

PANORAMIC

INSURANCE LITIGATION 2024

Contributing Editors

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LEXOLOGY

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Quick reference guide enabling side-by-side comparison of local insights, including into preliminary and jurisdictional considerations; interpretation of insurance contracts; providing notice; duty to defend; standard commercial general liability policies; first-party property insurance; directors' and officers' insurance; cyber insurance; terrorism insurance; and recent trends.

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PRELIMINARY AND JURISDICTIONAL CONSIDERATIONS IN INSURANCE LITIGATION

Fora

1 | In what fora are insurance disputes litigated?

Hierarchical jurisdiction

In China, there are four levels of courts: the primary courts, the intermediate courts, the high courts and the Supreme People's Court. These courts have first-instance jurisdiction over civil cases, including insurance cases. Normally, the primary court will act as the first instance court in most insurance cases; however, if the amount in dispute reaches a certain level or if the case exerts significant influence on society, the primary court will cede its jurisdiction to intermediate or even high courts. Specifically, if the amount in dispute for a civil case is less than 500 million yuan (not including), the primary court will have jurisdiction; if the amount is between 500 million yuan (including) and 5 billion yuan (not including), an intermediate court will have first-instance jurisdiction; if the amount exceeds 5 billion yuan (included), the high court will have first-instance jurisdiction. It is rare for the Supreme People's Court to hear a case at first instance. Also, an intermediate-level court will have first-instance jurisdiction over foreign-related civil and commercial cases with large amounts of disputed subjects by implementing different amounts in dispute according to different regions.

If any party is unsatisfied with the judgement or verdict of the first instance court, it may bring an appeal to a higher court within the period of time prescribed. The judgement or verdict of the appellate court will be binding. The only remedy against the binding judgment or verdict can be found in the legal review procedure; however, it is rare and difficult to kick-start this procedure.

Territorial jurisdiction

An insurance dispute will fall under the jurisdiction of the PRC Court where the domicile of the defendant or the insured object is located.

However, some exceptions exist. For instance, from 26 March 2021, the Beijing Financial Court will hear insurance disputes over which the Beijing Intermediate People's Court has first-instance jurisdiction. The Beijing Financial Court will also try the appeals for insurance disputes.

Law stated - 13 December 2023

Causes of action

2 | When do insurance-related causes of action accrue?

Concerning property insurance cases, the statute of limitations for an insured to claim indemnification or payment of the insurance benefits against the insurer is two years. The statute of limitations begins as of the day when the insured knew or should have known of the occurrence of the incident covered by the insurance policy.

Concerning life insurance, the statute of limitations is five years, which also starts from the day when the insured knew or should have known of the occurrence of the incident.

On 1 October 2017, the [General Rules of the Civil Law of the People's Republic of China](#) (*General Rules of the Civil Law*) came into force, in which Article 188 stipulates that 'the statutory limitation applicable to a people's court for protection of civil rights is three years, unless otherwise provided by law.' After the *General Rules of the Civil Law* came into effect, most courts conceded that the statutory limitation for an insured to claim indemnification or payment of insurance benefits against an insurer, in property insurance cases, is three years, and that in life insurance cases, remains to be five years. Article 188 was incorporated into the newly released [Civil Code of the People's Republic of China](#) that came into force on 1 January 2021.

Law stated - 13 December 2023

Preliminary considerations

- 3 | What preliminary procedural and strategic considerations should be evaluated in insurance litigation?

The following aspects are always considered in insurance litigations.

The validity of the insurance contract

Standardised boilerplate clauses provided by the insurer are deemed to be void as they are in violation of law. For instance, clauses exempting the insurer from any legal obligation or aggravating the liability of the insurance applicant or the insured, and clauses excluding any legal right of the insurance applicant, the insured or the beneficiary. Other issues that will render the policy void include, but are not limited to, fraud, violation of compulsory provisions of law and regulations, and violation of the public interest.

The insurance assessment report

An insurance assessment report made before litigation is not binding on the court or tribunal, but it can be used as a reference. If the court or tribunal deems it necessary, it can retain another loss adjuster to make an assessment again during the litigation procedure.

The duty of disclosure of the insurance applicant

In concluding an insurance contract, the insurance applicant must provide truthful information when the insurer enquires about the subject matter insured or relevant

circumstances concerning the insured. The insurer has the right to rescind the insurance contract if the insurance applicant intentionally or out of gross negligence fails to fully perform his or her duty of disclosure, thus affecting the insurer's decision on underwriting or increase of premium rate. Where a policyholder failed to perform such obligation intentionally, the insurer shall not be liable to make compensation or payment of insurance monies for an insured event occurred before rescission of the contract, and the premium shall not be refunded; Where a policyholder failed to perform due to gross negligence which has a serious impact on the occurrence of an insured event, the insurer shall not be liable to make compensation or payment of insurance monies for the insured event occurred before rescission, but the premium shall be refunded.

Where an insurer is aware that the policyholder has not provided truthful information when concluding the contract, the insurer shall not rescind the contract; upon occurrence of an insured event, the insurer shall be liable to make compensation or payment of insurance monies.

The specific explanation obligation of the insurer

For those clauses that exempt the insurer from liability in the insurance contract, the insurer shall sufficiently warn the insurance applicant of those clauses in the insurance application form, the insurance policy or any other insurance certificate, and expressly explain the contents of those clauses to the insurance applicant verbally or in writing. If the insurer fails to make a warning or express explanation thereof, those clauses shall be void.

The decision of the insurer

The insurer shall, after receiving a claim from the insured or the beneficiary, adjust the claim in a timely manner. If the circumstances are complex, the insurer shall complete the adjustment within 30 days, unless the insurance contract provides otherwise.

The payment of premiums

Upon conclusion of an insurance contract, the policyholder shall pay premiums pursuant to contractual provisions. Some contracts may specify the fulfillment of premiums as a precondition for a contract to come into effect, whereas, others may not.

Law stated - 13 December 2023

Damages

4 | What remedies or damages may apply?

There are two kinds of remedies or damages in insurance litigation: payment of insurance benefits and compensation for loss, which includes repair or replacement. The insurer will

also bear liability for delayed payment, which will always consist of bank interest accrued during the delay period.

In China, there is a clear difference between contractual liability and tort liability, and in an insurance dispute, even if a party conducts a breach of the insurance contract with malicious intent, it will not incur tort liability or punitive damages.

Law stated - 13 December 2023

5 | Under what circumstances can extracontractual or punitive damages be awarded?

Generally, the Chinese court would not award the punitive damages on insurers. In light of the insurer's obligation of compensation or payment of insurance monies in a certain period of time, where the insurer intentionally failed to perform such obligation, the Chinese court may also uphold the insured's or the beneficiary's claim for the loss of interest during the period of delayed performance. The interest is calculated based on Loan Prime Rate (LPR) issued by the People's Bank of China. Where the insurer does not perform the obligations for money payment within the period stipulated in a judgment, the insurer shall pay an amount double the interest on the debts during the deferred performance period.

Refused to perform the obligation of indemnification, an insurer risks to be ordered by the National Administration of Financial Regulation to make correction and be subject to a fine ranging from 50,000 yuan to 300,000 yuan; where the case is serious, its scope of business may be restricted or ordered to stop accepting new business or the business permit be revoked.

Law stated - 13 December 2023

INTERPRETATION OF INSURANCE CONTRACTS

Rules

6 | What rules govern interpretation of insurance policies?

Pursuant to the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the General Rules of Contract of the Civil Code of the People's Republic of China, generally, the interpretation of a contract should be based on the general meaning, often referred to as semantic interpretation, combined with the relevant terms, the nature and purpose of the contract, customary interpretation, and the principle of good faith, also pursuant to factors such as the background, negotiation process and the performance behaviour to justify the meaning a disputed term.

The unfavourable interpretation

Where a dispute over an insurance contract concluded by adopting the standard clauses provided by the insurer, interpretation shall be made based on common understanding.

Where there are two or more interpretations, the people's court or the arbitral tribunal shall interpret the clause in favour of the insured party and the beneficiary.

Special Interpretation

Where the contents are inconsistent in the insurance contract, the proposal form outweighs any other insurance certificates, the non-standard clauses outweigh the standard clauses; the handwritten certificate signed and sealed outweigh the printed version.

Law stated - 13 December 2023

Ambiguities

7 | When is an insurance policy provision ambiguous and how are such ambiguities resolved?

The policy provision becomes ambiguous when the insurer and the insured or the beneficiary have different interpretations of the policy provision. If a policy provision is found to be ambiguous, it should be interpreted according to the interpretation rules as follows:

- semantic interpretation;
- systemic interpretation;
- contract aim-based interpretation;
- utmost good faith interpretation;
- special interpretation;
- customary interpretation; and
- unfavourable interpretation.

Law stated - 13 December 2023

NOTICE TO INSURANCE COMPANIES

Provision of notice

8 | What are the mechanics of providing notice?

Though Chinese law does not specify the mechanics of providing notice, in practice, emails and letters are generally acceptable and recognised. Yet, oral notice is not suggested when the insured notifies the insurer, as such a method often features a lack of relevant evidence.

Where the degree of peril of the subject matter insured greatly increases during the term of validity of the contract, the insured shall notify the insurer in a timely manner as agreed upon in the contract, and the insurer may increase the insurance premium or rescind the contract as agreed upon in the contract.

Law stated - 13 December 2023

Obligations

9 | What are a policyholder's notice obligations for a claims-made policy?

The insurance applicant, the insured or the beneficiary must, in a timely manner, notify the insurer after becoming aware of the occurrence of an incident covered by the insurance policy.

Some claims-made policies may contain a provision that the insured shall, in a specified period, commonly the insurance period or the discovery period, notify the insurer of the occurrence of an incident covered by the policy or potential circumstances, otherwise, the insurer may reject to indemnify or pay the insurance monies. Some policies may instead specify that the insured shall timely or promptly notify the insurer after being aware of the occurrence.

An insurance applicant also has a duty to cooperate with the insurer defending a claim on its behalf. The insurance applicant must keep the insurer informed of all major case developments, respond to the insurer's reasonable enquiries and notify the insurer.

Specifically, the number of claims and litigation under the directors and officers (D&O) liability insurance policies has grown rapidly in recent years due to the increase of securities class actions worldwide. Most D&O liability insurance policies will provide that if notice of a claim is notified as required by the D&O liability insurance policy, then any subsequent notice of claim, alleging, arising out of, based upon or attributable to the facts or wrongful act alleged in that claim will be deemed to have first been made at the same time that the claim was first made, and reported to the insurer on the date the required notices were first provided.

Law stated - 13 December 2023

Timeliness

10 | When is notice untimely?

In determining whether the insured has given the notice in an untimely manner, several metrics as follows are employed:

- the wording of the policy's notice provision;
- the insured's sophistication regarding insurance policies;
- the insured's knowledge of an incident that may trigger indemnification as agreed in the insurance contract;
- the insured's diligence in ascertaining whether policy coverage is available;
- whether the insurer was prejudiced by any late notice; and
- the nature and complexity of the insurance incident.

Law stated - 13 December 2023

11 | What are the consequences of late notice?

When an insurance applicant, insured or beneficiary intentionally or due to gross negligence fails to notify the insurer in a timely manner, which makes it and such failure subsequently renders it difficult to ascertain the nature, cause, and/or degree of damage of the insured incident, the insurer shall not be liable for indemnification or payment of the insurance benefits monies for the indeterminable part, unless the insurer has known or should have known the incident in a timely manner through other channels.

In practice, where a late notice damages the subrogation right of the insurer, the insurer may refuse the insured's claim accordingly.

Some cases present insurance contract clauses stipulating that where an insurance applicant, insured or beneficiary fails to notify the insurer in a timely manner, the insurer has the right to refuse the insurance benefit. This policy provision will be deemed void by the Chinese court for it exempts the insurer from its legal obligation and/or excludes the legal right of the insurance applicant, the insured or the beneficiary (the right to insurance monies).

Law stated - 13 December 2023

INSURER'S DUTY TO DEFEND**Scope****12 | What is the scope of an insurer's duty to defend?**

There is no specific legal provision in Chinese laws and regulations that stipulates the insurer's duty to defend the insured. Only article 66 of the Insurance Law provides that if an insured in a liability insurance contract is brought into arbitration or legal proceedings because of the occurrence of an incident covered by the insurance policy that causes loss or damage to a third party, the insurer will bear the cost of the arbitration or legal proceedings, and other necessary and reasonable expenses paid by the insured, unless it is otherwise provided for in the insurance contract.

In practice, some liability insurance policies will provide that where a third party sues the insured, the insurer will have control over the litigation and hence have the obligation to defend the insured. Under such a policy, the insurer will retain a lawyer for defence, determine the settlement and pay the legal fees and other costs related to the litigation. In the meantime, the insurer will assume liability for insurance indemnification according to the result of the litigation. In some directors and officers liability insurance cases, the policies will provide that unless otherwise specified in the insurance contract, the insured shall not admit or assume any liability, enter into any settlement agreement, or consent to any judgement without the prior written consent of the insurer.

In the court and/or arbitral proceedings of an insurance dispute, the insurer will defend the insured in the name of the insured rather than in its own name.

Law stated - 13 December 2023

Failure to defend

13 | What are the consequences of an insurer's failure to defend?

If the insurer fails to defend, it will indemnify the insured for the loss incurred by litigation, including the damages awarded by a court or an arbitral tribunal, the legal fees paid by the insured and other costs incurred by the insured, which is subject to the limit of indemnity of the policy.

If the policy prescribes a specific compensation clause for defence violation, the insurer shall be responsible for such compensation in accordance with the specifications of the clause.

Law stated - 13 December 2023

STANDARD COMMERCIAL GENERAL LIABILITY POLICIES

Bodily injury

14 | What constitutes bodily injury under a standard CGL policy?

Bodily injury refers to physical (1) injury, (2) sickness, or (3) disease, sustained by a person and, if arising out of the above, mental anguish or death at any time. In practice, bodily injury often excludes mental/psychological distress unless otherwise stipulated in the standard CGL policy.

The purpose of liability (casualty) insurance is to cover bodily injury resulting from the negligence or omissions of an insured.

Law stated - 13 December 2023

Property damage

15 | What constitutes property damage under a standard CGL policy?

CGL policies generally define 'property damage' as: (1) Physical injury to tangible property, including all loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or (2) loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the 'occurrence' that caused it.

Law stated - 13 December 2023

Occurrences

16 | What constitutes an occurrence under a standard CGL policy?

Occurrence under a standard CGL policy refers to an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

An insurer may, in accordance with the provisions of the law or the terms of an insurance contract, directly indemnify a third party for loss or damage caused by the insured under liability insurance. When an insured inflicts damage on a third party and the liability of the insured for indemnity to the third party has been determined, the insurer must directly pay insurance monies to the third party as per the request of the insured. When an insured does not make a request, the third party will have the right to demand payment directly from the insurer.

Law stated - 13 December 2023

17 | How is the number of covered occurrences determined?

The following factors determine the number of occurrences:

- agreements about the number;
- definition of occurrence in the CGL policy: CGL policies frequently define occurrence as 'an accident, including continuous or repeated exposure to substantially the same general harmful conditions'. The limit of liability provisions can play an important role in determining how many occurrences are implicated by the underlying claim. A common limit in a liability provision states that 'Our total liability for all damages resulting from any one "occurrence" will not be more than the limit of liability';
- proximate cause: generally speaking, the same proximate cause leads to the same insurance occurrence and different proximate causes lead to different insurance occurrences; and
- the four unities test: the responsible persons, causation, timing and location are considered.

Law stated - 13 December 2023

Coverage

18 | What event or events trigger insurance coverage?

There are four theoretical events that trigger insurance coverage:

- exposure: a policy is triggered upon the first exposure to the injury-causing or damage-causing event;
-

manifestation: a policy is triggered when the damage or injury is discovered rather than when it occurred;

- injury in fact: a policy is triggered when the injury or damage actually occurs; and
- continuous: a combination of trigger types – manifestation, exposure, and injury-in-fact -leads to an injury that develops over time. A policy is triggered when the time during which exposure to the harmful condition occurred, when the actual damage occurred, and when the damage was manifested or identified.

Law stated - 13 December 2023

19 | How is insurance coverage allocated across multiple insurance policies?

Under PRC Law, double insurance arises when the following requirements are satisfied on a disjunctive basis: (1) the same subject matter of insurance; (2) the same insured interest; (3) the same insured accident; (4) there are two or more insurers; (5) there are two or more insurance contracts; (6) the total sum insured in multiple policies combined exceeds the insured value.

In the event of double insurance, an insurance applicant shall notify all concerned insurers of relevant information with respect to the double insurance where the event is within their knowledge.

The original legislative purpose of establishing a double insurance legal framework is to accentuate the loss compensation principle under insurance law, preventing the insured from using double insurance to obtain a windfall benefit exceeding the actual loss incurred, and preventing a moral hazard.

An insurance applicant in double insurance may require the insurers to refund pro rata the insurance premium for the excess of the total insured amount and the insurable value. The sum insured paid by all concerned insurers must not exceed the insurable value.

In other jurisdictions, when facing a double insurance scenario, a judge or arbitrator will consider the intention of the policyholder and make decisions accordingly. However, in China the law addresses double insurance on a factual basis and is without regard to the state of mind of the policyholder.

Law stated - 13 December 2023

FIRST-PARTY PROPERTY INSURANCE

Scope

20 | What is the general scope of first-party property coverage?

First-party property insurance policies generally provide coverage on an all-risk or a named-perils basis.

All-risk policies typically provide coverage for direct physical loss to covered property, subject to listed exclusions. To demonstrate the existence of the coverage under an all-risk policy, the insured is not required to demonstrate that the loss was caused by a peril that is specifically identified in the insurance policy. However, the insured generally carries the burden of demonstrating that a direct and physical loss encumbers covered property. If this burden is satisfied, the loss will be covered unless a contract-specific exemption applies. In general, the insurance company bears the burden of proof to demonstrate that an exclusion clause applies.

Named-perils policies provide coverage for specifically listed risks, usually with a coverage grant for direct physical loss to covered property caused by a peril listed, unless the loss is excluded. This means that coverage exists if the loss, in addition to being a direct physical loss, is specifically listed in the perils specified by the insurance policy and does not fall within an exclusion clause. To obtain coverage, an insured must therefore identify a named peril that potentially provides coverage for the loss.

It is common for property insurance policies to provide all-risk coverage for some of the insured's property and named-perils coverage for other property.

Law stated - 13 December 2023

Valuation

21 | How is property valued under first-party insurance policies?

When an insurance applicant and an insurer have agreed upon and specified the insurable value of the subject matter insured in the insurance contract, it will be the standard for calculation of indemnity when losses occur to the subject matter insured. If the insurer can demonstrate that the agreed insurance value was determined owing to fraud or misunderstanding, the PRC court could overrule this value, but this only happens in rare circumstances.

When the insurance applicant and the insurer could not reach an agreement regarding the insurable value of the subject matter insured, the value of the subject matter insured will be the actual value of the subject matter when losses occur, and this actual value should be assessed by a claims adjuster or other independent organisation(s).

The sum insured must not exceed the insurable value. In the event where sum insured exceeds the insurable value, the excessive part shall be deemed invalid, and the insurer shall refund the corresponding amount of the insurance premium to the insurance applicant.

When the sum insured is less than the insurable value, the insurer shall bear an obligation for indemnity on a pro rata basis between the insured amount and the insurable value, unless otherwise provided for by the insurance contract.

Law stated - 13 December 2023

Natural disasters

22 | Is insurance available in your jurisdiction for natural disasters and, if so, how does it generally apply?

Natural disaster risks are covered by most Chinese insurance products nowadays. Natural disaster public liability insurance is a new type of insurance developed in recent years aimed at covering natural disasters. It is insurance whose contributions are made by local governments and the injuries and fatalities suffered by insured residents, which are caused by natural disasters such as storms, rainstorms, cliff collapses, lightning strikes, floods, tornadoes, squall lines, typhoons (tropical storms), tsunamis, debris flows, landslides and hail, are indemnified.

On 12 May 2022, the China Banking and Insurance Regulatory Commission stated the necessity to accelerate the construction of a multi-hazard liability insurance system that covers losses of earthquakes, typhoons, floods, heavy rainfall, mudslides and other disasters. Even though the system has not been completely constructed yet, more than 10 provinces and cities have carried out practical exploration and accumulated catastrophe insurance pilot experience based on their own natural disaster risk characteristics.

Law stated - 13 December 2023

Pandemic

23 | Is insurance available in your jurisdiction for pandemic-related losses and, if so, how does it generally apply?

Pandemic-related losses generally are covered under three kinds of insurance policies: (1) extension coverage of critical illness insurance or medical insurance; (2) insurance policies specifically designed for pandemic disease risks, eg, the covid-19 pandemic; (3) coverage under business interruption insurance policies. Some insurance companies designed quarantine insurance policy which provides indemnification to the policyholder or the insured during the quarantine period if the policyholder is quarantined during the coverage period because of the pandemic.

On 7 February 2022, the China Banking and Insurance Regulatory Commission issued the Emergency Circular on Issues Related to Regulating the Operation of Quarantine Insurance Business, which puts forward policy requirements on the sales and promotion of quarantine insurance products, namely, that the insurers shall reasonably stipulate the exclusion clauses and conditions for claims settlement, not engage in one-sided propaganda and malicious speculation; give sufficient explanations and interpretations on the coverage, exclusions, and conditions for claims settlement. Insurers shall take the initiative to provide good service in settlement of claims and shall not reject to settle the claims without justifications.

Law stated - 13 December 2023

DIRECTORS' AND OFFICERS' INSURANCE

Scope

24 | What is the scope of D&O coverage?

Under Chinese laws, there are no specific provisions regarding directors and officers (D&O) insurance, except for the [Guidelines on Governance of Listed Companies](#) and the [Measures for the Administration of Independent Directors of Listed Companies](#) issued by China Securities Regulatory Commission, which provides that a listed company may establish a liability insurance system for independent directors to reduce the risks that may be incurred in the normal performance of duties by its independent directors and may purchase liability insurance for its directors upon the approval of the general meeting of shareholders.

On 7 April 2023, the [Opinions of the General Office of the State Council on the Reform of the Listed Company Independent Director System](#) encourages the listed companies to purchase D&O insurance for independent directors, and insurers shall be supported in conducting relevant D&O insurance business that meets the needs of listed companies, so as to reduce the risk faced by independent directors in normal performance of duties.

The parties to D&O insurance generally define D&O policy coverage as follows:

- the insurer will pay on behalf of the insured all loss resulting from a claim first made during the policy period against an insured, except for and to the extent that the company has indemnified the insured;
- the insurer will pay on behalf of the company all loss pertaining to a claim first made during the policy period against an insured to the extent that the company has indemnified the insured; and
- the insurer will pay the loss of the company arising from security claims.

Law stated - 13 December 2023

Litigation

25 | What issues are commonly litigated in the context of D&O policies?

Issues that are commonly litigated in the context of D&O insurance are those where the insurance applicant fails to make an honest disclosure about any pecuniary embarrassment or investigation by the government when he or she is concluding or renewing an insurance contract.

The disclosure obligation of the insurance applicant will be limited to the scope and the content of the inquiry made by the insurer. If the concerned parties have any dispute over the scope and the content, the insurer shall bear the burden of proof. In addition, if the insured is a listed company, the insurer may require the insured to make a disclosure even if this kind of information is published on the government's website or has entered the public domain.

Where the insurer is aware, at the time of conclusion of the contract, that the policyholder has not provided truthful information, the insurer shall not rescind the contract; upon occurrence of an insured event, the Chinese court will uphold the insurer shall be liable to make compensation or payment of insurance monies.

Liability under another jurisdiction potentially gives rise to further dispute. On 25 December 2021, the [Measures for the Supervision of Liability Insurance Business](#) was published and regulates that liability insurance sold in China should not cover losses of criminal fines and administrative penalties, which triggers disputes over whether fines or penalties issued by foreign criminal or administrative agencies could be covered or not.

Law stated - 13 December 2023

CYBER INSURANCE

Coverage

26 | What type of risks may be covered in cyber insurance policies?

According to the Interim Measures for the Supervision of the Cyber Insurance Business (currently effective) issued by the China Banking and Insurance Regulatory Commission (CBIRC), insurance companies can operate cyber insurance business in the following areas:

- personal accident injury insurance, term-life insurance and whole-life insurance;
- household property insurance, liability insurance, credit insurance and surety insurance insured for applicants or the insureds personally (personalised for applicants or insureds);
- property insurance business that could achieve full services of sale, underwriting and settlement of claims independently and completely online; and
- other insurance stipulated by the China Insurance Regulatory Commission (now the CBIRC).

Law stated - 13 December 2023

Litigation

27 | What cyber insurance issues have been litigated?

The most frequently litigated cyber insurance issues include:

- Whether the cyber insurance contract was duly formed. The court generally holds that an insurance contract can be concluded online. The key to the establishment of the insurance contract is whether the applicant and the insurer had a unanimous declaration of will.

- Whether the electronic signature of the policyholder or the electronic seal of the insurer is effective, which relates to the validity of the insurance contract.
- Whether the insurance company properly reiterated and explained the exemption clause(s) in the insurance contract during the online underwriting process, and adequately discharged its obligations under the Insurance Law. Judicial holdings are granting that insurance companies can operate cyber insurance business by entering into electronic insurance contracts but must still abide by the Insurance Law and clarify standard terms that would otherwise be invalid if exempting the responsibilities of the insurers.

Law stated - 13 December 2023

TERRORISM INSURANCE

Availability

- 28 | Is insurance available in your jurisdiction for injury or damage caused by acts of terrorism and, if so, how does it generally apply?

In China, insurance companies sometimes include terrorism as an additional risk under an insurance policy. Moreover, because there have been few terrorism incidents in China, Chinese insurance companies have yet to develop a comprehensive system to process and settle claims for terrorism, and the Chinese insurance companies often exclude terrorism from coverage in insurance policies.

Law stated - 13 December 2023

UPDATE AND TRENDS

Key developments of the past year

- 29 | Are there any emerging trends or hot topics in insurance law in your jurisdiction?

Development of agricultural insurance industry increases relevant insurance litigation

Due to the impacts of global environmental pollution, climate change and natural disasters, the corresponding disputes over agricultural insurance policies have increased. The central issue(s) in agricultural insurance disputes often lie in the validity of terms and the applicable methodology in calculating losses.

The [Measures for the Administration of Underwriting and Claim Settlement of Agricultural Insurance](#) and the [Statistical System for Green Insurance Business](#), published in 2022, further improves the entrust mechanism between the insurance companies and its assisting institutions. Also, the [Agricultural Insurance Actuarial Provisions \(Trial\)](#), effective on 1 September 2023, stipulates different rate adjustment coefficients for different kinds of products and require insurers to improve the premium adequacy testing procedures for agricultural insurance and assess the premium insufficiency reserve.

Establishment of the National Administration of Financial Regulation (NAFR)

In March 2023, the State Council Institutional Reform Proposal came into effect and approved the establishment of the NAFR as an institution directly under the State Council. The duties of the People's Bank of China in routine regulation of financial entities and protection of financial consumers, as well as the duties of the China Securities Regulatory Commission in protecting investors are assigned to the NAFR. With this transition, the China Banking and Insurance Regulatory Commission ceases to exist.

Development of regulation protects consumer rights

To protect financial consumers' rights and interests and advance the operation of the industry, NAFR published the [Measures for the Administration of Insurance Sales Activities](#) to regulate insurance sales according to different stages, namely, pre-insurance, insurance sales and post-insurance sales, establish insurance product description and grading rules.

Introduction, localization and evolution of D&O insurance and its litigation status quo

Directors and Officers Liability insurance (D&O insurance), initially introduced in the London financial market, was not widely embraced in China until the recent elevation of disclosure duties imposed on public-listed companies and the professional risks upon the directors and officers by the PRC State Council and the NAFR. Alongside the development of the securities and insurance markets, as well as the impact of the pandemic, D&O insurance has been on the rise in the Chinese market.

The Influence of Geopolitical Events on the Insurance Industry

Geopolitical events and sanctions are exerting a significant impact on the insurance industry, necessitating a reevaluation of risk exposure and policy specifications. This influence is particularly evident in the wake of recent developments, such as Russia's military campaign in Ukraine on 24 February 2022, which had far-reaching consequences for both the global geopolitical landscape and the insurance sector.

Law stated - 13 December 2023

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