Open for business: China adopts new legislation to further open up its insurance and banking sectors to foreign investors

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On 15 October 2019 the State Council of China published the *Decision on Revising the 'Foreign Insurers in China Regulations'* and the *'Foreign-Invested Banks Administrative Regulations'* ("**Decision**"), which became effective on the same day.

The regulatory changes set out in the Decision should not come as too much of a surprise, as most of these were presented by the Chinese government at the Boao Forum for Asia Annual Conference in 2018, and reflected in the draft *Decisions Relating to Amending Regulations Governing Foreign Insurers in China (Recommended Draft)* and the *Decisions Relating to Amending Foreign-Invested Banks Administrative Regulations (Recommended Draft)* previously issued by China's insurance and banking regulator, the China Banking and Insurance Regulatory Commission ("**CBIRC**") on 30 May 2018 and 28 November 2018, respectively. In addition, various circulars issued by, and press or other conferences[1] convened by, or attended by, financial sector regulators also conveyed the same messages that China would further open up its insurance and banking sectors to foreign investors, with the detailed provisions to reflect such policies still to be released.

The main changes brought about by the Decision are as follows.

Insurance sector

Three major changes have been made to the *Foreign Insurers in China Regulations*:

- Removing the requirement that a foreign insurer must have been operating for 30 years and have maintained a CBIRC-approved insurance representative office in China for two years before it can establish a foreign-invested insurance company ("**FIIC**") in China; this previous policy had the effect of preventing those more recently-established insurers from breaking into the China market;
- Foreign insurance groups are allowed to establish an FIIC in China. Previously, only a foreign insurer actually engaging in insurance business was allowed to establish an FIIC in China. Such change expands the shareholder universe for an FIIC to all entities within an insurance group (including the holding company), making it easier for say a holding company or a non-insurance subsidiary to meet the shareholder qualification requirements; and
- All types of overseas financial institutions are now permitted to invest in FIIC in China. Previously, to invest in an FIIC in China, such investor had to meet certain shareholder qualification requirements, including "operating an insurance business for more than 30 years", which made it impossible for other types of financial institution to invest in an FIIC.

These changes are designed to widen the expertise and skill pool of foreign investors investing in FIIC in China, and to encourage innovation and diversity amongst providers of insurance services in China. It will mean increased competition for both domestic insurers and FIIC, but should improve the range of products available, as the skill sets of those outside the insurance sector can be brought to bear when designing new products. However, as the detailed rules for foreign insurance groups to establish FIIC in China and for overseas financial institutions to invest in FIIC in China have yet to be published by the State Council, the full impact of the Decision is still to be determined.

[1] The most widely known ones are the keynote speech of President Xi at the Boao Forum for Asia Annual Conference in 2018 and the speech of Yi Gang (governor of the People's Bank of China) at a sub-forum on monetary policy at such Boao Forum, expressing that measures to relax restrictions on foreign investors in the financial sector were expected to be released by the end of 2018.

Sector-specific liberalization policies announced

In addition to relaxing the qualification requirements imposed on foreign investors in FIIC, certain insurance sub-sectors have been liberalized to foreign investment as well. Based on the *Relevant Measures for Further Opening Up the Financial Sector* ("**11 Measures**")[2] announced by the Financial Stability and Development Committee of the State Council on 20 July 2019, for instance, the transitional period during which foreign shareholdings in life insurance companies are capped at 51% will now end in December 2020 (rather than the original timing of "by the end of 2021"); in addition, foreign investors will be allowed to hold more than the current 25% ownership limit in an insurance asset management company in China, with no cap on the foreign shareholding.

Banking sector

The major changes in the banking sector are as follows:

Relaxing restrictions on the shareholder qualifications for foreign-invested banks ("FIB") and foreign banks that intend to establish a branch in China

The requirements to "have total assets of not less than US$10 billion" for foreign banks in order to establish an FIB in China, and the requirement to "have total assets of not less than US$20 billion" in order to establish a foreign bank branch in China have been removed. In addition, the requirement for the Chinese shareholders of Chinese-foreign joint venture banks in China to be financial institutions has been removed as well, leaving the door open to say private equity or funds.

Allowing foreign banks to set up foreign-invested banks and branches at the same time in China

Depending on its actual business needs, foreign banks are now allowed to either set up wholly foreign-owned banks or branches of foreign banks, or joint venture banks and branches of foreign banks simultaneously in China.

Previously, if such foreign bank converted its branch(es) into foreign-invested bank(s), a foreign bank could only retain one branch to conduct foreign exchange wholesale business.

Restrictions on the banking business of FIB in China lifted

FIB are now allowed to engage in issuing and cashing out government bonds agency and underwriting of government bond business. The threshold for a branch of a foreign bank to accept RMB deposits has also been lowered - the minimum requirement for fixed-term deposits made by Chinese citizens has been reduced from RMB 1,000,000 to RMB 500,000.

In addition, the one-year waiting period for FIB to engage in RMB business has gone, and thus, technically speaking, FIB may now conduct RMB business from the day they open for business, provided that they can satisfy prudential requirements prescribed by the CBIRC. However, the process for how FIB can apply to the CBIRC to carry out RMB business is not entirely clear now, and requires further clarification by the regulator.

Adjusting the supervisory requirement on the working capital of branches of foreign banks in China

The specific requirement on the working capital of foreign banks branches that 30% of the working capital must be in the form of interest-bearing assets has been replaced by a much looser a "certain percentage of the working capital of a foreign bank branch must be in the form of interest-bearing assets". In addition, for

[2] For more details on 11 Measures, please see our previous alert: "[Open for business: China ignores 'background noise' and forges ahead with opening up its financial sector]()".

foreign banks whose capital adequacy ratio continuously meets the requirements prescribed by the financial supervisory authority in its home country and by the CBIRC, its China branch can be exempted from the requirement that RMB operating capital plus RMB reserves must be not less than 8% of the branch's RMB risk assets. The above changes may enable foreign bank branches to enjoy more autonomy and flexibility in their allocation and deployment of assets.

More opening-up policies expected

Following the Decision, we anticipate that CBIRC will need to issue implementing rules for the *Foreign Insurers in China Regulations*, the *Foreign-Invested Banks Administrative Regulations* and the *11 Measures* in the near future. In other financial sectors, a clear message is also being sent that China is moving ahead with financial sector liberalization, with sector-specific restrictions on foreign investors melting away. At a press conference on 11 October 2019, a spokesman for the securities markets regulator, the China Securities Regulatory Commission ("**CSRC**"), disclosed a detailed and specific timeframe to lift foreign shareholding ratio restrictions on securities, fund management companies and futures: for securities, by 1 January 2020; for fund management companies, by 1 April 2020; and for futures, by 1 December 2020. These are significant changes, raising the question of: why now?

Link to the U.S. trade talks

The announcement of the Decision came just as the U.S. and China concluded the latest round of trade talks with a declaration that "substantial progress" had been made. Reportedly the Decision has been seen in the U.S. as a welcome move towards further opening up markets and levelling the playing field for foreign investors against the background of the latest trade war truce.

It goes without saying that these events are not coincidental, although it remains unclear what exactly is the relationship between the two and whether the Decision is simply a reflection of offering what has been agreed with the U.S. to the rest of the world, but in any event it sends a powerful signal to the outside world that China is serious about significantly opening up the financial sector to foreign investment, regardless of the outcome of the trade talks with the U.S.

Contacts

Jun Wei
Partner, Shanghai
jun.wei@hoganlovells.com

Andrew McGinty
Partner, Hong Kong
andrew.mcginty@hoganlovells.com

Michael Zou
Counsel, Beijing
michael.zou@hoganlovells.com

Shantay Cong
Senior Associate, Shanghai
shan.cong@hoganlovells.com

Xiaohao Li
Associate, Beijing
xiaohao.li@hoganlovells.com

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
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Johannesburg
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