

*The China Review*, Vol. 6, No. 2 (Fall 2006), 35–64

## *Insurance in China: Assessment of the Implementation of China's WTO Commitments*

Andreas Kellerhals\*

### *Abstract*

Almost five years ago, on 11 December 2001, the People's Republic of China became the 143rd member of the World Trade Organization (WTO). In its accession agreements China promised to reform its political and economic system and to strengthen its legal framework. Although expectations inside and outside of China were high it seems that in many ways they have not only been met but in some areas they even have been exceeded. This positive result is basically also true for China's insurance legal regime, which is imbedded in two interrelated streams of forces: The cautious administrative approach to the implementation of WTO obligations in order to protect and nurture domestic industry and the pressing need for the Chinese government to vitalize the local insurance industry in order to enable it to compete against the growing numbers of foreign insurers in China. This practice has led to market-oriented measures and de-regulation processes. China's WTO implementation performance will be shaped by the checks and balances between these two forces. Although China still has some work to do to comply fully with the letter and the spirit of the WTO it must be stressed that in the insurance sector China so far has done a "fair" job of fulfilling its WTO obligations.

---

**Andreas KELLERHALS** is Professor of the Zurich University and Director of its university's LL.M. Programme in International Business Law and a Research Fellow of the University of Hong Kong's East Asian International Economic Law and Policy Programme.

\* The author would like to thank Dr Wei Wenbin for his very helpful support in research.

## Introduction

Almost five years ago, on 11 December 2001, the People's Republic of China (PRC) became the 143rd member of the World Trade Organization (WTO). A good deal of expectation was put on China's WTO accession, which it was anticipated would provide momentum for reforming its political and economic system, overhauling its legal framework, and rationalizing its market structure. Although development has not been without shortcomings, the government has been diligent in adhering to its WTO commitments to further open up the Chinese market. On the eve of China's WTO entry, expecting fierce competition from global players, domestic industries had been arming themselves with any possible means. In fact, most of China's industry sectors have been witnessing fundamental reorganization and reorientation since China's WTO entry. The insurance sector followed suit. Market structure, technologies and products are evolving vigorously alongside regulatory measures. A monolithic, domestic-oriented and government-steered industry has been prompted to open up to foreign competition and to be part of an ongoing process of restructuring and liberalization.<sup>1</sup>

Although still at an immature stage, China's insurance market has been growing for a decade at a dazzling velocity with an average annual premium revenue growth rate of 30%.<sup>2</sup> Despite the fast growth, insurance density (premiums per capita) and insurance penetration (premium as percentage of GDP) are still low by international standards.<sup>3</sup> The insurance sector still accounts for only 3.8% of China's financial industry in terms of assets, and total premiums were in 2005 just 3.4% of gross domestic product, compared to 9.36% in the United States.<sup>4</sup> International forecasts on the annual growth rate of China's insurance sector as measured by premium are set at 12% for the next 5 to 10 years, which means that the *total size of the Chinese market might increase by 310% in 2010*.<sup>5</sup> This huge growth potential is supported by China's rapid economic growth, changing demographics, social welfare reforms and a more supportive and flexible regulatory framework as a consequence of China's WTO commitments. The potential size of the market and its current pace and breadth of development make China a key strategic target for any insurer in the world. Many foreign insurers have been attracted by the prospect of acceding to and exploring the world's largest potential market, which is still very much underdeveloped.<sup>6</sup>

Nevertheless, entering China's insurance market has proved not to be

as easy as some foreign insurance companies might have anticipated.<sup>7</sup> Although China's progress in implementing its WTO commitments and in opening up its insurance market to foreign competition is remarkable and should be acknowledged, some limitations and caution are still key characteristics of China's regulations and will continue to be so in the foreseeable future. Therefore, it is necessary for foreign insurers to adapt to the challenges posed by China's cautious regulatory approach and to follow China's liberalization efforts closely in order to ensure that relevant international commitments are fully honoured.

### **Basic Framework of China's Insurance Legislation**

Chinese legislation, which is rendered and adopted by respective law-making bodies at hierarchical levels, carries various statuses of effectiveness and applicability. At the top of the legislature system are the laws of the National People's Congress (NPC) or its Standing Committee. They are followed by the *administrative regulations* of the State Council, in the pursuit of implementing laws. At a lower level, diverse ministries, commissions and departments subordinated to the State Council issue *administrative rules* within their mandates of competences. The insurance-related legislation follows the same legislative order.

### **Insurance Law**

In 1995, the Standing Committee of the NPC enacted China's first Insurance Law (the 1995 Insurance Law), which provided the necessary legal and regulatory framework to support the rapid growth of China's insurance sector and to fight malpractices.<sup>8</sup> The 1995 Insurance Law was very much a framework legislation — which over time was supplemented by regulations dealing with specific parts of the insurance industry<sup>9</sup> — and dealt, in general, with the structure and regulation of the insurance industry and insurance contracts.<sup>10</sup> One of the most important clauses of the 1995 Insurance Law classifies the insurance business into two categories: (1) property and casualty insurance (including liability and credit insurance) and (2) life insurance (including accident and health insurance).<sup>11</sup> At that time, promulgating insurance regulations fell within the scope of competences of the central bank, i.e. the People's Bank of China (PBOC).<sup>12</sup> In 1998, in the course of strengthening the relevant regulatory system, the China Insurance Regulatory Commission (CIRC) was

established as a ministerial-level agency subordinated to the State Council, and assumed the powers and responsibilities for supervising the insurance industry previously vested in the PBOC.<sup>13</sup>

In October 2002, the Standing Committee of the NPC partially amended the 1995 Insurance Law (the 2002 Insurance Law),<sup>14</sup> in order to make the law consistent with China's WTO commitments.<sup>15</sup> For instance, Article 154 of the 2002 Insurance Law replaced Article 148 of the 1995 Insurance Law, adding wholly foreign-funded insurance companies as one of the legally permissible forms of foreign-invested insurance companies.<sup>16</sup> The former requirement for non-life, personal accident and health insurance businesses to reinsure 20% of the primary risk with China Re was revised in order to accomplish China's WTO commitment to the gradual reduction of this rate.<sup>17</sup> Other adjustments made to the insurance business by the 2002 Insurance Law entail the reversal from a micro-managing style of regulatory activities to more market-oriented and policy based regulatory activities,<sup>18</sup> favoured by private insurers over excessive administrative interference with their daily business. Moreover, in line with international trends, property insurance companies were freed from the previous restriction to provide short-term health insurance and accidental injury insurance coverage.<sup>19</sup>

### **Insurance Administrative Regulations**

The most fundamental insurance regulation related to China's WTO obligations is the *Regulation on Administration of Foreign-funded Insurance Companies*, which came into force on 1 February 2002.<sup>20</sup> The regulation provides a special set of rules applicable to foreign insurers' activities in China and in principle incorporates China's commitments made upon its WTO entry regarding the insurance service. Under the regulation, foreign-funded insurance companies may be established in the form of joint venture insurance companies, wholly foreign-owned insurance companies, and branches of foreign insurance companies.<sup>21</sup>

### **Insurance Administrative Rules**

The CIRC was given the mandate to implement reforms in the PRC insurance industry. Among other tasks,<sup>22</sup> one of the major mandates that the State Council delegated to CIRC is "to formulate policies and rules concerning commercial insurance."<sup>23</sup> This is confirmed by Article 2 of the

Rules on Administration of Insurance Companies,<sup>24</sup> which entitles the CIRC to supervise insurance companies by the authorization of the State Council.<sup>25</sup> Thus, given the general nature of the laws and administrative regulations promulgated at a higher level, CIRC rules constitute the main body of applicable regulations for the insurance industry in China.<sup>26</sup> Because of its dual role as central legislative body and the main enforcement agency in the insurance sector at the same time, the CIRC's dominant position as an administrative and regulatory body does raise some concerns regarding its legitimacy under the common understanding of the rule of law.<sup>27</sup> Among the important rules enacted by the CIRC are the *Administration of Foreign-funded Insurance Companies Regulations Implementing Rules* promulgated on 13 May 2004, and effective as of 15 June 2004.<sup>28</sup>

### **Bifurcated Regulatory Regime: Domestic vs. Foreign**

China's reform process and open door policy have created a bifurcated legal system where foreign-funded business in China is governed by a set of rules separate from those applicable to Chinese businesses. The logic of a bifurcated legal system is that whilst foreign direct investments may foster the inflow of capital, technologies and managerial expertise, the resulting increased competition could also pose a threat to the national economy, especially where those industries are still in the nascent stage. Therefore, China's open door policy has been implemented with the bottom-line that foreign direct investment should only be allowed into the country to the extent that it enhances local competitiveness and fosters the independence of the national economy, and does not expose the infant Chinese domestic industry to too much competition.

To achieve this balance, rules were promulgated according to which foreign insurers are subject to restrictions in terms of ownership, business scope, geographic coverage, etc. Up to the time of China's WTO entry, foreign insurers on the waiting list for market entry complained that the CIRC's practices in implementing foreign-related special rules were arbitrary, bureaucratic and opaque. This made the insurance industry a sticking point in the whole negotiation process of China's entry into the WTO. Insurance-related commitments made by China in relation to its accession to the WTO<sup>29</sup> reflect the high value placed by the international community on expediting the opening of the insurance markets in China, including facilitating the licensing process, eliminating rules on product limitation, and lessening geographic restrictions.<sup>30</sup> China's WTO accession

commitments, however, need to be translated into national rules before they can apply to foreign insurers' entrance and operation in China.<sup>31</sup> In any case, in those areas where WTO law applies, regulations that differentiate between domestic and foreign competitors need a justification under international law. Without such justification, international law will ultimately invalidate such a bifurcated regulatory order. Notably, many recent rules<sup>32</sup> issued by CIRC are concurrently applicable to both domestic and foreign-funded insurers, indicating a process of consolidation in the regulatory field. China's legal regime with respect to foreign insurers' activities will be the main subject of analysis in the next following section.

### **China's WTO Obligations Re Insurance**

The Final Agreement setting out the detailed terms on which China entered the WTO is found in some 900 pages of text, including the final *Report of the Working Party for the Accession of China; the Protocol of Accession of China and the Annexes*; and the *Schedule of China's Specific Commitments on Market Access for Goods and Services* (the *Service Schedule*). These three legal documents are interrelated and interconnected, with the Accession Protocol being the leading document.<sup>33</sup>

Among the WTO multilateral agreements which China accepted during the negotiation process for its accession to the WTO, the General Agreement of Trade in Services (GATS)<sup>34</sup> is the most relevant for the insurance industry. It covers all sectors of services and provides no exception for financial services. In addition, as part of GATS, the Annex on Financial Services and the Second Annex on Financial Services directly relate to financial services. According to these GATS regulations financial services encompass the following insurance related services: (1) direct insurance, including co-insurance (life; non-life), (2) reinsurance and retrocession, (3) insurance intermediation (such as brokerage and agency), and (4) services auxiliary to insurance (such as consultancy, actuarial risk assessment and claim settlement services).<sup>35</sup>

China's obligations under WTO law can be divided into two categories: (1) general obligations in the area of all services, and (2) insurance specific commitments deriving from China's Service Schedule.

#### **General Obligations**

Within the framework of the WTO the GATS provides for some general

obligations in the area of all services, the most important of which concern the Most-Favoured-Nation Treatment (MFN), transparency, domestic regulation, judicial review, market access and national treatment.<sup>36</sup>

### China's Insurance Specific Commitments

Pursuant to its Service Schedule, China has agreed to a wide range of market-opening measures, effective in some cases from the date of accession, or spread over a maximum five-year period. These commitments to modify its relevant regulations in order to open up its insurance market for foreign insurance service providers mostly concern GATS supply mode 3 ("commercial presence" in China), although there are also important undertakings with respect to GATS supply mode 1 ("cross-border supply" of insurance services).

#### *Form of Establishment*

Upon China's WTO accession, *foreign non-life insurers* were permitted to establish their businesses in China as a branch or as a joint venture with up to 51% foreign ownership, and within two years after China's accession,<sup>37</sup> the establishment of wholly foreign-owned subsidiaries was permitted.<sup>38</sup> The *Catalogue for Guidance on Foreign Investment in Industries*<sup>39</sup> opened up the non-life insurance sector to wholly foreign-owned enterprises.

Upon China's WTO accession, *foreign life insurers* were permitted 50% foreign ownership in a joint venture with a local partner of their choice.<sup>40</sup> Moreover, the joint venture partners became entitled to freely agree on the terms of their contractual arrangement, provided they remained within the limits of the commitments contained in the Service Schedule. It is important to note, however, that no phase-out period is set out for the elimination of the 50% local participation requirement in the life insurance sector.<sup>41</sup>

On 11 December 2004 the CIRC issued the *Fulfilment of WTO Accession Commitments Notice*, effective as of date of issue. Among other issues the Notice stipulates that the ratio of foreign investment shares for the establishment of equity joint insurance brokerages may be up to 51%.<sup>42</sup> In addition, in its accession agreement, China agreed that foreign insurers handling large-scale commercial risks, marine, aviation and transport insurance, and reinsurance were to be permitted a 50% foreign equity share in a joint venture upon accession, while they had to be able to

own 51% three years after accession and establish as a wholly foreign-owned subsidiary five years after accession.

### *Geographic Coverage*

China has unequivocally committed to rolling back the stringent geographical restrictions previously imposed on foreign insurance providers operating in China. Such restrictions naturally resulted in a meagre market share for foreign providers. Upon China's WTO accession, foreign life and non-life insurers, and insurance brokers were permitted to provide services in five municipalities.<sup>43</sup> Within two years of China's accession,<sup>44</sup> foreign life and non-life insurers, and insurance brokers were permitted to provide services in a further ten municipalities.<sup>45</sup> Within three years of China's accession,<sup>46</sup> all geographical restrictions were reduced to the same level as that applied to Chinese insurers.<sup>47</sup>

### *Business Scope*

Upon China's WTO accession, *foreign non-life insurers* were permitted to provide "master policy"<sup>48</sup> insurance of large-scale commercial risks with no geographical restrictions. In accordance with MFN, foreign insurance brokers were permitted to provide "master policy" coverage no later than Chinese brokers, under conditions no less favourable. Moreover, foreign non-life insurers were permitted to provide insurance of enterprises abroad as well as property insurance, related liability insurance and credit insurance of foreign-invested enterprises in China upon accession. Within two years after China's accession,<sup>49</sup> foreign non-life insurers were permitted to provide the full range of non-life insurance services to both foreign and domestic clients.

Upon accession foreign insurers were permitted to provide individual (not group) insurance to foreigners and Chinese citizens; within three years after accession, foreign insurers were permitted to provide health insurance, group insurance and pension, annuities insurance to foreigners and Chinese citizens. Upon accession, foreign insurers were permitted to provide reinsurance services for life and non-life insurance as a branch, joint venture, or wholly foreign-owned subsidiary, without geographical or quantitative restrictions on the number of licences issued. In addition, restrictions concerning group insurance<sup>50</sup> and health insurance have been removed.<sup>51</sup>



On 11 December 2003 the CIRC issued a *Notice Fulfilment of Relevant WTO Accession Commitments* which allowed foreign-invested property insurance companies to engage in all non-life insurance businesses other than the statutory insurance businesses.<sup>52</sup>

On 1 December 2004 the CIRC promulgated the *Administration of Insurance Agencies Provisions*, effective 1 January 2005, which regulates the insurance agencies business within the territory of the PRC.<sup>53</sup>

### *Licence*

China's WTO accession required that licences were to be issued with no quantitative restrictions on foreign licences or "economic needs" test. Licences must be awarded on the basis of prudential criteria only, which may only consider the soundness of the foreign insurance institutions, without reference to political factors and must be applied in a non-discriminatory manner.<sup>54</sup> This means that China is precluded from disallowing licensure or other activities of a foreign insurer on the basis of potential competition, even if the insurer might have a negative impact on Chinese domestic companies.

On 12 December 2001 the State Council promulgated the *Administration of Foreign-funded Insurance Companies Regulations*, effective as of 1 February 2002. These Regulations specify two types of insurance companies (equity joint venture and wholly foreign-owned companies), fix a minimum registered capital of RMB 200 million and additional criteria such as being in the insurance business for at least 30 years, having had a representative office within China for at least two years, etc.<sup>55</sup>

In May 2004, the CIRC issued as the final implementing rules the *Detailed Rules on the Regulations for the Administration of Foreign-Invested Insurance Companies*. These new rules lower capital requirements for national licences from RMB 500 million to RMB 200 million and for branch offices from RMB 50 million to RMB 20 million.

Today, the main prerequisites for establishing a foreign insurance institution are as follows:

- The investor must be a foreign insurance company with more than 30 years of establishment experience in a WTO Member;
- It must have had a representative office for two consecutive years in China; and
- It must have total assets of more than US\$5 billion at the end of the

year prior to submitting the application, except for insurance brokers.<sup>56</sup>

China apparently places much emphasis on a foreign insurer's size and history in business, rather than on its actual performance. Thus, the market opened up only for international giants and basically the smaller and younger insurers were shunned.

### *National Treatment*

The scope of GATS national treatment is limited to those sectors inscribed in each Member's Schedule.<sup>57</sup> This means that national treatment is not applicable to service sectors not covered by a Member's Schedule, so one Member of the WTO may take discriminatory measures against services and service suppliers of any other Member in those reserved sectors, without violation of the national treatment rule embodied in GATS Article XVII. Concerning *specific commitments* in the insurance sector — beside the restrictions concerning foreign ownership — China excluded the engagement of foreign insurance institutions in the statutory insurance business.<sup>58</sup> Apart from that, full national treatment should apply from 1 January 2005.

## **China's Insurance Legal Regime in the Context of Its WTO Obligations**

The 15-year long negotiation process with China resulted in China's unprecedented commitment to open and liberalize its economy and to offer a more predictable environment for trade and foreign investment in accordance with WTO rules. Among other areas, China committed to a gradual opening of both its life and non-life insurance sector. Membership in the WTO has brought with it the huge burden of transposing China's many commitments into national laws. This process, which has been undertaken by China in a very impressive way, involves a broad-ranging programme of post-WTO accession legislative innovation. Although enforcement remains difficult, China has made significant efforts towards bringing its legal regime up to its WTO obligation.

To date, China has successfully implemented many of its WTO commitments, but a significant number of problems arose in the first years of China's membership. Therefore, while a review of China's current

insurance legal regime in the light of its WTO obligations indicates positive developments it also reveals certain shortcomings regarding how China's WTO obligations and regulatory implementation is shaping the insurance industry.

### Legal Developments in the Call for WTO Compliance

Shortly after acceding to the WTO the CIRC issued several new insurance regulations, including ones directed at the regulation of foreign insurance companies. The *Regulations on Administration of Foreign-funded Insurance Companies (the Foreign Insurance Regulation)*<sup>59</sup> set forth stipulations regarding the forms of establishment, the market entry prerequisites, the foreign equity percentage licensing procedures and the business scopes. These regulations implemented many of China's WTO commitments, but they also created problems, especially in three critical areas: capitalization requirements, transparency and branching.<sup>60</sup>

In 2004 the CIRC enacted revised rules (*the Implementing Rules for the Regulations on Foreign-invested Insurance Companies*)<sup>61</sup> which streamlined application processes, shortened approval times, and lowered capital requirements for branching.<sup>62</sup> These rules complemented the *Administration of Insurance Companies Provisions*, which were replaced in 2004 by new provisions.<sup>63</sup> These Provisions, which introduced in some respects stricter guidelines, such as those relating to capital adequacy ratios, consist of seven parts covering insurance organizations, insurance business operations, insurance clauses, insurance premium rates, insurance funds and solvency of insurance companies, and supervision and inspection. On the other hand, insurance companies were also given more flexibility concerning internal decisions on the height of premiums and the wording of insurance clauses which should still be reported, but no longer need to be approved by the CIRC.<sup>64</sup> Moreover, administrative regulations on insurance brokerage,<sup>65</sup> agencies,<sup>66</sup> assessors<sup>67</sup> and reinsurance companies<sup>68</sup> were released. The Regulations were issued in order to implement China's WTO obligations. The following is an evaluation of how the system established complies with China's WTO obligations.

In terms of *geographic coverage*, China has fulfilled its commitment to open up enlarged scopes of cities for foreign insurers. The CIRC has even lifted certain geographical restrictions applicable to foreign life insurers ahead of schedule.<sup>69</sup> From the year-end 2004 on,<sup>70</sup> foreign insurers have been allowed to underwrite province-wide business from any branch

in a given province and all geographical restrictions were lifted.<sup>71</sup>

In terms of *business scope*, upon accession foreign non-life insurers were allowed to carry on large-scale commercial business and master policy as promised in the Service Schedule.<sup>72</sup> Foreign non-life insurers have been allowed to underwrite a full range of non-life policies for all clients since the year-end 2003. In addition, since the end of 2003, foreign non-life insurers may conduct short-term health and casualty insurance business<sup>73</sup> and since the end of 2004, foreign life insurers may offer health, group, and pension/annuity insurance to both foreign and Chinese clients.<sup>74</sup> However, the general prohibition on simultaneous cross-engagement in both life and non-life business is still in place,<sup>75</sup> a prohibition which also applies to domestic insurers.<sup>76</sup>

With respect to *national treatment*, the requirement on non-life, personal accident and health insurance business to reinsure 20% of the primary risk with China Re was reduced to 15% on 11 December 2002 and further reduced to 10% on 11 December 2003 and to 5% on 11 December 2004, which is fully in compliance with China's WTO concession.

Year-end 2004 was a critical point, as all geographical restrictions had to be phased out and group insurance and annuities markets had to be fully opened up at that time. China implemented those changes in its insurance regime in accordance with its WTO commitments by enacting a series of rules and regulations. In connection with the lifting of all geographical restrictions, some interested WTO member states also brought related issues, such as internal branching and business expansion with existing licence under focus during the last round of transitional review of China's implementation efforts.<sup>77</sup>

In the framework of this market-opening process, the Chinese authorities approved the establishment by some 39 foreign insurance companies of 70 insurance operational entities in China, including 22 life insurers, 14 property insurers and three re-insurers up to the year-end 2004.<sup>78</sup> Since then about 124 foreign insurance companies have opened resident offices in China. Given their more advanced managerial skills, product quality and service-oriented business mentality, it comes as no surprise that the market share of foreign-funded insurance companies experienced a faster growth than their local counterparts.<sup>79</sup> According to the CIRC, "the growth rate of foreign-funded insurers was 100–200 per cent higher than that of domestic insurers. Compared to the same period of 2003, during the first half of 2004 the insurance premium of (foreign-funded) property insurance companies and life insurers increased

47.1% and 51.2%, respectively. In the same period, the insurance revenue of all property and life insurers in China increased by only 23% and 6.5%, respectively."<sup>80</sup> In addition it should be noted that China implemented those WTO commitments which allow foreign-invested insurance enterprises to provide health, group, and pension/annuities insurance to both foreign and Chinese clients on schedule.

### Lingering Issues

Although China has made significant progress in implementing its WTO commitments, especially in the area of insurance services, it should also be acknowledged that in some areas its implementation efforts have lacked the necessary degree of commitment and coordination. While some of these concerns are specific to China's accession agreement, others seem to arise out of a certain reluctance on China's part to embrace key underlying tenets of WTO principles.

#### Licensing

The conditions under which a country grants licences to foreign-funded insurance providers are a major part of WTO market access rights. In its WTO Schedule, China has agreed to award licences solely on the basis of prudential criteria (soundness of the foreign insurance institution), without reference to political factors and in a non-discriminatory manner. For China, the implementation of these commitments meant a significant change in its policy on insurance.

China's WTO commitments concerning the issue of licences to foreign-funded insurance providers were implemented by the *Regulations for the Administration of Foreign-funded Insurance Companies and the Detailed Rules on the Regulations for the Administration of Foreign-funded Insurance Companies*. Due to the enactment of these rules and regulations, the licensing procedure became simpler and faster. This represents a significant improvement and a real step forward towards an open insurance market in China. Nevertheless, it seems that the full benefit of these procedures has yet to be realized,<sup>81</sup> due in particular to the following difficulties:

#### High Capital Requirements

Even after the elapsing of the phase-out period by the end of 2004 the

minimum registered capital which is required for the establishment of a foreign-funded insurance company remains RMB 200 million,<sup>82</sup> 20% of which is required to be placed in a bank designated by CIRC as a guaranteed fund that may not be used for any purpose other than to pay off debts during liquidation procedures.<sup>83</sup> In addition, the working capital of foreign insurance companies is subject to the same minimum requirements. Although lower now than previously China's capitalization requirements remain high and prudentially probably unjustifiable and may continue to restrict market entry for foreign insurance service suppliers.

In addition, a foreign-funded insurance company must increase its capital by RMB 20 million for each new branch that it intends to establish, until its registered capital reaches the amount of RMB 500 million.<sup>84</sup> These capital requirements are extremely burdensome, especially in light of the fact that foreign-funded insurance companies — like Chinese companies — may not carry out business across the border of provinces, and therefore must set up new branches if they wish to write insurance in other provinces.<sup>85</sup>

Given the size and scope of China's insurance market, such unusually high capitalization requirements<sup>86</sup> are a source of concern in light of national treatment and market-access commitments. Most of the WTO member States have expressed concern that these capital requirements restrict market access in China in a manner that violates relevant GATS provisions.<sup>87</sup>

### Lengthy and Burdensome Licensing Procedure

Applying for an insurance licence in China is still a multi-tier process that may invite uncertainty and delay. Application consists of a three-step process, which takes roughly two years.<sup>88</sup> This multi-tier licensing process applies not only to the initial establishment in China, but also to the establishing of branches in additional provinces, which can take roughly 9 months.<sup>89</sup> Although this licensing procedure applies equally to domestic insurance companies, one has to point out that these requirements have much more restrictive effects on foreign insurers than on domestic ones, as the latter generally dispose already over a widespread national network. Consequently, the lengthy application procedure continues to adversely affect full consummation of market expectation of foreign insurers, despite the fact that all geographical restrictions were technically phased out by the end of 2004.

In May 2004, the CIRC issued the *Detailed Rules on the Regulations for the Administration of Foreign-invested Insurance Companies* which streamlined licensing application procedures and shortened approval times, although some procedures remained unclear.<sup>90</sup> In particular, the new rules did not adequately address branching rights, and an often opaque and confusing regulatory framework leaves foreign companies vulnerable to discriminatory treatment of their applications for new branches in additional provinces. It seems that authorities are allowing domestic insurance companies to license new branches concurrently, whereas foreign companies' new licences are approved only consecutively.<sup>91</sup> Only allowing concurrent branching of insurance companies in multiple provinces would ensure a level playing field. Therefore, it is fair to say that the lengthy licensing procedure does create entry barriers for foreign insurers to further expand their business in China.

Bearing these difficulties in mind, many potential strategic investors<sup>92</sup> opt to make strategic investment in domestic insurance companies, instead of obtaining licences to set up an initial or second branch in China. Such a strategic investment provides at least two benefits: (1) as the investee domestic insurance company remains a Chinese company, it is not subject to the locality and scope of business restrictions that are currently applicable to joint venture insurance companies or foreign branches; (2) it allows foreign insurers to have an interest in both life and non-life business at the same time, while a joint venture or a branch may only write one or the other kind of insurance. However, strategic investments in a domestic insurance company are subject to equity limits rules, i.e. (1) the aggregate foreign ownership in the target company must be less than 25%;<sup>93</sup> (2) a single foreign investor (including its associated companies) should not take more than 20% of the shares of the target company.<sup>94</sup>

### Transparency Obligations

Transparency and fair regulatory processes are absolutely vital in order for cross-border trade and investment in services to flourish, because all countries traditionally tend to regulate services very highly. Therefore, the commitment to transparency is among the most important factors of China's WTO obligations.<sup>95</sup> Lack of transparency creates an uncertain regulatory environment for companies attempting to do business in China and can therefore act as a significant non-tariff barrier to trade. While China's transparency commitments in many ways require a profound

historical shift, China has made important strides in improving transparency and predictability of business dealing across a wide range of national and provincial authorities.

Improvements seem to be necessary especially with regard to (a) the obligation of notification of all laws, regulations and other measures which affect trade in services;<sup>96</sup> (b) the proper functioning of enquiry points, which China has the obligation to establish and which shall answer requests for information on all laws and regulations within 30 days; (c) China's obligation to invite — within a "reasonable period" — comments from the public before implementing a new law or regulation;<sup>97</sup> (d) China's obligation to provide for translations of "all laws, regulations and other measures" which affect trade in services or others, into one or more of the official languages of the WTO not later than 90 days after they are implemented or enforced<sup>98</sup> and to publish them in an official journal.

#### *Rule By Law vs. Rule of Law*

Embedded in the legal development of China's post-reform era was the idea that laws must be used to strengthen the state's ability to govern a country which is becoming ever more complex as a result of its economic reforms. In other words, the Chinese concept of the law is conceived and operates as an instrument that is used to carry out and consolidate institutional, primarily economic, changes according to predetermined policy.<sup>99</sup> Such Chinese understanding of rule by law — instead of the Western rule of law — has formed the mind-set presiding over the whole exercise of WTO accession and implementation.

WTO law does not only require transparency and accessibility of law, but it also calls for an independent judiciary review and for uniform, impartial and reasonable administration of the law. As recent policy moves show, China is taking notice of this problem and has started to take corrective measures.<sup>100</sup> Nevertheless, any real impact of the law on the regulatory style of the CIRC, if any, will come only in the long term. Eventually, the real acid test of China's commitment to the rule of law remains with the future position of the Communist Party and its claim to have the final word in ruling the country.

#### **Recent Regulatory Trends: De-regulation and Consolidation**

Despite the frustration of foreign participants in terms of a less fluid than



expected opening,<sup>101</sup> the market does present some progress in de-regulation as a direct consequence of different WTO obligations. According to the 1995 Insurance Law, once an insurer is licensed by the CIRC to do business in China, the CIRC continues to closely monitor that insurer's operation. The CIRC approves every branch office, every change in the name of the company, the amount of capital, business premises, scope of business, and every change of those investors who hold more than 10% of the shares.<sup>102</sup> In addition, the CIRC decides the basic insurance clauses and premium rates for major types of commercial insurance.<sup>103</sup>

It seems obvious that this direct involvement of the CIRC in the daily business of insurance companies does not support the cultivation of a market-based insurance industry. It is another positive result of China's accession to the WTO that it is accelerating the de-regulation process required to meet the pressing need to prepare the major local insurance companies for a more competitive marketplace. Thus, a reversal from a formerly micro-managing style of regulatory activities is underway. From an over-emphasis on bureaucratic monitoring of the internal operations of insurance companies there has been a shift towards more market-oriented and policy-based regulations.<sup>104</sup> This has been achieved through two legal amendments: (1) Only insurance policy clauses and premium rates for policy-mandated insurance and new types of life insurance products need pre-approval from the CIRC, while clauses and rates for other insurance products will only need to be filed for record.<sup>105</sup> (2) Consequently, and as can be seen in other financial service sectors as well, more emphasis is put on the prudential regulation of institutions on an ongoing basis instead of merely placing access control at the market entrance.<sup>106</sup>

Market de-regulation is also seen in the existence of *broadened investment channels*. The starting points for fund operations by Chinese insurers are a handful of instruments such as bank deposits, corporate bonds, state debentures and investment funds. Limitation on investment channels led to decreasing investment yield and inhibited the industry's development, hence the recent calls for greater market liberalization measures. Also in this area recent policy moves have demonstrated a more liberal horizon and practical approach, allowing insurance companies to invest in subordinated bank loan and convertible corporate bonds<sup>107</sup> and directly in stock markets.<sup>108</sup>

Along the line of this de-regulation process, rules governing foreign and domestic insurers are exhibiting a trend of consolidation. Numerous regulations and rules<sup>109</sup> are applicable to both locals and foreigners, with a

general reservation that these do not apply on issues that are stipulated otherwise in special foreign-related regulations,<sup>110</sup> such special regulations shall prevail. In fact, special regulations on foreign insurers are confined to the areas of equity composition, legal forms, locality restriction and business scope which have been included in China's WTO accession documents. To put it differently: except for those areas where China made explicit reservation when entering into the WTO, foreign insurers are now generally subject to the same regulations as those applicable to the Chinese insurance companies. Whether in practice these commitments are fully honoured and the CIRC applies all rules equally to foreign and local insurers is a question the answer to which depends very much on how effectively the lingering issues addressed in the above sub-section: "Lingering Issues" could be addressed.

## Conclusions

China's insurance legal regime in the post-WTO era is imbedded in two interrelated streams of forces. On the one hand is a cautious administrative approach to the implementation of WTO obligations, under which WTO rules are cunningly transposed and interpreted to best suit the interest of protecting and nurturing the domestic industry. This is the major source of frustration for foreign insurers seeking to enter the underdeveloped market. On the other hand, the imminent competition between Chinese and foreign insurers as a consequence of China's WTO entry creates a pressing need for the Chinese government to vitalize the local insurance industry. This leads to market-oriented measures and de-regulation processes. Certainly, China's WTO implementation performance will be shaped by the checks and balances between these two forces, with a long-term perspective of a gradually opening-up and liberalized market. However, this process might present a scenario where the de-regulation and market process will progress to such an extent that China will try to implement its WTO obligations, especially those of a general character (transparency, judicial review etc.), out of its own need, instead of being forced to do so by other members of the WTO. China therefore still has some work to do to comply fully with the letter and the spirit of the WTO. It will remain to be seen how China's partners within the WTO, especially the USA and the EU, will cope with this development.

Nevertheless, it must be stressed that in the insurance sector China so far has done a "fair" job in fulfilling its WTO obligations. Almost five

years after China entered the WTO, the rapidly-growing insurance sector remains the only financial sector that has opened its doors to foreign competition almost completely. That this move presents a new experience for China's regulatory authorities is obvious. As Wu Dingfu, chairman of the CIRC said: "Joining the WTO is like riding on an international train, ... because you are not the conductor, you cannot stop the train anytime you want, nor can you jump off."<sup>11</sup>

## Notes

1. According to Wu Dingfu, chairman of the China Insurance Regulatory Commission (CIRC), the local insurance industry has already benefited from foreign expertise and know-how (see <http://eg2.mofcom.gov.cn/aarticle/chinanews/200505/20050500099615.html>).
2. Figures released by Wu Dingfu in an interview with *China Daily* published on 10 October 2005 ([www.chinadaily.com.cn/english/doc/2005-10/28/content\\_488515.thm](http://www.chinadaily.com.cn/english/doc/2005-10/28/content_488515.thm)).
3. By the year-end 2001, China's non-life and life insurance penetration rates were 0.9% and 1.3% respectively, in comparison to those of Germany at 3.6% and 3.0% and of the USA at 4.6% and 4.4%. More stridently, China's non-life and life insurance density rates are at a meagre 8% and 12%. (Kai-Uwe Schanz, "China; The Dragon Stirs," *Reinsurance Magazine*, 1 April 2003).
4. Figures released by Wu Dingfu (see Note 2).
5. Stephen M. Harner, *Business Opportunities for Foreign Insurance Companies in China's Changing Marketplace; Facts and Figures for Potential Investors* (Roland Berger Strategy Consultants, 2000).
6. By the end of June 2005 there were 37 foreign insurance companies offering insurance services in China, and three more were making preparations to do so. See *China Economic News*, No. 24 (27 June 2005), p. 3.
7. Although in June 2005 the number of foreign insurance companies exceeded that of Chinese companies, they still only have a 3% share of the insurance market in China. See *China Economic News*, No. 24 (27 June 2005), p. 3.
8. These included kickbacks, excessive agent's commissions and dishonesty in product promotion.
9. Accordingly, regulations deal with brokers (*Administration of Insurance Brokerages Provisions*, effective 1 January 2005), agents (*Insurance Agencies Provisions*, effective 1 January 2005), assessors (*Administration of Insurance Assessors Provisions*, effective 17 January 2000) and broader issues like the administration of insurance companies (*Regulations for the Administration of*

- Insurance Companies*, effective 15 June 2004), equity investment in insurance companies (*Provisional Regulations on Equity Investment in Insurance Companies*, effective 31 December 2003) and foreign invested insurance companies (*Regulations on Administration of Foreign-Invested Insurance Companies*, effective 1 February 2002), etc.
10. According to the 1995 Insurance Law, insurance companies could be joint stock companies or fully state-owned enterprises (1995 Insurance Law, Article 69), and could deal only in life or non-life insurance (1995 Insurance Law, Article 91). Foreign investors were only allowed to operate through joint ventures or branches (1995 Insurance Law, Article 148). Various formalities were specified for the formation and validity of insurance contracts (1995 Insurance Law, Articles 10–30).
  11. Because a company is prohibited from engaging in both areas at the same time, those insurance companies which want to run both kinds of business need to set up different entities.
  12. For example, the PBOC issued the *Interim Rules on Administration of Insurance* in 1996, stating that the PBOC was the competent authority issuing regulations and supervising the insurance industry (See Article 65 of *Interim Rules of Administration of Insurance*). These interim rules were abolished by the *Administration of Insurance Companies Provisions*, issued by CIRC on 3 January 2000.
  13. See *Notification of the State Council on the Establishment of CIRC*, *Guofa* (1998), No. 37.
  14. The 2002 Insurance Law became effective as of 1 January 2003.
  15. See the statement of Wu Dingfu, available at <http://www.circ.gov.cn/news/wudingfu.htm> (accessed on 22 September 2003).
  16. According to China's insurance commitments, within two years after China's accession to the WTO, foreign non-life insurers were permitted to establish as wholly foreign-owned subsidiaries.
  17. Article 102 of the 2002 Insurance Law replaces Article 101 of the 1995 Insurance Law by stating that "the re-insurance of insurance companies shall be carried out according to the relevant regulations of the insurance regulatory body." See discussion on the related WTO commitment of China in subsection: "China's Insurance Specific Commitments" below.
  18. Major changes of the PRC Insurance Law and new regulations included more stringent reserve and solvency requirements and their disclosure, greater freedom for insurance companies to develop products to meet market needs, broader investment channels for insurance companies, including allowing insurers to invest in securities markets, tightening of market conduct regulation and increased penalties for violations, phasing out of mandatory reinsurance by the beginning of 2006 and reduction of barriers to entry, including allowing property and casualty insurers to enter the accident and short-time health



- insurance business (see *Administration of Foreign-funded Insurance Companies Regulations* from 13 May 2004, *Issues Relevant to the Stock Investment and Trading of Insurance Investors Circular* from 17 February 2005, *Administrative Licensing Law* from July 2004, *Fulfilment of WTO Accession Commitments Notice* from 11 December 2004, *Matters Relevant to Investments in Convertible Bonds by Insurance Companies Circular* from 23 July 2004, *Representative Offices in China of Foreign Insurance Institutions Procedures* from 1 March 2004, *Relevant to the Adjustment of the Clauses and Premium Rates etc. of Third-party Liability Insurance for Motor Vehicles and Its Rider Urgent Circular* from 29 April 2004).
19. Guojian Xu, Bristar Cao and Richard Mertl, "Amending the Insurance Law: Long-term Policy or Expedient Measures?" *China Law & Practice*, Vol. 16, No. 1 (December 2002).
  20. Order of the State Council, No. 336.
  21. These Regulations were formulated to suit the requirements for opening up and economic development, to strengthen the supervision and administration of foreign-funded insurance companies, and to promote the healthy development of the insurance industry (Art. 1). The Regulations specify two types of insurance company (equity joint venture and wholly foreign-owned companies), fix a minimum registered capital of RMB 200 million and additional criteria such as having been in the insurance business for at least 30 years, having had a representative office within China for at least two years, etc.
  22. The CIRC focuses on the regulation of the formation, division, take-over or dissolution of insurance companies, the examination and approval of policy terms, unfair competition among insurers, solvency and market behaviour of insurance companies, the use of funds by insurance companies and the qualification of personnel nominated for senior managerial positions in the insurance industry.
  23. See *Notification on the Establishment of CIRC, Guofa* (1998), No. 37.
  24. Promulgated by CIRC on 13 May 2004 and effective as of 15 June 2004.
  25. See Organic Law of the State Council (1982), Article 10.
  26. The CIRC is responsible for the drafting of laws and regulations that regulate the insurance industry.
  27. See the discussion below in sub-section: "Rule by Law vs. Rule of Law."
  28. It rules for example that the ratio of foreign capital in an equity joint venture life insurance company shall not exceed 50% of the total share capital of the company and provides for additional specifications. ([www.clrsonline.com/clrsonline/ChinaLaw/showpage.asp?ok=English&id=3910...](http://www.clrsonline.com/clrsonline/ChinaLaw/showpage.asp?ok=English&id=3910...)).
  29. See the discussion below in sub-section: "Lingering Issue."
  30. S. P. D'Arcy and Hui Xia, "Insurance and China's Entry into WTO," *Risk Management and Insurance Review*, Vol. 6, Issue 1 (Spring 2003), pp. 7–25.

31. For example on 11 December 2003 the CIRC issued the *Fulfilment of Relevant WTO Accession Commitments Notice*, which allows foreign-invested property insurance companies to engage in all non-life insurance businesses other than the statutory insurance businesses. Five cities (Fuzhou, Xiamen, Ningbo, Shenyang and Wuhan) are open to the outside for insurance business. See *China Law & Practice*, Vol. 17 (December 2003/January 2004), p. 10.
32. For instance, the *Administration of Insurance Companies Provisions* (promulgated on 13 May 2004 and effective as of 15 June 2004), the *Administration of Insurance Assets Management Companies Tentative Provisions* (promulgated on 25 April 2004 and effective as of 1 June 2004); the *Rules on Establishment of Reinsurance Companies* (promulgated on 17 September 2002 and effective as of the same date); the *Administration of Utilization of Insurance Foreign Exchange Funds Outside China Provisions* (promulgated on 9 August 2004 and effective as of the same date); the *Administration Methods on Approval and Filing of Life Insurance Products Provisions* (promulgated on 13 June 2004 and effective as of 1 July 2004); the *Risk Control Guideline on Utilization of Insurance Funds (In Trial)* (promulgated on 28 April 2004 and effective as of 1 June 2004); the *Administrative Rules on Solvency Margin and Regulatory Benchmarks of Insurance Companies* (promulgated on 24 March 2003 and effective as of the same date).
33. Douglas Arner et al., "Financial Regulation and the WTO: Liberalization and Restructuring in China Two Years Post-Accession," EAIEL Policy Paper No. 1 (March 2004).
34. In force since 1 January 1995.
35. Annex on Financial Services, Section 5.
36. For further discussion, see Arner et al. (Note 33).
37. I.e. since 11 December 2003.
38. The following applies to *brokerage of insurance* of large-scale commercial risks and brokerage of reinsurance and brokerage of international marine, aviation, and *transport insurance* and *reinsurance*: upon China's WTO accession, joint ventures with foreign equity of no more than 50% became permitted; within three years after China's accession (i.e. after 11 December 2004), the maximum foreign equity share could be increased to 51%; within five years after China's accession (i.e. after 11 December 2006), wholly foreign-owned subsidiaries will be permitted.
39. Passed 11 February 2002, effective 1 April 2002.
40. The *Catalogue for Guidance on Foreign Investment in Industries* permitted foreign stakes in life insurance companies up to 50%.
41. It has to be noted that China is not obliged under the GATS and its Schedule of Services Commitments to necessarily extend national treatment to foreign

insurance or any other service suppliers with respect to forms of business establishment. In this regard, foreign investors in most of China's service sectors may only establish "foreign-invested enterprises," as defined in China's Service Schedule, in order to avail themselves of the many market access benefits arising from China's WTO accession. Companies limited by shares are not included within this definition of "foreign-invested enterprises" and are therefore not apparently eligible for any of the market access benefits. Because foreign insurers are not permitted to establish companies limited by shares they may find themselves operating at a distinct competitive disadvantage, particularly as regards equity financing, organizational structure and business operations. In particular, foreign-funded insurance companies unlike Chinese domestic insurers, will be barred from listing on the Shenzhen and Shanghai Stock Exchanges. In this regard, it is noteworthy that the 2000 *Insurance Companies Provisions*, applicable to both domestic and foreign-funded insurers, specifically permit the establishment of companies limited by shares, including publicly listed companies (Art. 26, *Administration of Insurance Companies Provisions*). Thus domestic insurance companies are authorized to do what foreign-funded companies cannot do (see Donald Lewis, [www.clrsonline.com/clrsonline/ChinaLaw/howpage.asp?ok=English&id=3910...](http://www.clrsonline.com/clrsonline/ChinaLaw/howpage.asp?ok=English&id=3910...))

42. *China Law & Practice*, Vol. 19 (March 2005), p. 9.
43. Shanghai, Guangzhou, Dalian, Shenzhen and Foshan.
44. After 11 December 2003.
45. Beijing, Chengdu, Chongqing, Fuzhou, Suzhou, Xiamen, Ningbo, Shenyang, Wuhan and Tianjin.
46. After 11 December 2004.
47. On 11 December 2004 the China Insurance Regulatory Commission issued the *Fulfilment of WTO Accession Commitments Notice*, effective as of same date. Among other issues the Notice removed the geographical restrictions on establishment of foreign-invested insurance institutions. See *China Law & Practice*, Vol. 19 (March 2005), p. 9.
48. A master policy is the policy that provides blanket coverage for the same legal person's property and liabilities located in different places. A master policy may only be issued by the business department of an insurer's head office or that of its authorized province-level branch office. Other branches are not allowed to issue master policies.
49. After 11 December 2003.
50. At the beginning of 2005 AVIVA-COFCO Life Insurance Co. Ltd. signed group insurance policies in Beijing with three Chinese enterprises. This was the first time a foreign capital insurance company had signed group insurance policies in the Chinese mainland. AVIVA-COFCO Life Insurance Co. Ltd. is a joint venture life insurance company launched in early 2003 jointly by the



- China Cereals, Oils and Foodstuffs Corp and AVIVA of Britain. In line with its commitment to the WTO, China has opened its domestic group insurance market to foreign capital as of 11 December 2004. The first group of foreign capital insurers including AVIVA-COFCO has been approved by the CIRC to operate group insurance business. See *China Economic News*, No. 7 (21 February 2005), p. 3.
51. China's first specialized health insurance company — PICC Health Insurance Co., Ltd. recently opened for business in Beijing. The company was initiated by five shareholders, with PICC Holding having a 51% stake, DKV of Germany a 19% stake and the remainder being held by three Chinese partners. It has been learnt that PICC Health will initially launch three insurance products covering medical treatment, serious illness and accident. See *China Economic News*, No. 19 (23 May 2005), p. 4.
  52. *China Law & Practice*, Vol. 17 (December 2003/January 2004), p. 10.
  53. Without the approval of the CIRC, no work unit or individual may engage in or covertly engage in, insurance agency business within the territory of the PRC (Art. 2). An insurance agency that takes the form of a partnership enterprise or a limited liability company shall have a registered capital of no less than RMB 10 million (Art. 9). The registered capital or capital contribution shall be increased by at least RMB 100,000 for every new insurance agency branch or sub-branch, unless the registered capital or capital contribution has reached RMB 2 million (Art. 16). Insurance agencies shall pay and deposit 20% of the registered capital or capital contribution as guarantee funds or, alternatively, purchase professional liability insurance policies (Art. 21). As of 1 January 2005, overseas-funded banks are able to act as agents for insurance products in the mainland in accordance with the relevant regulations. The country's regulatory requirements call for a so-called "one licence for one site" regime, meaning an outlet can only act as an agent of insurance products when the local CBRC arm issues a Licence for Insurance Agent Services. Overseas-funded banks are not allowed to promote and conduct insurance agent services at their outlets or at other venues without such a licence. A substantive breakthrough has occurred in spring 2005 in overseas-funded banks' efforts to serve as insurance banks in the Mainland, with Hong Kong and Shanghai Banking Corporation Ltd. (HSBC) winning the approval of the Shanghai arm of the CBRC to act as an agent for insurance products at three of its Shanghai branches. See *China Economic News*, No. 14 (18 April 2005), p. 4.
  54. The process of licensing was previously influenced by many informal factors. Foreign insurers were supposed to demonstrate a long-term commitment to China, for example offering seminars, setting up research centres or investing in educational institutions. The licences granted were distributed evenly among the major nations with developed insurance markets in order to encourage



- diversification and benefit from a wide variety of technologies and experience, and consequently Chinese authorities when granting licences, aimed to meet China's foreign policy goals. See Chen Ji and Steve Thomas, "The Role of Foreign Insurance Companies in China's Emerging Insurance Industry: An FDI Case Study," Conference on Financial Sector Reform in China, 11–13 September 2001; Shen Yiming, "China's Insurance Market: Opportunity, Competition and Market Trend," *The Geneva Paper on Risk and Insurance*, Vol. 25, No. 3 (July 2000), pp. 335–55.
55. However, the Regulations go further than China's WTO commitments and impose additional conditions on foreign insurers (Art. 8 [4]–[7]). But these additional criteria do not seem to be particularly onerous and may therefore be justified under the so-called "prudential carve-out" exception of Art. 2, Annex on Financial Services of GATS. (Donald Lewis, [www.clrsonline.com/clrsonline/ChinaLaw/howpage.asp?ok=English &id=3910...](http://www.clrsonline.com/clrsonline/ChinaLaw/howpage.asp?ok=English&id=3910...)).
  56. At China's WTO accession, insurance brokers had to have total assets of more than US\$500 million. Within one year after accession (i.e. after 11 December 2002), they must have had total assets of more than US\$400 million. Within two years after accession (i.e. after 11 December 2003), they must have had total assets of more than US\$300 million. Within four years after accession (i.e. after 11 December 2005), they must have had total assets of more than US\$200 million.
  57. See GATS Article XVII, 1.
  58. On 11 December 2003 the CIRC issued a *Notice of Fulfilment of Relevant WTO Accession Commitments* which allows foreign-invested property insurance companies to engage in all non-life insurance businesses other than the statutory insurance businesses. See *China Law & Practice*, Vol. 17 (December 2003/January 2004), p. 10.
  59. On 12 December 2001 the State Council promulgated the *Administration of Foreign-funded Insurance Companies Regulations*, effective as of 1 February 2002. These Regulations were formulated to suit the requirements for opening up and economic development, to strengthen the supervision and administration of foreign-funded insurance companies, and to promote the healthy development of the insurance industry (Art. 1). The Regulations specify two types of insurance companies (equity joint venture and wholly foreign-owned companies), fix a minimum registered capital of RMB 200 million and additional criteria like having been in the insurance business for at least 30 years, having had a representative office within China for at least two years, etc.
  60. See hereafter chapter IV.2.
  61. Promulgated on 13 May 2004 and effective as of 15 June 2004.
  62. These Implementing Rules further maintain the minimum registered capital of foreign-invested insurance companies at RMB 200 million. Another

- substantive requirement reconfirmed is the need to have operated a Representative Office in China for at least two years. Novel is the inclusion of detailed requirements for the setting up of branch offices — additional registered capital of RMB 20 million is needed per branch office. Furthermore, each office should be registered with the provincial-level CIRC where it is established, and may operate only in that province ([www.wjnco.com/webnews/view.asp?id=200408231147495616](http://www.wjnco.com/webnews/view.asp?id=200408231147495616)).
63. *Administration of Insurance Companies Provisions*, promulgated 13 May 2004 and effective 15 June 2004 ([www.clrsonline.com/clrsonline/ChinaLaw/showpage.asp?id=3910/2004.05.13\(1...\)](http://www.clrsonline.com/clrsonline/ChinaLaw/showpage.asp?id=3910/2004.05.13(1...))).
  64. See [www.wjnco.com/webnews/view.asp?id=200408231147495616](http://www.wjnco.com/webnews/view.asp?id=200408231147495616).
  65. *Provisions on Insurance Brokerages*, promulgated by CIRC on 16 November 2001 and effective as of 1 January 2002, revised on 1 November 2004 and effective as of 1 January 2005.
  66. *Provisions on Insurance Agencies*, promulgated by CIRC on 16 November 2001 and effective as of 1 January 2002, revised on 1 November 2004 and effective as of 1 January 2005.
  67. *Provisions on Insurance Assessors*, promulgated by CIRC on 16 November 2001 and effective as of 1 January 2002.
  68. *Provisions on the Establishment of Reinsurance Companies*, promulgated by CIRC on 17 September 2002. These provisions make foreign investment in reinsurance companies in China legal for the first time. The new Provisions apply to the establishment of reinsurance companies generally, making no distinction between China domestic and foreign-invested reinsurance companies. Nevertheless, the special regulations governing foreign investment in insurance companies in China apply as special laws, such as the Foreign Insurance Regulations. In addition, China's relevant WTO commitments will also apply to foreign-invested reinsurance companies in certain circumstances. Foreign insurance companies may establish joint venture reinsurance companies or wholly foreign-owned reinsurance companies, provided that they meet the requirements set out in China's *Schedule of Commitments for WTO Accession*. Such requirements have already been implemented by the government in the *Foreign Insurance Regulations* with respect to length of establishment (30 years), existing representative office presence in China (2 years) and level of capitalization (minimum US\$5 billion). Additional prudential requirements are compensation capability, the existence of a good insurance regulatory system in the home country, and so on. ([www.clrsonline.com/clrsonline/ChinaLaw/new/showpage.asp?ok=Editorial&id=391...](http://www.clrsonline.com/clrsonline/ChinaLaw/new/showpage.asp?ok=Editorial&id=391...)).
  69. In early 2002, CIRC approved life insurance operations for US insurers in Beijing, Suzhou and Tianjin, two years before China had committed to do so in its Service Schedule. In 2003, CIRC approved life insurance operations for a US insurer in Chongqing nearly one year ahead of schedule. Other foreign

life insurers must now be provided with the same access to those cities (2003 Report to Congress on China's WTO Compliance, United States Trade Representative, p. 58).

70. *Circular of the Question of Operational Regions of Insurance Companies*, promulgated by CIRC on 2 September 2003.
71. *Proclamation on Implementing WTO Commitments*, promulgated by CIRC on 11 December 2004 and effective as of the same date.
72. Article 15, *Regulations on Administration of Foreign-funded Insurance Companies*.
73. Article 92, 1995 Insurance Law.
74. *Proclamation on Implementing WTO Commitments*, promulgated by CIRC on 11 December 2004 and effective as of the same date.
75. Article 16, *Regulations on Administration of Foreign-funded Insurance Companies*.
76. Article 92, Insurance Law.
77. WTO, S/FIN/M/43, pp. 6–7; WTO, S/FIN/M/47, pp. 5–8 (see hereafter, Chapter IV.2).
78. *Ibid.*, p. 3.
79. In Shanghai and Guangzhou, the market share of foreign insurers increased from around 2% prior to China's accession to the WTO to approximately 17% and 8%, respectively, as of December 2002. See Chun Wei, Michael G. DeSombre and Hong Zhang, "China's Post/WTO Reforms in Financial Services: Achievements and Challenges," *China Law & Practices*, 1 March 2003.
80. WTO, S/FIN/M/47, p. 4.
81. USCC.gov/hearing, p. 103.
82. Article 7, *Regulations on Administration of Foreign-funded Insurance Companies*.
83. Article 13, *ibid.*
84. Article 28, *Implementation Rules of the Regulations on Administration of Foreign-funded Insurance Companies*, promulgated by CIRC on 15 March 2004 and effective as of 15 June 2004.
85. Article 27, *ibid.*
86. China's capital requirements are much higher than those of other populous countries with no less an interest in preserving a healthy insurance market and they therefore limit the ability of foreign insurers to enter China's market significantly (2003 Report to Congress on China's WTO Compliance, United States Trade Representative, p. 57).
87. WTO, S/FIN/M/37, pp. 7–8; WTO, S/FIN/M/47, pp. 5–8.
88. The three steps are (1) preliminary application, where CIRC has up to 6 months in which to decide whether to approve the application; (2) setting-up of the company, where the applicant has one year to complete the task before



- submitting an official application to establish the company; and (3) registration of the company. Articles 9–12, the *Regulations on Administration of Foreign-funded Insurance Companies*.
89. Articles 30–33, *ibid*.
  90. A good example of speeding up the approval process are the *Representative Offices in China of Foreign Insurance Institutions Procedures*, according to which the CIRC is required to make a decision as to whether to approve or disapprove an application for the establishment of a representative office within 20 days. See *China Law & Practice*, Vol. 18 (February 2004), p. 6.
  91. 2005, the US-China Business Council.
  92. In the reported cases such as Millea Asia and Tokyo Marine and Fire Insurance in taking stakes in Sino Life Insurance; Zurich Insurance, International Finance Corp., Meiji Life and Nederlandse FMO in taking stakes in New China Life; ACE INA, ACE Tempest and ACE US in taking stakes in Huatai Insurance; Winterthur Life, Bank Leu, GIC, Softbank, International Finance Corp. in taking stakes in Taikang Life; Goldman Sachs, Morgan Stanley, HSBC in taking stakes in Ping An Insurance. See W. Seung Chong, “Insurers Find Strategic Path for China Investment,” *International Financial Law Review*, Vol. 22, Issue 9 (September 2003), pp. 56–57.
  93. Article 45, *Regulations on Administration of Foreign-funded Insurance Companies*.
  94. Article 43, *ibid*.
  95. In a survey carried out by the US-China Business Council among US companies in 2005, transparency ranked as the third most important issue for their business in China, up from sixth the previous year. See The US-China Business Council, *China’s WTO Implementation: An Assessment of China’s Fourth Year of WTO Membership*, 14 September 2005, Federal Register, pp. 44714–44715.
  96. Because the transparency obligation runs through every aspect of trade in insurance services, thus relevant laws, regulations, rules or other measures to be made public should not be narrowed down to market access (therefore, this issue was raised by some WTO Members during the transnational review in the WTO, especially by the EU).
  97. For example China did not publicly issue its draft revisions to the 1994 Auto-policy Guiding Rules and did not provide an opportunity for foreign companies to comment (see [www.uscc.gov/hearing/20.PDF](http://www.uscc.gov/hearing/20.PDF), p. 85).
  98. Paragraph 334, China’s Working Party Report.
  99. Zheng Yongnian, “From Rule by Law to Rule of Law? A Realistic View of China’s Legal Development,” *China Perspectives*, No. 25 (September–October 1999), pp. 31–34; Donald J. Lewis, “China Law Guru Rules Out ‘Level Playing Field’,” *China Law & Practice*, April 1996, pp. 10–12.

100. A case in point is the adoption of the *Law of Administrative Licensing* (approved by the National People's Congress's Standing Committee on 27 August 2003 and effective as of 1 July 2004), which aims to restrict the power of government departments and to introduce a just and transparent, clean and efficient administrative system with standardized practice and good coordination. In addition, the CIRC has enacted supplementary rules (*Implementing Rules for Administrative Licensing*, promulgated by CIRC on 3 June 2004 and effective as of 1 July 2004) to put its licensing activities under the surveillance of the *Law of Administrative Licensing*.
101. David Pilla, "Open for Business: Ever So Slowly, China's Market Takes Shape as Regulatory Rules Solidify," *Best's Review*, 1 May 2004.
102. Articles 74, 79, 81, 1995 Insurance Law.
103. Article 106, 1995 Insurance Law.
104. Guojian Xu, Bristar Cao and Richard L. Mertl, "Amending the Insurance Law: Long-term Policy or Expedient Measures?" in *China Law & Practice*, Vol. 18 (1 December 2002).
105. Article 107, Insurance Law; *Administration on Approval and Filing of Life-insurance Products Provisions*, promulgated by CIRC on 30 June 2004 and effective as of 1 July 2004. This new policy grants insurance companies greater latitude to compete through innovation and price advantages.
106. Thus, solvency margins and regulatory benchmarks have been put into place (*Administrative Rules on Solvency Margins and Regulatory Benchmarks of Insurance Companies*, promulgated by CIRC on 24 March 2003 and effective as of the same date) in order to bring the risk management of insurance companies under prudential measures. Regulations concerning reserve funds (*Interim Measures on Provisions for Non-life Insurance Business of Insurance Companies*, promulgated by the CIRC on 15 December 2004 and effective as of 15 January 2005), safeguard funds (*Provisions on Insurance Safeguard Funds*, promulgated by the CIRC on 23 December 2004 and effective as of 1 January 2005), risk control on fund application (*Interim Risk Control Guidelines on Utilization of Insurance Funds*, promulgated by CIRC on 28 April 2004 and effective as of 1 June 2004) for the sake of industry safety and policyholder protection have been produced with no efforts spared.
107. *Circular of CIRC Baojianfa* (2004) No. 77, promulgated on 25 June 2004 and effective as of the same date; *Administration of Utilization of Insurance Foreign Exchange Funds Outside China*, promulgated on 9 August 2004 and effective as of the same date; *Issues Relevant to the Stock Investment and Trading of Insurance Institutional Investors Circular* (issued 17 February 2005, effective as of the same date).
108. The *Interim Provisions on Insurance Institutional Investors' Stock Investment*, jointly promulgated by the CIRC and CSRC on 24 October 2004 and effective as of the same date.

109. See Note 32.
110. At this stage, the major regulations specially applicable to foreign insurers include the *Regulations on Administration of Foreign-funded Insurance Companies*, promulgated by the State Council on 12 December 2001 and effective as of 1 February 2002; the *Implementing Rules of the Regulations on Administration of Foreign-funded Insurance Companies*, issued on 15 March 2004 and effective as of 15 June 2004, and the *Administration of Representative Offices of Foreign Insurance Institutions in China Procedures*, issued in January 2004 and effective as of 1 March 2004.
111. Wu Dingfu, Chairman of the CIRC in *China Daily*, 28 October 2005 ([www.chinadaily.com/english/doc/2005-10/28/content\\_488515.htm](http://www.chinadaily.com/english/doc/2005-10/28/content_488515.htm)).