (Standing Committee of the National People's Congress, 2016), and a series of departmental regulations on internet and user information protection, showing its determination to defend cyber security and “cyber sovereignty.” It is worth noting that Article 37 of Cyber Security Law lays down the principles of localization of personal information and important data, and security assessments for information to be provided to overseas parties.

Applicable Scope of Localization and Security Evaluation

- Legal Basis: Article 37 of Cyber Security Law

Cyber Security Law limits the applicable scope of localization and security evaluation to outbound transmission of personal information and important data gathered by "key information infrastructure operators." The industry scope of "key information infrastructure" is limited to those vital to national security and public interest such as, inter alia, public communications and information service, energy, and transport. Such requirements have aroused widespread concerns among foreign investors on their information storage and transmission.

- The Draft: Enlargement of the Applicable Scope

Notwithstanding the limitation of Cyber Security Law on applicable scope, the Draft requires all "network operators" to store personal information and important data within the territory of China and conduct security evaluation on outbound transmission of the same. The applicable scope of localization and security evaluation is therefore significantly enlarged. If the Draft were to be adopted formally, it is likely that companies would have to face additional expense of compliance. It is noteworthy that consent to the outbound transmission must be acquired from the subjects involved.

Security Evaluation and Statutory Evaluation Agencies

- Self-Evaluation

Network operators shall conduct self-evaluation on transmission of data to overseas parties at least once every year and be responsible for the evaluation results. The self-evaluation shall cover the following aspects:

a) the necessity of transmitting data overseas;

b) content related to personal information, including the quantity, scope, type, and sensitivity of personal information, as well as whether or not the data subjects agree to transmit their personal information overseas, etc.;

c) content related to important data, including the quantity, scope, type, and sensitivity of important data;

d) safety protection measures, capabilities, and levels of data recipients, as well as the network security environment in their countries and regions, etc.

e) risks such as leakage, damage, falsification, and abuse of data after the data is transmitted overseas and retransferred;

f) risks to national security, public interests, and personal legal advantage which may be likely to arise due to transmission of data to overseas parties and gathering of overseas data; and

g) other significant matters required to be evaluated.

- Statutory Evaluation Agencies

In the event of any of the following, the relevant authority or regulatory department shall be informed and conduct security information evaluation:

- Where the data involves the personal information of over 500,000 individuals;
- Where the data volume exceeds 1,000 GB;
- Where the data contains information regarding nuclear facilities, chemical biology, national defense and military, population, health, and the like, and information about major engineering activities, the marine environment, and sensitive geography;
- Where the data contains network security information such as system vulnerabilities and security protection of key information infrastructure;
- Where key information infrastructure operators provide personal information and important data for overseas parties; and
- Other factors which may affect national security and public interests and should be evaluated by the competent authority or regulator of the industry.

In practice, it may be easy to some of these criteria, especially for those companies in the bio-science sector. As a result, companies may from time to time face statutory evaluation conducted by governmental authorities.

Prohibition of Outbound Transmission

In some cases, information and data are not allowed to be provided to overseas parties:

- Where no approval has been obtained from the data subjects to transmit their personal information overseas or the transmission may infringe their personal interests;
- Where transmitting data overseas exposes the safety of state politics, the economy, science and technology, national defense, or may affect national security and harm public interests; and
- Other circumstances identified by the national cyberspace administration authority, public security departments, security departments, and other relevant departments.

Summary and Prospect

Many countries are aiming to build up their cyber security legislation and carry out stricter protection measures. Companies should pay special attention to the increasingly stringent Chinese cyber security laws and regulations. Though the Draft has not yet been officially adopted, companies should expect additional compliance requirements for information storage and transmission under the framework laid down by the Cyber Security Law and the Draft. On the other hand, some concepts in the Draft as well as the Cyber Security Law need further clarification. For example, the concept of "network operator" is very broad, since almost all companies maintain a network for their business. It is hoped that the legislators will figure out a consistent regulatory framework and apply reasonable regulatory requirements to different types of companies.

CBRC Allows Foreign-invested Banks to Invest into Domestic Banking Financial Institutions

The General Office of the China Banking Regulatory Commission (CBRC) issued the Circular on Matters concerning Certain Business Undertaken by Foreign-invested Banks (Circular). The Circular is warmly welcomed as it shows that the Chinese government takes the stance to further open up China's banking industry.

No Approval is required for Foreign-invested Banks to Conduct National Debt Undertaking Business

In the past, none of the Administrative Regulations of the PRC on Foreign-invested Banks or guidance touched on whether governmental approval is necessary for foreign-invested banks to undertake business related to the national debt. For the sake of caution, foreign-invested banks tended to apply for approval from CBRC, but CBRC typically rejected these applications for the lack of clear authorization to grant approval.

Limited exceptions can be found in the past. For example, CBRC approved the HSBC Shanghai Branch to carry out business related to the national debt. The Circular clarified that no approval is required for foreign-invested banks to carry out business related to the national debt and thus cleared a gray area. Instead, foreign-invested banks shall report to CBRC within five days after undertaking such business.

No Approval is required for Foreign-invested Banks to Conduct Custody Business (with Exceptions)

In principle, foreign-invested banks do not need to acquire any approval in order to carry out custody business and submitting a report to CBRC within five days is fine. In accordance with existing regulations relating to Foreign-funded Banks, CBRC still requires that foreign-invested banks acquire approval for the following types of custody.

- Custody Service for Securities Investment Funds
- Service of Overseas Wealth Management on Behalf of Clients

Business Collaborations with Parent Groups

The Circular clarifies that foreign-invested banks may enter into business collaborations with their parent groups in order to exploit the global service advantage, and provide comprehensive financial services for clients' overseas bond issuance, listing, merger and acquisition, financing, and other activities. CBRC commented that the "business collaboration" mainly includes daily maintenance, cross border cooperation, communication, and contact, but did not mention whether foreign-invested banks may promote and sell overseas financial products. CBRC emphasized that the Circular is issued in the background of China's "One Belt, One Road" strategy and growing outbound investment of Chinese corporations. Therefore, Chinese companies planning to conduct outbound investment may be the major beneficiary of the business collaboration between foreign-invested banks and their parent groups.

Investment in Domestic Banking Financial Institutions by Foreign-Invested Banks

Before the issuance of the Circular, there existed no laws or regulations on whether it is allowed for foreign-invested banks to invest in domestic banking financial institutions. In the absence of such regulations, a foreign bank could invest directly in domestic banking financial institutions, while a foreign-invested bank, as a Chinese subsidiary of a foreign bank, could not participate in such investment.

After the Circular, foreign-invested banks may play a role in the investment in domestic banking financial institutions.

MOHRSS Revises the Administrative Provisions on Foreigners' Employment in China

The Ministry of Human Resources and Social Security (MOHRSS) issued the Decision on Revising the Administrative Provisions on the Employment of Foreigners in China (人力资源社会保障部关于修改《外国人在中国就业管理规定》的决定, Decision) on March 13, 2017.

Background: Reform on Foreigners' Employment in China

In late September 2016, the State Administration of Foreign Experts Affairs issued a reform plan on foreigners' employment in China, which aimed to:

- Integrate the Employment Permit for Foreigners and the Foreign Expert Work Permit into the Foreigner's Work Permit in China;
- Classify foreigners into foreign top talents (Class A), foreign professional talents (Class B), and foreign common workers (Class C), with simplified procedures and channels for Class A talents (Green Channel). For example, age and working experience restrictions are not applicable to Class A talents and a commitment to no criminal record would suffice and thus exempt Class A talents from submitting paper materials.

The above measures have come into effect nationwide. Apparently, China intends to attract "high-end" foreign talents to work in China through simplified application procedures.

Unification of Certificates

The Decision replaces "Employment Visa" with "Z Visa" in the Administrative Provisions on the Employment of Foreigners in China.

Simplification of Foreigners' Employment

After the Decision came into effect, Chinese employers that hire foreigners do not need to apply for invitation letters from government authorities. Instead, employers may apply for a Foreigners' Work Permit from the Administration of Foreign Experts as stated in the previous paragraph. With the Foreigners' Work Permit, a foreigner shall apply for Z Visa in a Chinese embassy or consulate before entering China.

Summary: Sample Procedure to Hire a Foreigner in China

- Before the foreigner enters China:
    - Employer applies for the Foreigners' Work Permit;
    - Employee applies for Z Visa with the Foreigners' Work Permit;
- After the foreigner enters China:
    - Employer applies for Foreigners' Employment Certificate with the Foreigners' Work Permit, employment contract, and effective passport;
    - Employee applies for residency permit with the Foreigners' Employment Certificate.

The Decision, along with the reform plan in 2016, serves to simplify and facilitate foreigners' employment in China, especially for high-end talents. However, the extent to which the procedures are simplified or facilitated is still limited. The qualifying standard of Class A talents that enjoy the Green Channel is rather high. In addition, while it is expected that the Green Card for permanent residency will be amended and become less stringent, the Ministry of Public Security has not yet proposed any amendment since the promulgation of Administrative Measures for the Examination and Approval of Permanent Residence of Foreigners (《外国人在中国永久居留审批管理办法》) in China in 2004.

Introduction of the General Rules of the Civil Law Brings China into the Age of 'Civil Code'

The Chinese government plans to promulgate a Civil Code which will unify current specific laws such as General Principles of the Civil Law (《民法通则》, General Principles), Contract Law (《合同法》) and Property Law (《物权法》). In March 2017, the 12th National People's Congress of the People's Republic of China adopted the General Rules of the Civil Law (《民法总则》, General Rules). It is anticipated that the remaining chapters (contract, property, tort, marriage, and succession) of the Civil Code will be submitted to the National people's Congress in 2020. Therefore, we may witness the adoption of a complete Civil Code within several years.

The General Rules follows the structure of General Principles and is composed of several parts such as civil subjects, civil rights, (civil) juristic acts, agency, civil liabilities, and limitations. The General Rules provides a better system of terminologies and adapts itself to the urgent need of protecting civil rights. Please find some highlights below:

Improved Classification of Legal Persons

Under the General Principles, legal persons were classified into enterprise legal persons, official organ legal persons, public institution legal persons, and social organization legal persons, which were generally not viewed as inclusive. For example, foundations and privately-run schools do not fall within any type of the legal persons. In fact, it is the Regulation on the Administration of Foundation (《基金会管理条例》) that provides that foundations constitute a new type of legal person, *i.e.*, "non-profit legal persons," which does not exist under the General Principles.

The General Rules classifies legal persons according to the purpose of the legal person: profit-making legal persons, non-profit legal persons, and special legal persons.

- Profit-making Legal Persons: limited liability companies, joint stock limited companies, and others
- Non-profit Legal Persons: public institutions, social organizations, foundations and social service organizations
- Special Legal Persons: official organs, rural collective economic organizations, urban and rural cooperative economic organizations and grass-roots self-governing mass organizations

All three types of legal persons have independent personalities and bear civil liabilities with all property of the legal persons. The chapter governing profit-making legal persons incorporates quite a few regulations of the Company Law. For example, there must be a board of directors (or an executive director) and a supervisory committee (or a supervisor); the controlling investor, actual controller, directors, supervisors and senior officers of a profit-making legal person shall not damage the interests of the legal person by making use of its associated-party relationship. As for non-profit legal persons, it is most noteworthy that profits shall not be distributed to investors, founders, or members. Furthermore, if a non-profit legal

person established for public welfare purposes terminates, the profits will not be distributed to investors, founders, or members.

Internal Procedure or Agreement of Legal Persons shall Not Challenge any Bona Fide Third Party

This principle appears in four sections of the General Rules, namely Article 61, 65, 85, and 170:

- The restriction on the scope of the legal representative's right of representation imposed by a legal person's articles of association or its authoritative body shall not challenge any bona fide third party.
- The actual situations of a legal person that are inconsistent with the registered particulars shall not challenge any bona fide other party.
- If the resolution of the shareholder meeting or board meeting is revoked by the court, a bona fide other party shall not be challenged based upon the revocation of such resolution.
- Any restrictions imposed by the legal person or unincorporated association on the scope of functions and powers of the person performing work tasks for the legal person or unincorporated association shall not be a valid defense against any bona fide other party.

These provisions strengthen the protections for bona fide other parties on one hand, while giving the legal representatives and "persons performing work tasks" more power in the process of dealing with the external other party. In order to avoid unnecessary losses due to ultra vires of such legal representatives as well as specific "persons performing work tasks," legal persons or companies shall pay particular attention to the contract approval procedure and company seal maintenance.

New Types of Data Rights in the Information Era

In recent years, people have grown increasingly conscious of the need to protect personal information, confidential data, and virtual digital property. At the same time, the Chinese government has become increasingly committed strengthening the concept of network sovereignty and is making information security a higher priority. The General Rules respond to this policy direction by recognizing personal information, confidential data, and virtual digital property as being subject to new types of rights. Although only high-level principles are included in the General Rules, implementing laws and regulations for the General Rules will provide more detailed guidance, as will the Cyber Security Law and the aforementioned Measures for Evaluating the Security of Transmitting Personal Information and Important Data Overseas (Draft for Comment).

Classification of Juristic Acts

In order to form a valid juristic act, the following shall be fulfilled:

- The actor has the relevant capacity for civil conducts;
- The intent expressed is genuine; and
- Such act does not violate the mandatory provisions of laws and administrative regulations or the public order and good morals.

In addition to effective juristic acts, there still exist:

- invalid juristic acts:

- which are performed by persons who have no capacity for civil conducts (under eight years old);
- where actors collude with another party to perform civil juristic acts that damage others' legitimate rights and interests;
- which are against the public order and good morals;
- which are performed by making a false expression of intent. It should be particularly noted that such voidance of juristic acts does not invalidate everything, since the validity of the original juristic acts concealed by such false expression of intent shall be dealt with in accordance with applicable law. For example, if the sale of a house is disguised as bestowal through a false expression of intent between the seller and the buyer, such bestowal shall be invalid while the legal provisions governing sales contracts shall apply to the transaction.
- which violate the mandatory provisions of laws and administrative regulations, except where the mandatory provisions do not result in the invalidity of such civil juristic acts. Further clarification appears to be needed for this section. As a matter of fact, the Supreme People's Court has previously introduced a similar system to Interpretation of the Supreme Court on Certain Issues Concerning the Application of the PRC Contract Law (II) (最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（二）) where the Supreme People's Court distinguishes provisions that have a mandatory effectiveness from provisions that have a managerial effectiveness. For example, the Law on the Administration of Urban Real Estate provides that pre-sale contracts of commodity buildings shall be submitted by the developers to governmental authority for registration and record filing, which constitutes a typical provision that has a "managerial effectiveness." Therefore, the Supreme People's Court has issued Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases Involving Disputes over Contracts for the Sale and Purchase of Commodity Housing which stipulates that such registration and record filing shall not constitute an element for the validity of the sales contract of commodity buildings.

- revocable juristic acts:
  - which are performed based on a substantial misunderstanding;
  - which are performed by a party against his or her real intention as a result of fraud or coercion committed by another party or third parties;
  - which are unfair since instituted by a party making use of another party's dangerous or unfavorable position or lack of judgment.
- juristic acts with undetermined effects:
  - acts of pure acquisition of benefits or acts according with the cognition of persons with limited capacity for civil conduct (under 18 years old, above eight years old) shall be valid; other juristic acts by persons with limited capacity for civil conduct is valid only when acknowledged by the legal representatives;
  - acts of agency by agents without power of agency, beyond the scope of agency or after the agency has been terminated.

Statute of Limitation: Three Years in Principle

- General Principles: Two Years with Exceptions

The General Principles provides different statutes of limitations for different causes of actions. For example, the most common limitations for most contract disputes is two years, beginning when the entitled person knows or should know that his/her rights have been infringed upon. The limitation concerning claims for compensation for bodily injuries is one year, while the Environmental Protection Law (《环境保护法》) provides that the limitation concerning compensation for environmental damage shall be three years.

- Limitations under the General Rules

The General Rules stipulates a uniform statute of limitation of three years unless otherwise provided by law. Although the General Principles has not yet been annulled, the General Rules shall prevail where the General Rules conflicts with the General Principles.

- Uncertainties: Different Statutes of Limitation for Special Causes of Actions

It should be noted that there exists a longer limitation of four years concerning disputes over contracts for international sales of goods and contracts for technology imports and exports under the Contract Law. There is no solid legal basis providing whether such special limitation would be adjusted (either prolonged or shortened) or not. Similarly, since the Maritime Law is an independent system from the General Principles and the General Rules, it is hard to tell whether such shorter statutes of limitation should remain effective in the absence of unequivocal legal provisions and interpretations. There can be arguments on both sides since such special limitations were devised based upon different requirements for specific industries.

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