

To: China Banking and Insurance Regulatory Commission (CBIRC)

Date: 9 July 2018

Subject: Comments on the Draft Revised Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies and the Draft Implementation Rules for the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies

Dear Sir, Dear Madam,

The Global Federation of Insurance Associations (GFIA) has reviewed the Draft Revised Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies (draft Administrative Regulations) and the Draft Implementation Rules for the Administrative Regulations of the People's Republic of China on Foreign-Invested Insurance Companies (draft Implementation Rules). Due to our internal governance procedures, GFIA was unfortunately not able to meet the CBIRC's short deadline to respond to the public consultation. However, it would be appreciated if GFIA's views could be taken into consideration.

GFIA welcomes the commitments in the draft Administrative Regulations (Article 8(2)) to delete the two-year representative office precondition to the establishment of foreign-invested insurance companies, and in the draft Implementation Rules to delete references to representative offices (Articles 8-9). GFIA is particularly appreciative of the speed with which this revision is to be implemented following the announcements by senior government officials to delete the two-year representative office precondition and raise the foreign equity cap. This revision will endorse the ability of foreign insurance companies not yet present in the Chinese market to make their products available to Chinese consumers.

However, GFIA would kindly ask you to reconsider some of the provisions proposed in the draft Administrative Regulations and the draft Implementation Rules:

I. Draft Administrative Regulations:

- (i) Article 8 anticipates that the foreign applicant be a foreign insurance company. It is quite common, however, for insurance companies making investments to do so through investment holding companies or affiliates thereof. GFIA therefore recommends that "or investment affiliate thereof" be inserted after "foreign insurance company."
- (ii) Article 8(1) retains the 30-year experience requirement for foreign insurance companies seeking to establish a foreign-invested insurance company. This has been rigidly construed to require that the same company be in operation under the same name for 30 years. This does not take into account corporate reorganisations, name changes and other transactions that may have occurred over the past 30 years without altering the fundamental nature of the company or its business. GFIA therefore recommends inserting "directly or through affiliates" in Article 8(1).

- (iii) Article 8(3), formerly Article 8(4), would continue to require that the foreign insurance company be domiciled in a country or region which has a comprehensive insurance business supervision and administration system and be subject to the effective supervision and administration of the responsible authorities in country or region. As the applicant may be an investment affiliate and/or may be from a different jurisdiction under its parent insurance holding company, GFIA would suggest revising this provision so that it applies to the “foreign insurance company or its parent holding company.” This revision would provide additional flexibility for multinational insurance companies without compromising the requirements for home country or region supervision and administration system.
- (iv) Article 8(5), formerly Article 8(6), would require approval of the application from the applicant’s home country or region. As many countries do not require that their insurance companies or insurance holding companies obtain prior approval before establishing a subsidiary or affiliate in another country, GFIA recommends appending “if required in such country or region” at the end of this clause.
- (v) Similarly, Article 9(2) would continue to require that the applicant submit an opinion from the responsible department in its home country or region regarding the applicant’s indemnification capacity. As the responsible departments in many countries do not have the authority or practice of issuing such opinions, GFIA recommends deleting this clause.

II. Draft Implementation Rules:

- (i) While GFIA appreciates the commitment in Article 3 to raise the foreign equity cap in personal insurance from 50% to 51%, this cap continues to burden foreign-invested insurance companies. GFIA therefore urges that the equity cap be removed in its entirety rather than wait several years before it is lifted in full. The full removal of the equity cap will promote sound development of an insurance sector that can better serve Chinese consumers and support sustainable growth. In addition, as the foreign equity cap applies only to personal insurance rather than property insurance, GFIA recommends that personal insurance here or elsewhere be expressly defined to include, without limitation, life, health, accident and old-age pension insurance.
- (ii) Article 4(1) would require that a foreign-invested insurance company have at least one insurance company with normal operations as a principal shareholder. Insurance companies typically make investments in the industry indirectly through investment holding companies or subsidiaries thereof, other than through insurance operating companies for governance and other reasons. GFIA therefore recommends that “or investment affiliate thereof” be inserted after “at least one insurance company.” GFIA also believes that the term “normal operations” is overly vague. GFIA would suggest instead that it be replaced by “which meets the requirements established by the supervisory authority in its home country or region.”
- (iii) Article 4(3) would establish “a shareholder holding less than 50% of the capital or less than 50% of the shares which nevertheless exercises preponderant influence over the management of the insurance company’s operations” as one criterion for the determination of principal shareholder status. GFIA believes that “preponderant influence” is vague and hard to measure. Indeed, some foreign investors in existing Chinese-foreign joint venture insurance companies may not themselves be insurance companies. GFIA recommends instead replacing this sub-clause with “having the ability unilaterally to appoint a majority of the board of

directors of the insurance company or to determine the major policies or to direct the operations of the insurance company.”

- (iv) Articles 5-6 would impose a 5-year lockup requirement on principal shareholders and require that they replenish the insurance company’s capital if they wish to reduce their shareholding or leave the China market. These provisions do not reflect common regulatory standards in other major insurance markets, would impose a discriminatory burden on foreign shareholders and foreign-invested insurance companies, and unduly burden capital transactions in the insurance industry by impeding transfers to better capitalised investors who are better equipped to enhance the insurance company’s capital base. For example, if a newly established insurance company has yet to achieve profitability within 5 years, the insurance company may have greater prospects for profitability and growth if the principal shareholder is allowed to sell its shares to a better-capitalised or more capable third party.

It is also unclear if the 5-year lockup requirement is intended to apply to shareholders who are diluted as well as existing shareholders or only to investors who become principal shareholders after the draft Implementation Rules take effect. It is similarly unclear whether the 5-year lockup requirement will apply to the existing shares of a shareholder who becomes a principal shareholder by acquiring additional shares, or only to such shareholder’s newly acquired shares. GFIA also recommends that the capital replenishment requirement on principal shareholders be deleted as it violates the fundamental principle of limited liability enshrined in company law around the world, including Article 3 of the Company Law of the People’s Republic of China. GFIA therefore recommends that the 5-year lockup requirement and capital replenishment requirement be reconsidered.

It is unclear how “if necessary” will be determined. GFIA believes that it is important to provide greater specificity to establish reasonable bounds on administrative discretion.

- (v) Articles 12-14 are predicated upon the presumption that the applicant will be an insurance company when it may be an investment affiliate of an insurance company or insurance holding company. GFIA therefore recommends that “or insurance holding company thereof” be inserted after “applicant.”
- (vi) Clarification is needed in Article 16 as to the relationship between the draft Implementation Rules and the recently amended Administrative Measures on Equity of Insurance Companies with respect to foreign-invested insurance companies and foreign shareholders. GFIA presumes that the draft Implementation Rules should prevail because they are more specific but clarification to that extent would be appreciated.
- (vii) While GFIA notes the deletion of Articles 28-33 on branches and sub-branches, GFIA is concerned by the continuance of discrimination in practice by approving branches of domestically-invested insurance companies in clusters, even for new and unproven companies, while mature foreign-invested insurance companies receive branch approvals one at a time. This practice impedes their ability to serve Chinese consumers and is anti-competitive as exemplified in the attached table. Fundamentally, GFIA would ask the CBIRC to clarify in Article 26 para. 2 that foreign-invested and domestically-invested insurance companies shall be treated equally with respect to branch and sub-branch applications.



Finally, GFIA regrets that the CBIRC, like CIRC in the past, did not provide a (minimum) 30-day public comment period with respect to foreign-related laws and regulations, as the Government of the People's Republic of China had committed to on previous occasions. In this instance only 16 days was allowed for comments on the draft Administrative Regulations.

GFIA would welcome the opportunity to discuss our comments regarding the draft Measures in person. GFIA thanks you for your attention to our comments and as always extend our appreciation for your hospitality and continuing cooperation.

Kind regards,

Brad Smith, Chair of the GFIA Trade Working Group (BradSmith@acii.com)

EXHIBIT: Insurance Company Branch Approvals in China

About GFIA

Through its 42 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 61 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.