

Overview of Chinese Insurance Law

Related Practice Areas

- Insurance Coverage

As global insurers continue to penetrate the Chinese market, our offices are seeing an ever increasing number of Chinese law related inquiries, including in the fields of credit and political risk, property and other lines.

The Chinese legal system is based on the civil law system that is structurally similar to Germany and France. There are some significant differences to English and U.S. law. London and other international insurers should be aware that Chinese law imposes greater obligations upon them than might typically be expected.

Policyholder's Duties of Disclosure

In Chinese insurance law, there is no pre-contract duty on those seeking insurance to volunteer information. Rather, insurers are required to play the active role in the process by asking questions of the policyholder as appropriate. The policyholder needs only answer questions asked by insurers, although of course it must do so honestly. The legislation requires the policyholder to declare, when asked, details of matters it is "aware of." In the event of a dispute, the burden is on the insurer to show that the scope and content of the questions asked were sufficiently specific.

The insurer's remedy for breach of the duty to answer questions honestly is to rescind the contract. The precise manner of rescission may depend upon the degree of connection between the loss and the intention of the policyholder. If the breach of the duty by the policyholder was deliberate, the insurer may avoid the policy and refuse all claims, and may not have to return the premium. However, in cases where the breach of the duty by the policyholder was merely negligent, the insurer may avoid the contract but should return the premium.

The insurer loses the right to rescind the contract if he has knowledge of a material fact that the policyholder has not honestly declared, but underwrote the contract nevertheless. The right of an insurer to rescind a contract must be exercised within 30 days of knowledge of the facts giving rise to the right to rescind. There is a long-stop, two-year limitation period from the conclusion of the contract after the expiration of which no action to avoid the policy by the insurer can be maintained.

Warranties

There is no equivalent to English law warranties in non-marine Chinese insurance law, although there is an equivalent concept in marine insurance. The breach of any warranties in marine insurance may entitle the insurer to terminate the contract. However, the insurer has an option to continue with the contract but stipulate an increased premium or insist on a change to the terms of the insurance contract.

Conditions Precedent to Liability

In Chinese insurance law, there are no direct equivalents to English conditions precedent. Typically, in English law, conditions precedent are concerned with obligations that an insured must comply with after the loss has occurred, for example loss notification. Under Chinese law, the insured, the policyholder or the beneficiary is required to give notice of the loss within a reasonable time and furnish details of the event or his loss, but this provision is not construed as a condition precedent to the liability of the insurer the breach of which would entitle the insurer to terminate the contract or decline the claim. If the insured, the policyholder or the beneficiary fails to notify the event or loss in a timely manner, and such delay prejudiced the insurer's ability to ascertain the nature, cause, and extent of the loss, then the insurer may not be liable for the undeterminable part of the claim.

In addition, Chinese law requires an insured and the policyholder to notify an insurer of significant increases in risk during the lifetime of the contract, and shall fulfill his/her contractual obligations to protect his/her insurable interest, in the absence of which the insurer may rescind the contract or demand an increased premium.

Exemption Clauses

Chinese insurance law allows the insurer to absolve itself either wholly or in part from liability under the insurance contract from certain perils and circumstances. As is common in other legal systems, the insurer is required to do so in clear terms. Exclusions and exemptions need to be highlighted in a particular way. The relevant clause must be brought to the notice of the policyholder before the contract is made. If the clause has not been brought to the policyholder's attention, it will be of no effect.

Limitation Period

Chinese statute provides a limitation period of two years relating to non-life insurance; for a life insurance claim it is five years. In the insurance context, this period begins to run from the date on which the insured or beneficiary knew or ought to have known about the occurrence of the event insured against. The parties are not allowed to postpone the commencement of the limitation period by agreement.

Law and Jurisdiction

Purely domestic contracts entered into between a Chinese insurer and a Chinese policyholder are subject to Chinese law and jurisdiction. The parties cannot choose foreign law and jurisdiction. However, overseas insurers insuring a Chinese insured may choose foreign law and arbitration.

Confidentiality

An obligation to treat certain information as being confidential is frequently expressly imposed by an insurance contract, for example in the case of political risk and credit policies. However, in Chinese law there is no recognized equivalent of warranties of confidentiality. Although it is contractually possible to agree to confidentiality, this is rarely seen in practice. Insurer's rights in respect of breaching confidentiality lie under the Chinese General Civil Code rather than insurance law.

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