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## Insurance in the People's Republic of China: Laws and Practice

Henry R. Zheng

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## Insurance in the People's Republic of China: Laws and Practice

*Henry R. Zheng\**

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## I. INTRODUCTION

The insurance industry in the People's Republic of China (PRC) has expanded rapidly during the past several years. Since the end of 1979 when domestic insurance was reestablished, the income generated from insurance business has been increasing at a rate of over forty-four percent annually.<sup>1</sup> By early 1987, over 500,000 enterprises and business entities utilized property insurance and about 34 million people purchased personal insurance; during the first half of 1986 the total insurance earnings from the People's Insurance Company of China alone reached a record high of over 2.33 billion yuan.<sup>2</sup> In the meantime, the insurance

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1. Qin Daofu, *Zhongguo Baoxian Shiye de Xinjinzhan (The New Progress of Chinese Insurance Business)*, *Jingji Daobao [Economic Reporter]*, Hong Kong, Jan. 1, 1986, at 68 [hereinafter *Economic Reporter*]. The premium income for 1980 was 460 million yuan and the figure reached 1.98 billion yuan by 1984, representing a 44.68% annual increase. The premium income for the first three quarters of 1985 increased by 141% in comparison with the same period in 1984. See *Woguo Baoxianye Jinnian Fazhankuai (Our Insurance Business Developed Quickly This Year)*, *Renmin Rebao (People's Daily)*, Dec. 13, 1985, at 1 [hereinafter *Woguo Baoxianye Jinnian Fazhankuai*] (unless otherwise indicated all cites of *People's Daily* in this article refer to *People's Daily*, Overseas Ed.).

2. China Business Briefs, *Asian Wall St. J. Weekly*, Sept. 8, 1986, at 15, col. 1; see also *Woguo Baoxianye Jiang Jiji Gaige Jiakuai Fazhan (China's Insurance Business*

business has become much more diversified, and by the end of 1986 Chinese insurance companies were underwriting over 130 different types of coverage.<sup>3</sup> Along with the growth of the insurance business, the laws and practice of insurance have steadily developed, and a basic regulatory framework of insurance has now taken shape.

The development of insurance law in the PRC has had a direct impact on foreign economic interests in China. Chinese law contains provisions making it compulsory to obtain Chinese insurance for certain kinds of foreign investment in China.<sup>4</sup> Consequently, understanding Chinese insurance law and practice is important for a foreign investor to formulate and carry out well-informed investment or business planning in China. This eight-part article represents a preliminary review of the current Chinese insurance law and practice. Section II discusses the history and development of the Chinese insurance business, law and practice. Section III considers regulations and administration of the insurance business in the PRC. Section IV discusses the basic state law and the policies towards insurance. Section V illustrates Chinese laws relating to the insurance contract. Section VI explains Chinese insurance practice by introducing major insurance coverage. Section VII highlights major elements of dispute settlement relevant to insurance contracts, and Section VIII considers future prospects of Chinese insurance law and practice.

## II. HISTORY AND DEVELOPMENT

The insurance industry in China began in the late 19th century. The earliest Chinese insurance companies, *Renhe* and *Jihe*, were created in Shanghai in 1885 by the *Lunchuan Zhaoshangju* (Bureau of Ships and Commerce) of the Qing Dynasty.<sup>5</sup> By the late 1940s, foreign insurance companies largely dominated the insurance business in China which was

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*Actively Reforming and Accelerating Development*), People's Daily, Overseas Ed., March 17, 1987, at 3 [hereinafter *China's Insurance Business Actively Reforming*]. At the Chinese official exchange rate in March 1987, one U.S. dollar equals approximately 3.75 Chinese yuan.

3. See *China's Insurance Business Actively Reforming*, *supra* note 2.

4. For a detailed discussion, see Section IV, B and C *infra*.

5. ZHONGGUO QIYE GUANLI BAIKE QUANSHU [ENCYCLOPEDIA OF BUSINESS MANAGEMENT OF CHINA] 1018 (Beijing 1984). Foreign insurance business came to China in the early 19th century. In 1835 Britain established the Union Insurance Society of Canton. It was followed by the Canton Insurance Office and the China Fire Underwriters, among others. Chen Xiaocang, *Jiuzhongguo de Baoxianshiye (Insurance Industry in Old China)*, in LI JIXIONG, BAOXIANXUE GAILUN ZILIAO HUIBAN [Selected Readings on Insurance Theory] 49-50 (1985).

then concentrated in a few major coastal cities.<sup>6</sup> The insurance business of the PRC took off in October 1949 (the same month as the founding of the PRC) with the establishment of the People's Insurance Company of China (People's Insurance Company).<sup>7</sup> By the late 1950s, the number of insurance institutions in the PRC swelled to over 4,600, employing more than 50,000 workers.<sup>8</sup>

Since the late 1950s, the governmental policy dramatically shifted away from supporting the insurance industry.<sup>9</sup> At the end of the 1950s, apart from limited international underwriting, domestic insurance service was largely discontinued, thousands of experts were transferred to other occupations, and the established institutional insurance framework was dismantled.<sup>10</sup> The compulsory personal accident insurance for passengers on trains, ships and airplanes remained, but the state transferred these underwritings from the People's Insurance Company to the relevant governmental bureaus in charge of transportation.<sup>11</sup>

This situation remained unchanged for two decades until the end of the 1970s when China instituted its new economic policy and an era of political stability commenced. In 1979 the Chinese government decided to rejuvenate the terminated domestic insurance business and expand existing international insurance services.<sup>12</sup> Since then, insurance institutions and insurance services have developed rapidly.<sup>13</sup> By the end of

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6. Qin Daofu, *supra* note 1, at 68.

7. *Id.*

8. *Woguo Baoxianye Jinnian Fazhankuai*, *supra* note 1, at 1.

9. The theoretical basis for such a policy shift may be stated as follows: "As the state revenue increases, the loss of state-owned enterprises resulting from natural disasters or accidents can be gradually compensated from state appropriation without taking the form of insurance." Yu Nengbin, *Fazhan Baoxian Shiye Jianquan Baoxian Fagui (Promote Insurance Business, Perfect Insurance Laws)*, in 1 FAXUE YANJIU [LEGAL STUD.] 34 (1981). The idea in favor of compensating loss or damage through budgetary appropriation other than insurance is rooted in the basic presumption that the state and the enterprises are the same entity. To require enterprises to pay insurance will necessarily reduce their margin of profit and, therefore, decrease state revenue which was based on the profit of the state-owned enterprises. The policy proposed was to set aside certain reserve funds from the state budget to compensate the loss or damage. See Sun Xueming, *Luelun Baoxian de Benzhi, Zhineng he Zuoyong (Tentative Discussions on the Nature, Functions and Role of Insurance)*, 4 SHANXI CAIJINGXUEYUAN XUEBAO [J. SHANXI FIN. & ECON. INST.] 102 (1982).

10. Yu Nengbin, *supra* note 9, at 34.

11. *Id.*

12. See Circular of the People's Bank of China concerning the Reestablishment of Domestic Insurance Industry and Consolidation of Insurance Institutions, Apr. 25, 1979, reprinted in LI JIXIONG, *supra* note 5, at 156-57.

13. For more information, see RESEARCH INSTITUTE OF THE PEOPLE'S INSURANCE

1986, the number of insurance institutions grew to over 2,600, including over thirty overseas branches and representative offices which provide services throughout the country.<sup>14</sup> Insurance services also expanded rapidly to meet the needs of the economy. By the end of 1986 Chinese insurance business already provided over 130 different services ranging from life and property insurance to auto insurance.<sup>15</sup> A new approach to insurance theory accompanied this surge of growth in the insurance business. According to this view, insurance is a form of mutual help, indispensable to both the society and the economy.<sup>16</sup> This in turn affects the attitude of ordinary Chinese citizens towards insurance. In 1981 there was only one family in the city of Beijing covered by property insurance.<sup>17</sup> By early 1986, over 220,000 families in the capital city had purchased family property insurance.<sup>18</sup>

The expansion of insurance business has generated a growing demand for a body of insurance law and regulations. In the early 1950s, when the insurance business in the PRC had just started to grow, the Chinese government issued several regulations dealing with labor insurance in enterprises.<sup>19</sup> For the most part, those regulations provided for a mutual insurance program within each enterprise without the participation of insurance companies.<sup>20</sup> In addition, from 1949 to 1958 before domestic insurance was discontinued, Chinese governments promulgated nearly a dozen other insurance statutes and regulations.<sup>21</sup> The regulations estab-

COMPANY OF CHINA, NEW DEVELOPMENT OF CHINA'S INSURANCE INDUSTRY, in 1984 ZHONGGUO JINGJI NIANQIAN [YEARBOOK OF THE CHINESE ECONOMY] pp. V-235 to V-237.

14. *China's Insurance Business Actively Reforming*, *supra* note 2, at 3.

15. *Id.*

16. See Guan Yuanfei, *Shehui Zhuyixia Jianli Baoxian de Biyaoxing (The Necessity of Insurance Under the Socialist System)*, [1984] 2 JINGJI KEXUE [SCIENCE OF ECON.] 39; see also Sun Xueming, *supra* note 9, at 102.

17. *Baoxianhu (Insured Families)*, People's Daily, Feb. 20, 1986, at 1.

18. *Id.*

19. Labor Insurance Regulations of the People's Republic of China, *adopted at* 73d Gov't Admin. Mtg., Gov't Admin. Council, Feb. 23, 1951, [hereinafter Labor Insurance Regulations], *reprinted in* COMMERCIAL LAWS & THE BUSINESS REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 1949-1983, at 102-08 (V. Sit. ed. 1984); Revised Draft of the Rules for the Implementation of the Regulations of the People's Republic of China on Labor Insurance, *reprinted in id.* at 109-21 (promulgated by the Ministry of Labor on Jan. 26, 1953).

20. Labor Insurance Regulations, *supra* note 19, art. 8.

21. These regulations and laws include: Instruction of the Finance and Economy Commission of the Government Affairs Council Mandating State-owned or Public-owned Enterprises to Purchase Insurance from the People's Insurance Company, Dec. 23, 1949, *reprinted in* ZHONGYANG RENMIN ZHENGFU FALING HUIBIAN 1949-50

lished various types of compulsory insurance in the PRC and provided basic guidelines for the operation of the insurance industry in the PRC. Some of these regulations remain in force. For instance, the regulations concerning compulsory insurance for railroad, ship and airplane passengers are still invoked in current insurance practice as a legal basis for compensation.<sup>22</sup> Many of the other regulations, however, are apparently no longer effective.

Another important source of law is in the practice of the People's Insurance Company. For many years, the People's Insurance Company, a state-owned insurance concern, served both regulatory and business functions.<sup>23</sup> Even during the period when domestic insurance was discontinued, it still wrote international insurance coverage serving China's

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[LAWS AND REGULATIONS OF THE CENTRAL PEOPLE'S GOVERNMENT] 390; Decision of the Government Affairs and Economic Commission of the Government Affairs Council on Compulsory Property Insurance for State Agencies, State-owned Enterprises, Cooperatives and Compulsory Passenger Insurance, Feb. 3, 1951, *reprinted in* ZHONGYANG RENMIN ZHENGFU FALING HUIBIAN 1950-51 [LAWS AND REGULATIONS OF THE CENTRAL PEOPLE'S GOVERNMENT] at 196; Six Regulations promulgated by the Finance and Economic Commission of the Government Affairs Council on Apr. 24, 1951: Regulations of Compulsory Property Insurance, Regulations of Compulsory Insurance for Ships, Regulations of Compulsory Insurance for Railroad Vehicles, Regulations of Compulsory Accident Injury Insurance for Railroad Passengers, Regulations of Compulsory Accident Injury Insurance for Ship Passengers; Regulations of Compulsory Accident Injury Insurance for Airplane Passengers, *reprinted in id.* at 202-235; Procedures of Payment for the Unpaid Life Insurance Policy Issued by the Insurance Industry Before the Liberation, promulgated by the Ministry of Finance on Dec. 15, 1954, *reprinted in* 1 ZHONGHUA RENMING GONGHEGUO FAGUI HUIBIAN [LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA] 253; Regulations of Voluntary Property Insurance for Citizens, Ministry of Finance, Apr. 6, 1957, *reprinted in* 5 ZHONGHUA RENMING GONGHEGUO FAGUI HUIBIAN [LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA] 134; and Regulations of the State Council on the Improvement of the Administration of Insurance, State Council, July 5, 1958, *reprinted in* 8 FAGUI HUIBIAN [LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA] 124.

22. For instance, in August 1975, two ships collided resulting in 437 deaths among the passengers and crew members. The compensation to the passengers was based on provisions of the Regulations of Compulsory Accident Injury Insurance for Ship Passengers. See Zhao Jinian, *Zeren Bao Xian Zai Woguo Fazhan de Qianjing (Prospect of Liability Insurance in Our Country)*, in Li JIXIONG, *supra* note 5, at 208.

23. The People's Insurance Company of China has been consistently deemed the equivalent of a "Jiu (bureau)" in the Chinese governmental hierarchy, a level just below the ministry. The regulatory role of the People's Insurance Company is obvious. For many years, the standard insurance contract provisions of the People's Insurance Company were cited as insurance law both inside China and abroad. See COMMERCIAL LAWS *supra* note 19, at 91-142; Wang Yanli, *Guanyu Caizheng Jinrong de Falu Zhishi (Legal Knowledge on Finance)*, [1985] 2 JINGJI YU GUANLI YANJIU [STUDY OF ECONOMICS AND MANAGEMENT] 60.

foreign trade. Through years of uninterrupted business operations it developed a variety of standard insurance contracts as the basis for the underwriting business. These contracts and contractual provisions today represent the prevailing insurance practice in the PRC.

The development of insurance law in the PRC was largely suspended from the late 1950s to the late 1970s when the government discontinued domestic insurance coverage. Since 1979, the growth of insurance law has resumed as the insurance industry has begun to expand. Apart from many laws and regulations indirectly dealing with insurance, statutes and regulations directly controlling the insurance business have emerged. These laws and regulations, plus the insurance practice of the People's Insurance Company, constitute the current legal framework of the Chinese insurance business.

### III. REGULATION OF THE INSURANCE BUSINESS

The People's Insurance Company has largely monopolized the insurance business in China in recent decades. By the end of 1983, there were only three nationwide insurance companies registered in China, with the People's Insurance Company occupying the dominant position<sup>24</sup> and the other two companies primarily concentrating on overseas business operations. The economic reform instituted in 1979 brought about a certain decentralization in the Chinese insurance coverage. Since 1980, several existing and newly established institutions have broken the People's Insurance Company monopoly and have begun to engage in the insurance business. Because no laws or regulations effectively provided guidance and restraint on the insurance business, some insurance companies were poorly operated and began to adversely affect the economy. For instance, an insurance company dissolved by the government of Henan Province in 1983 incurred 22 million yuan in claims while its net premium income was only 9.6 million yuan.<sup>25</sup> The insurance company paid only 4 million and left the remaining 18 million yuan unpaid.<sup>26</sup> To furnish a basic regulatory framework to facilitate the development of the insurance industry, the State Council issued the Interim Regulations of the Administration of the Insurance Enterprises (Regulations of Insurance Busi-

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24. The two other insurance companies were the China Insurance Company and Tai Ping Insurance Company. See U.N. ECONOMIC & SOCIAL COMMISSION FOR ASIA & THE PACIFIC, *GUIDEBOOK ON TRADING WITH THE PEOPLE'S REPUBLIC OF CHINA* 145 (2d ed. Bangkok 1983).

25. See *Henan Province Dissolved Regional State-Owned Insurance Company on July 1, 1983*, in LI JIXIONG, *supra* note 5, at 345.

26. *Id.*

ness) on March 3, 1985.<sup>27</sup> The Regulations of Insurance Business are the first comprehensive set of insurance business regulations in the PRC, and in combination with other statutory provisions, represent a basic legal framework for insurance operations. The following material will be based mainly on the Regulations of Insurance Business and will discuss three topics: the establishment of insurance businesses; the regulation and administration of the insurance business; and the People's Insurance Company.

### A. *Establishment of an Insurance Business*

Foreign insurance companies are not officially permitted to engage in the insurance business in the PRC, although a number of foreign insurance companies have established representative offices in China.<sup>28</sup> A recent official circular issued by the State Council made it clear that foreign insurance companies will be unlikely to obtain permission to engage in direct insurance business in China in the near future.<sup>29</sup> As a result, the regulations and procedures regarding the establishment of the insurance business apply only to the creation of domestic insurance companies.

The State regulatory agency for insurance business is the People's Bank of China, the central bank of the PRC.<sup>30</sup> The establishment of insurance enterprises and entry into the insurance business by existing institutions in other fields is subject to approval by the People's Bank of

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27. Interim Regulations of the Administration of Insurance Enterprises, State Council, March 3, 1985, [hereinafter Regulations of Insurance Business], *reprinted in* [1985] 9 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [STATE COUNCIL BULLETIN] [hereinafter STATE COUNCIL BULLETIN] 228-231 *reprinted in English in CHINA'S LAWS FOR FOREIGN BUSINESS* (CCH Australia) ¶9-600.

28. By the end of 1985, eleven foreign insurance companies set up representative offices in China. People's Daily, Feb. 4, 1986, at 2.

29. *Zhongguo Renmin Baoxian Gongsi Guanyu Fazhan Shewai Baoxian Yewu Zengjia Waihui Shouru de Baogao* (Report of the People's Insurance Company of China on Developing Foreign-Related Insurance and Increasing Foreign Exchange Income [hereinafter Report], in [1985] 34 STATE COUNCIL BULLETIN 1151.

30. The People's Bank of China became the Central Bank in September 1983 as a part of the financial reformation. See Lao Zhang, *Zhongguo Jinrong Guanli Tizhi Gaige de Tedian he Qushi* (The Features and Trend of the Chinese Financial Management Restructuring), Economic Reporter, Nov. 25, 1986, at 27. According to the new banking regulations promulgated in January 1986, the People's Bank of China is authorized to regulate the insurance industry in the PRC. See Interim Regulations of the People's Republic of China on Administration of Banks, State Council, Jan. 7, 1986, art. 5, *reprinted in* People's Daily, Jan. 18, 1986, at 3, *reprinted in English in CHINA'S LAWS FOR FOREIGN BUSINESS* (CCH Australia) ¶8-690 [hereinafter Regulations of Banks].

China and licensing by the State Administration of Industry and Commerce.<sup>31</sup> Conducting an insurance business without a license is subject to penalties.<sup>32</sup> To obtain approval for doing insurance business, an applicant needs to file with the People's Bank of China the articles of association, which shall set forth the name of the enterprise, the type of business operations, sources of capital and funds as well as the enterprise's organizational structure.<sup>33</sup>

The applicant must also meet the capital requirement set forth by law for an insurance business.<sup>34</sup> For companies engaged in life or other personal insurance business, the paid-in cash capital can be no less than 50 million yuan (about \$13.5 million).<sup>35</sup> Having raised the funds as required by law, the applicant shall file with the People's Bank of China, together with other application documents, a certificate demonstrating the adequacy of funds.<sup>36</sup> The applicant is also required to file with the People's Bank of China a list of the persons to be in charge of the enterprise.<sup>37</sup> After obtaining approval from the People's Bank of China, the applicant must post twenty percent of the cash capital as a security deposit with a bank designated by the People's Bank of China, and this deposit may not be withdrawn without People's Bank of China approval.<sup>38</sup> The applicant then may proceed to apply for a business license with the State Administration of Industry and Commerce and commence insurance business afterwards.

### B. *Regulations and Administration of the Insurance Business*

The administration of the insurance industry is the responsibility of the People's Bank of China.<sup>39</sup> The People's Bank of China assumed this responsibility in the early 1950s when the PRC insurance industry was in its infancy.<sup>40</sup> Although the Ministry of Finance took over and exer-

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31. Regulations of Insurance Business, arts. 4, 6. Article 6 provides that the establishment of insurance enterprises is subject to approval from "State insurance administrative authority." Article 4, on the other hand, defines "State insurance administrative authority" as the People's Bank of China.

32. Regulations of Insurance Business, art. 6.

33. *Id.*

34. *Id.*, art. 8.

35. *Id.*

36. *Id.*, art. 6.

37. *Id.*

38. *Id.*, art. 9.

39. *Id.*, art. 4.

40. Jie Menglin, *Buchang Shi Shehuizhuyi Baoxian de Zhuyao Zhineng (Compensation is the Major Function of Socialist Insurance)*, in LI JIXIONG, *supra* note 5, at 347.

cised regulatory authority for a period beginning in 1953,<sup>41</sup> authority over the insurance business is clearly vested today in the People's Bank of China. The new banking regulations promulgated in early 1986 give an official mandate to the People's Bank of China to regulate the insurance business throughout the country.<sup>42</sup> Under current Chinese law, the People's Bank of China is authorized to make basic national insurance policy and to lead and supervise the business activities of insurance companies.<sup>43</sup> It has the power to examine and determine the provisions of both insurance policies and premium rates of various insurance businesses.<sup>44</sup> In addition, under separate regulations promulgated in July 1985, the People's Bank of China and its branches have jurisdiction over the newly created Department of Inspection and may dispatch inspectors to the insurance companies to investigate and supervise business operations.<sup>45</sup> The People's Bank of China may inspect the accounts and other documents of an insurance business.<sup>46</sup> Where an insurance company violates State laws or policies or damages the lawful interest of an insured party, the People's Bank of China may impose economic sanctions or issue an order to terminate the business.<sup>47</sup>

Although the People's Bank of China is given extensive regulatory power, Chinese law does not indicate whether People's Bank of China decisions are subject to judicial review when an affected insurance business disagrees with a People's Bank of China action. Chinese law, however, does provide for an administrative review of sanctions imposed by inspectors dispatched by the People's Bank of China. According to current Chinese law, an inspector must render a report after an inspec-

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41. *Id.*

42. Regulations of Banks, art. 5.

43. Regulations of Insurance Business, art. 4 reads:

The State insurance administrative authority is the People's Bank of China. The functions of the State insurance administrative authority include formulating national insurance guidance policy; approval of the establishment of insurance enterprises; providing leadership and supervision to the business operations of insurance enterprises; examining and determining the basic insurance clauses and premium rate; examining the accounts and reports and other forms and receipts of insurance enterprises; imposing economic sanctions or order of terminations of business on an insurance business which, in the course of business operations, violates state laws, regulations, policies, or incurs harm to the lawful interest of the insured.

44. *Id.*

45. Interim Regulations of the People's Bank of China on Inspections by People's Bank of China, July 5, 1985 [hereinafter Regulations on Inspections], *reprinted in* [1985] 32 STATE COUNCIL BULLETIN 865-867.

46. Regulations of Insurance Business, art. 4.

47. *Id.*

tion.<sup>48</sup> The inspector may recommend solutions for the existing problems. When an inspector recommends economic sanctions, the People's Bank of China or the branch which dispatched the inspector must approve such a decision.<sup>49</sup> If the situation warrants the issuance of an order to terminate a given insurance business, the decision must be reported through administrative procedures to the head office of the People's Bank of China for final approval.<sup>50</sup> The responsible inspectors are to recommend penalties against individuals to the relevant governmental agencies when such penalties are necessary.<sup>51</sup> When an inspected company disagrees with the proposal of the inspector or branch of the People's Bank of China, it may petition the higher level of branches or the head office of the People's Bank of China for a final determination.<sup>52</sup>

To protect the interests of the insured, Chinese law provides for reserves, insolvency, and reinsurance of insurance companies. The law requires that insurance companies maintain three types of reserve funds. First, an insurance company engaged in a business other than personal insurance is required to maintain an "immature liability reserve fund."<sup>53</sup> An insurance company must contribute to the fund an amount equivalent to fifty percent of net premium income each year.<sup>54</sup> The net premium income is the part of the premium that an insurance company is entitled to retain after paying taxes and other contributions required by law.<sup>55</sup>

Second, an insurance company engaged in the personal insurance business is required to maintain a "personal insurance reserve fund."<sup>56</sup> "Personal insurance" is a literal translation of the Chinese phrase *Ren-shen Baoxian*, which refers to any insurance under which the payment of the policy value is contingent upon the life, age or the state of health of the insured. Examples of this include life insurance, disability insurance, personal accident insurance, and retirement pension insurance. The personal insurance reserve fund equals the total net value of all the long-term personal insurance policies in effect plus fifty percent of the net premium income from personal insurance service with a term of one

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48. Regulations on Inspections, art. 9.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Regulations of Business Insurance, art. 15.

54. *Id.*

55. *Id.*

56. *Id.*

year or less.<sup>57</sup> The net value of a long-term personal insurance policy refers to the total liabilities of the insurer to the insured under the policy; the value is to be examined and determined by the accountant designated by the People's Bank of China.<sup>58</sup>

Third, insurance companies are also required to maintain a "general reserve fund."<sup>59</sup> The general reserve fund is intended to compensate for long-term loss or extraordinary loss in a certain line of insurance sustained by an insurance company, in order to maintain business stability and protect the interest of the insured. For the People's Insurance Company and other state-owned insurance companies, the general reserve fund is composed of the annual net income after tax and other required contributions, including contributions to the immature liability reserve fund or the personal insurance reserve fund, or both.<sup>60</sup>

Current Chinese law does not specify the required size of the general reserve fund for non-state-owned insurance companies. It authorizes the People's Bank of China to make such provisions through separate regulations.<sup>61</sup> The three reserve funds are required to be segregated and funds may not be transferred among the three accounts.<sup>62</sup> The People's Bank of China is authorized to specify the way in which an insurance business may utilize its reserve funds.<sup>63</sup> Currently, Chinese insurance companies deposit the bulk of these funds with the bank to obtain interest.<sup>64</sup> Since early 1985, however, the Chinese government has allowed insurance companies to invest part of their reserve funds for a higher rate of return.<sup>65</sup> In 1986 Chinese insurance businesses invested about 200 million yuan in approximately 100 projects in transportation, real estate, tourism, textiles, and the food industry.<sup>66</sup> Insurance companies in major cities and provinces such as Beijing, Shanghai, and Guangdong set up affiliated "insurance investment companies" to manage the investment portfolios of the insurance business.<sup>67</sup> So far the government has

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57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*, art. 16.

63. *Id.*, art. 17.

64. Wu Te, *Baoxian Jinying Yu Hesuan* ("Insurance Management and Calculation"), in Li JIXIONG, *supra* note 5, at 427.

65. *Zhongguo Baoxianye Yunyong Baoxianjin Touzi* (*Chinese Insurance Business Investing the Insurance Proceeds*), *People's Daily*, Feb. 14, 1987, at 3.

66. *Id.*

67. *Id.*

not developed a set of published, written rules governing the specific areas and projects in which insurance companies may invest their reserve funds and the amounts of funds that can be invested. The guidelines established so far require that insurance companies disperse their investment in many safe projects that require only small and short-term financial commitment.<sup>68</sup>

Insurance companies are required to maintain a minimum solvency.<sup>69</sup> The law sets forth two different solvency tests, one for insurance companies engaged in the long-term personal insurance business and another for those engaged in other types of insurance service. The minimum solvency for a long-term personal insurance business requires that the balance in the long-term personal insurance reserve fund not be less than total insurance obligations.<sup>70</sup> The law does not define "long-term personal insurance." It apparently refers only to the types of personal insurance under which the liability for compensation is fairly predictable and certain, and is more or less based on the cumulative premium plus interest such as whole life insurance. The "total obligation" is to be determined by applying the standard risk-calculation formula of the insurance industry. The other minimum solvency test requires that the difference between total actual assets and actual obligations not be less than an amount specified by the People's Bank of China.<sup>71</sup> Should an insurance company's financial status fall below the minimum solvency level it must increase its capital.<sup>72</sup>

Except for the People's Insurance Company, insurance businesses established in the PRC must carry reinsurance.<sup>73</sup> Under current Chinese law, an insurance company is required to purchase a reinsurance policy from the People's Insurance Company to cover thirty percent of its total insurance business.<sup>74</sup> Additionally, insurance businesses other than personal insurance may not underwrite each risk unit in excess of ten percent of the total assets plus general reserve fund.<sup>75</sup> Chinese law defines "risk unit" as the scope of damage of the insured subject to each accident or event of disaster.<sup>76</sup> An insurance company, however, may obtain permission from the People's Bank of China for underwriting in excess of

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68. *Id.*

69. Regulations of Insurance Business, art. 13.

70. *Id.*, art. 14.

71. *Id.*, art. 13.

72. *Id.*

73. *Id.*, art. 18.

74. *Id.*

75. *Id.*, art. 19.

76. *Id.*, art. 21.

this ceiling. When permission is obtained, the insurance company must purchase reinsurance from the People's Insurance Company to cover the part of the underwriting exceeding the provided limit.<sup>77</sup>

C. *The People's Insurance Company of China and Other Insurance Companies*

Until very recently, the People's Insurance Company enjoyed a monopoly position in the Chinese insurance industry. The trend in Chinese policy toward insurance is to continue to maintain the dominant position of the People's Insurance Company while allowing regional or local governments to establish business entities to engage in insurance business within certain limits.<sup>78</sup> Unlike the recent banking regulations,<sup>79</sup> the Interim Insurance Regulations discussed above do not specify that individuals may not establish an insurance business. The high capital requirement, however, makes it unlikely that any Chinese individuals could currently afford to start an insurance enterprise. Nonetheless, there are a few collectively organized mutual insurance corporations in the countryside among farmers or fishermen.

A board consisting of seventeen to twenty-three state-appointed directors governs the People's Insurance Company.<sup>80</sup> The board elects seven to nine standing directors and nominates one chairman and two vice-chairmen from these directors to be appointed by the State Council. The board holds a meeting once a year and renders important policy decisions on behalf of the People's Insurance Company. Routine policy decisions are the charge of standing directors under the leadership of the chairman and vice-chairmen. The People's Insurance Company also establishes a supervisory commission consisting of seven to nine state-appointed supervisors. The commission elects three standing supervisors, from among whom the commission nominates one chief supervisor to be appointed by the State Council. The commission holds a meeting once a year to dis-

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77. *Id.*, art 19.

78. This is demonstrated in the Regulations of Insurance Business which accords numerous privileges to the People's Insurance Company and at the same time permits other types of insurance companies to engage in limited insurance business. *See* Regulations of Insurance Business, arts. 5, 6, 11, 12.

79. Article 28 of the Regulations of Banks, *supra* note 30, reads: "Regional governments may not establish banks. Individuals may not establish banks or other financial institutions or engage in financial business."

80. The discussion in this paragraph is largely based on the Articles of Association of the People's Insurance Company approved by the State Council. *See* CHINA RESOURCES TRADE CONSULTANCY, CO., LTD., ALMANAC OF CHINA'S FOREIGN ECONOMIC RELATIONS AND TRADE 124 (1984).

cuss and examine the People's Insurance Company's budget, accounts and important cases. Representatives from the People's Bank of China, Bank of China, and the Agriculture Bank of China are included among the supervisors and directors.<sup>81</sup> Eight government organizations — the State Economic Commission, the State Planning Commission, the Ministry of Finance, the Ministry of Foreign Trade and Economic Relations, the Ministry of Railroads, the Ministry of Transportation, the Ministry of Commerce and the China Council for the Promotion of International Trade — each appoints one representative to the board or commission by mandate of the State Council.<sup>82</sup> The People's Insurance Company also has a president and several vice presidents nominated by the board and appointed by the chairman of the board. The president and vice presidents are responsible for daily management and business operations.

The People's Insurance Company is authorized by law to engage in all types of insurance and reinsurance, insurance consulting services for other insurance businesses and to participate on behalf of the state in international insurance business and activities.<sup>83</sup> Chinese law also accords the People's Insurance Company a monopolistic privilege in some specified categories of insurance business.<sup>84</sup> These include compulsory insurance, insurance business involving foreign exchanges, and international reinsurance. The People's Insurance Company has the exclusive right to underwrite insurance business for Sino-foreign joint ventures, Sino-foreign cooperative enterprises, foreign enterprises, and state-owned enterprises.<sup>85</sup> The regional state-owned insurance companies, however, are allowed to underwrite insurance for the regional state-owned enterprises within their respective geographical areas.<sup>86</sup> Additionally, Chinese law authorizes the People's Insurance Company to monopolize all domestic compulsory reinsurance business.<sup>87</sup> Consequently, the insurance market open to insurance companies other than the People's Insurance Company is very limited and is composed only of personal insurance and insurance for collectively-owned enterprises.

The People's Insurance Company maintains affiliated regional insurance companies in most Chinese cities and provinces. Handling the eco-

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81. Report of the People's Bank of China on the Establishment of the Board of Directors for the People's Insurance Company of China, [1983] STATE COUNCIL BULLETIN 13.

82. *Id.*

83. Regulations of Insurance Business, art. 11.

84. *Id.*, art. 12.

85. *Id.*

86. *Id.*

87. *Id.*, art. 18.

conomic relationship between the head office of the People's Insurance Company and these regional affiliates is a major concern of the current economic reform in the area of insurance. Prior to 1985, the entire People's Insurance Company system throughout the PRC was considered one economic and accounting unit.<sup>88</sup> All premium income from all affiliates was surrendered to the head office after deducting costs and liabilities for compensation due.<sup>89</sup> The head office of the People's Insurance Company paid taxes and retained the profits.<sup>90</sup> This system failed to provide economic incentives for various regional People's Insurance Company affiliates to enhance performance.

Since 1985, the People's Insurance Company has restructured its relationship with various regional affiliates.<sup>91</sup> Under the new system, each regional affiliate is completely in charge of personal insurance in its respective geographic area. For other insurance underwritings, the regional affiliates need to surrender thirty percent of their gross premium receipts to the head office of the People's Insurance Company while retaining seventy percent. In return, the head office shoulders thirty percent of costs and liabilities. The head office and its regional affiliates thus become separate accounting units and each pays taxes separately. This system motivates the regional People's Insurance Company affiliates and spreads risks. The decentralized system applies only to the relationship between the head office of the People's Insurance Company and its direct affiliated regional companies at the provincial level. These regional insurance companies under the People's Insurance Company system each usually have many sub-affiliates located in counties and small cities; each regional insurance company and its various sub-affiliates will remain one accounting unit.

The People's Insurance Company formerly used a standard insurance contract and uniform premium rate throughout the country. This practice apparently neglected the differentiations in the risks of various geographic regions. Since 1985, the decision making power of the People's Insurance Company in terms of setting premium rates and writing insurance clauses has been decentralized. Under the newly established sys-

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88. Xiao Yu, *Gaige Baoxian Gongzuo, Jiasu Baoxian Shiye De Fazhan (Reforming Insurance Practice and Accelerating the Development of Insurance Business)*, [1985] 2 XINHUA YUEBAO [XINHUA MONTHLY] 125.

89. *Id.*

90. *Id.*

91. Discussion on the reformed People's Insurance Company practice in the following part of this section is based on the article cited in note 88, *supra*. For a summary of the reformed insurance practice of the People's Insurance Company, see *China's Insurance Business Actively Reforming*, *supra* note 2, at 3.

tem, the People's Insurance Company head office retains jurisdiction in determining insurance clauses and premium rates only for national compulsory insurance approved by the State Council and personal insurance which resembles bank savings. The former currently includes third party liability insurance for motor vehicles, ship insurance and passenger accident insurance. Each People's Insurance Company regional affiliate is given the authority to write insurance clauses and determine the premium rate for the compulsory insurance approved by the regional government applicable in that specific region. For all other types of insurance, the People's Insurance Company head office will, instead of determining specific standards, promulgate certain guidelines. The regional affiliates will then enact their own insurance clauses and determine premium rates within the limit of the guidelines and report the clauses and rates to the People's Insurance Company head office for record.

For foreign related insurance, the regional affiliates are allowed to underwrite any risk that the head office may underwrite. Yet for foreign related insurance, the People's Insurance Company head office often needs to obtain reinsurance from international insurance markets. The premium rate is influenced by the international insurance market and the insurance clauses need to conform to international insurance practices. For this reason, the head office of the People's Insurance Company has exclusive jurisdiction to determine premium rates and insurance clauses for all foreign related insurance in which foreign underwriters participate. For other foreign related insurance, the People's Insurance Company regional affiliates may enact their own insurance clauses and set up premium rates under the guidelines of the People's Insurance Company head office.

The People's Insurance Company head office and its various regional affiliates also have clearly defined jurisdiction in terms of authority to render compensation. Since 1985, regional affiliates have been authorized to handle all domestic claims and liabilities without approval of the head office. The authority to handle foreign-related claims of each regional affiliate is limited to \$500,000 for regional affiliates in coastal provinces and large cities and \$300,000 for regional affiliates in inland areas. Prior to 1985, the ceiling for all affiliates was \$100,000. The authority to handle lawsuits is the same as that to handle claims if the lawsuits are filed in the PRC and half the amount of the claims that they are authorized to handle if the lawsuits are overseas. The expanded authority of regional insurance companies to handle claims will facilitate compensation.

#### IV. INSURANCE LAWS AND POLICIES

This section will introduce Chinese laws and policies towards foreign insurance business in the PRC, Chinese insurance of international transactions, insurance of Sino-foreign joint ventures, Sino-foreign cooperative enterprises, foreign enterprises, and insurance for domestic business.

##### A. *Foreign Insurance Business in the PRC*

Foreign insurance companies came to China looking for business opportunities in the late 1970s, and by the end of 1985, eleven foreign insurance companies had representative offices in China.<sup>92</sup> Unlike foreign banking in China, the PRC has not issued regulations governing foreign insurance business. Although there have been reports that foreign insurance businesses began issuing policies in China in 1983,<sup>93</sup> a recent official report of the People's Insurance Company ratified and circulated by the State Council clearly states that foreign insurance companies are not yet allowed to do business in China.<sup>94</sup> This prohibition is intended to ensure the growth of foreign exchange income from Chinese international insurance business.

Currently, foreign insurance companies are limited primarily to the reinsurance business, a relatively extensive market in China. The People's Insurance Company has actively cooperated with over one-thousand various foreign insurance companies and purchases reinsurance to cover most of its high risk and long-term insurance business, especially that involving international business transactions. Furthermore, for many international underwritings, the People's Insurance Company invites foreign insurance companies to jointly underwrite projects under a pre-agreed percentage in the form of coinsurance and excess insurance to decrease the exposure to risks. This also constitutes part of the insurance market for foreign insurance companies in the PRC.<sup>95</sup>

##### B. *Chinese Insurance of International Transactions*

Insuring international transactions has been a significant source of foreign exchange income for the PRC. During the first three quarters of 1985, the net foreign exchange income of the PRC from international

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92. See *supra* note 28.

93. CHINA INTERNATIONAL CONSULTANTS, CHINA INVESTMENT GUIDE 1984/85, at 36 [hereinafter CHINA INVESTMENT GUIDE].

94. *Report, supra* note 29, at 1151.

95. Wu Te, *supra* note 64, at 427.

insurance reached a record high of \$190 million.<sup>96</sup> The average rate of annual growth from this source of foreign exchange income for the last several years has been ten percent.<sup>97</sup> The expansion of international insurance has its firm basis in the current Chinese international insurance laws and policies.

Foreign trade has been an important item to the Chinese international insurance industry. Insurance for foreign trade enjoyed the support of the PRC government even during the twenty-year period from 1959 to 1979 when the domestic insurance business was discontinued. The People's Insurance Company has developed an experienced international insurance service network and now has over three-hundred agents in more than ninety foreign countries.<sup>98</sup> Most of those agents are authorized to render compensation on the spot within certain limits.<sup>99</sup>

Currently, about ninety percent of Chinese imports and fifty percent of exports are covered by Chinese insurance.<sup>100</sup> As a rule, Chinese trading companies prefer to purchase insurance coverage from the People's Insurance Company rather than from foreign insurance companies. Chinese trading companies usually insist on the C.I.F. price for exports and F.O.B. or C. & F. for imports so that they will have the opportunity to arrange for Chinese insurance.<sup>101</sup> They are sufficiently flexible, however, especially when exports are concerned, to make exceptions to this general practice in order to promote trade. To encourage Chinese trading companies actively to seek insurance business, the People's Insurance Company agreed recently to allow trading companies to retain a percentage of the insurance income as a service fee and to allocate the fee to employees as bonus compensation.<sup>102</sup>

Chinese enterprises are required to purchase insurance from the People's Insurance Company for compensation trade and other similar arrangements. According to a joint circular issued in 1979 by five governmental agencies including the People's Bank of China, the Ministry of Finance and the Ministry of Foreign Trade (now the Ministry of Foreign Trade and Economic Relations), construction of an imported project must be covered by insurance provided by the People's Insurance Company, whether it is financed through state appropriation or international

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96. *Woguo Baoxianye Jinnian Fazhankuai*, *supra* note 1, at 1.

97. *Report*, *supra* note 29, at 1151.

98. *Accord CHINA INVESTMENT GUIDE*, *supra* note 93, at 36.

99. *Id.*

100. *Accord Report*, *supra* note 29, at 1151.

101. QIAN YIMING, DUIHUA MAOYI BIDU [READINGS FOR TRADE WITH CHINA] 85, 87 (1981).

102. *Report*, *supra* note 29, at 1151.

finance and whether it is in the form of compensation trade or direct trade.<sup>103</sup> The enterprises in charge of construction, whether foreign contractors or Chinese construction companies, must purchase contractors' all-risks insurance or erection all-risks insurance and third-party liability insurance from the People's Insurance Company.<sup>104</sup> After the construction is completed and the project begins operation, the enterprises in charge of the operation must arrange with the People's Insurance Company for property insurance and machinery damage insurance if the project is financed by foreign borrowings or compensation trade.<sup>105</sup> The insurance must be renewed continuously until the foreign borrowings are paid up or the compensation trade is complete.<sup>106</sup>

In addition, domestic enterprises importing equipment or projects financed by loans of foreign exchange provided by the Bank of China must also arrange with the People's Insurance Company for contractors' all-risks insurance or erection all-risks insurance and property insurance including machinery damage insurance until the loan is completely repaid.<sup>107</sup> Finally, Chinese enterprises providing processing or assembling services to foreign businesses are required to purchase from the People's Insurance Company property insurance on imported materials including machinery equipment provided by foreign companies.<sup>108</sup> They are also required to try to negotiate contract provisions which allow domestic insurance to cover the transportation abroad of the processed or assembled products.<sup>109</sup> The fulfillment of the above insurance requirements is one of the criteria that the competent department of the government uses to determine both the feasibility of the projects and repayability of the borrowings and therefore whether or not to extend the approval for the transactions.<sup>110</sup>

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103. Joint Circular of the People's Bank of China, the State Planning Commission, the State Construction Commission, the Ministry of Finance, the Ministry of Foreign Trade, the State Administration of Foreign Exchanges on Property Insurance for Importation of Machinery Equipment and Compensation Trade, 1979, *reprinted in ZHAO YUCHEN, GUOJI JINGJI JISHU HEZUO FANGSHI [METHODS OF INTERNATIONAL ECONOMIC AND TECHNOLOGICAL COOPERATION] (1984) [hereinafter Joint Circular]*.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

C. *Insurance for Sino-Foreign Joint Ventures, Sino-Foreign Contractual Joint Ventures and Foreign Enterprises in the PRC*

The Chinese Joint Venture Law and the Foreign Enterprise Law require Sino-foreign joint ventures and foreign enterprises in China to purchase insurance from Chinese insurance companies.<sup>111</sup> According to a joint circular issued by major Chinese governmental agencies in charge of foreign economic relations, joint ventures must purchase contractors all-risks insurance, erection all-risks insurance and third-party liability insurance from the People's Insurance Company when the enterprise is in the process of establishment and construction.<sup>112</sup> After the joint venture is set up and in operation, it must purchase property insurance, including machinery damage insurance,<sup>113</sup> and may also purchase employer's liability insurance.<sup>114</sup>

Additionally, the Regulations of the People's Republic of China on Labor Management in Sino-foreign Joint Ventures specify that joint ventures shall provide labor insurance and social insurance, but the provisions are not detailed.<sup>115</sup> Regional governments often have relevant regulations providing details of this required labor insurance. In Shanghai, equity joint ventures are required to surrender an amount equivalent to thirty percent of the total monthly actual wages of the Chinese employees to the Shanghai branch of the People's Insurance Company as retirement pension insurance which will cover the pension, medical expenses, funeral expenses and pension for a deceased employee's family.<sup>116</sup> After

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111. Law of the People's Republic of China on Sino-Foreign Joint Ventures, adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and promulgated on July 8, 1979, art. 8, *reprinted in* 1 CHINA'S FOREIGN ECONOMIC LEGISLATION 1-7 [hereinafter Chinese Joint Venture Law]; Law of the People's Republic of China on Foreign Enterprises, adopted by the Fourth Session of the Sixth National People's Congress and promulgated on April 12, 1986, art. 16, *reprinted in* People's Daily, Apr. 14, 1986, at 4 [hereinafter Foreign Enterprises Law].

112. Joint Circular, *supra* note 103.

113. *Id.*

114. *Id.*

115. Regulations of the People's Republic of China on Labor Management of Sino-Foreign Joint Ventures, State Council, July 26, 1980, arts. 11-12, *reprinted in English in* CHINA'S LAWS FOR FOREIGN BUSINESS (CCH Australia) ¶6-520.

116. Regulations of Shanghai City on Labor Management of Sino-Foreign Joint Ventures (for trial use) [hereinafter Regulations of Shanghai City on Labor Management] promulgated by Shanghai Government on Oct. 8, 1984, art. 12, *reprinted in* GENERAL OFFICE OF THE SHANGHAI MUNICIPAL PEOPLE'S GOVERNMENT, SHANGHAI INVESTMENT ENVIRONMENT: LAWS AND REGULATIONS 115-18 (1987); Procedures of Employee Retirement Pension Insurance of Sino-Foreign Joint Ventures, promulgated by Shanghai Government on May 17, 1986, *reprinted in id.* at 124-25.

Chinese employees retire, the People's Insurance Company will furnish the above items in accordance with the standard used by state-owned enterprises.<sup>117</sup>

Equity joint ventures must also bear the medical expenses, maintenance of invalid employees, funeral expenses, and family members medical expenses, even if the sickness or injury did not result from employment.<sup>118</sup> This requirement is very similar to the typical social service programs operated by state-owned enterprises and most collective enterprises. Joint ventures may purchase employees health insurance, which covers the above expenses when the illness is not caused by employment, and employees safety insurance, which covers expenses incurred as a result of injury or illness caused by the employment.<sup>119</sup> The monthly premium for health insurance is ten percent of the total actual wages of the Chinese employees.<sup>120</sup> The monthly premium for safety insurance ranges from one to eight percent of the total actual wages of the Chinese employees.<sup>121</sup> The Shanghai government allows the People's Insurance Company to adjust the premium, but the People's Insurance Company may not do so more than once every two years.<sup>122</sup>

The law on foreign enterprises in the PRC has just begun to develop. Though it is clear that foreign subsidiaries in China must obtain Chinese insurance,<sup>123</sup> further detailed rules on the kinds of insurance that are compulsory for foreign subsidiaries have yet to be promulgated.

Sino-foreign contractual joint ventures are a flexible form of investment and are now most widely used by foreign investors in China.<sup>124</sup> Participants, in accordance with actual needs, may set up a variety of cooperative arrangements through contract. In comparison with equity joint ventures, contractual joint ventures are not subject to rigid requirements with respect to capital contribution, profit sharing or management. Currently no rule governs insurance of contractual joint ventures, al-

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117. Regulations of Shanghai City on Labor Management, *supra* note 116, art. 12.

118. *Id.*, art. 13.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*, art. 14.

123. *See supra* note 111 and accompanying text.

124. From 1979 to 1985, China concluded over 7,000 investment contracts with foreign investors, of which over 3,400 were cooperative enterprises, 2,200 were equity joint ventures, and over 100 were wholly-owned foreign subsidiaries. *See Wo Liyong Waizi Guime Jiangyou Jiaoda Kuozhan (The Scale of Foreign Investment Will be Further Expanded)*, People's Daily, Mar. 3, 1986, at 1.

though the PRC is drafting a governing law.<sup>125</sup> According to an official report, many contractual joint ventures are currently insured from abroad.<sup>126</sup> It is anticipated that the new law governing contractual joint ventures will parallel the Foreign Enterprise Law and Chinese Joint Venture Law by requiring contractual joint ventures to obtain Chinese insurance.<sup>127</sup>

#### D. *Insurance for Domestic Businesses*

Domestic insurance includes compulsory and optional insurance. In Chinese laws and documents, the words "compulsory insurance (*Qiangzhi Baoxian*)" and "legally provided insurance (*Fading Baoxian*)" are used interchangeably to indicate the type of insurance specifically required by law. Compulsory insurance is within the exclusive jurisdiction of the People's Insurance Company.<sup>128</sup>

In the 1950s, compulsory insurance in China included property insurance for government institutions, state-owned enterprises and cooperatives at the county level or higher.<sup>129</sup> It also encompassed compulsory insurance for railroad vehicles, and ships, and compulsory personal accident insurance for passengers of railroads, ships and airlines.<sup>130</sup> After 1959, compulsory insurance was largely discontinued together with many other insurance services.<sup>131</sup> However, the compulsory personal accident insurance for passengers remained in force and the service was transferred to the charge of various transportation departments.<sup>132</sup> The current compulsory insurance includes personal accident insurance for passenger service and social security insurance for employees of the state-owned enterprises.

The PRC is now considering other types of compulsory insurance including retirement pension insurance for employees in collective enter-

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125. *Woguo Jinnian Yi Banbu Shiwuxiang Jingjifa (Our Country Enacted Fifteen Economic Laws This Year)*, People's Daily, Sept. 13, 1985, at 1.

126. Report, *supra* note 29, at 1151.

127. The People's Insurance Company strongly recommended that future laws governing foreign economic relations make it clear that domestic Chinese insurance should be obtained. *Id.*

128. Regulations of Business Insurance, art. 12.

129. Yu Nengbin, *supra* note 9, at 34.

130. *Id.*

131. *Id.*

132. *Guanyu Jiakuai Woguo Baoxian Shiye de Baogao (Report of the People's Insurance Company of China on Accelerating the Development of the Insurance Industry of Our Country)*, People's Daily, Nov. 11, 1984, at 2.

prises, third-party liability insurance for motor vehicles,<sup>133</sup> and compulsory property insurance for state-owned enterprises.<sup>134</sup> The government will likely announce new regulations to effectuate these proposals on a national scale. Some regional governments have already begun to enact their own local compulsory insurance regulations. For instance, the Tianjin city government very recently promulgated new regulations obligating all state-owned enterprises operating in that city to purchase property insurance.<sup>135</sup>

## V. THE LAW OF INSURANCE CONTRACT

The law of insurance contract in China is broadly outlined in articles 25 and 26 of the Economic Contract Law.<sup>136</sup> On September 1, 1983, the State Council issued the Regulations of the People's Republic of China on Property Insurance Contract providing detailed rules about insurance contracts.<sup>137</sup> The regulations apply to property insurance including marine insurance.<sup>138</sup> The Regulations are based on the authority of the

133. The People's Insurance Company of China proposed six suggestions. The second and third suggestions read as follows:

2) Implementing legally-provided retirement pension insurance for employees in collective enterprises in townships, so that the employees' pension and retirement will be socialized. Study is being carried out and regulations are being drafted to be officially implemented next year.

3) Implementing legally-provided third party liability insurance for motor vehicles (including tractors) and ships in order to protect lawful interest of the injured in transportation accidents and to facilitate the settlement of claims arising therefrom. . . .

*Id.* These proposals were put forward in late 1984. As late as 1986, they were still under consideration.

134. *Id.* Currently, most state-owned enterprises actively participate in insurance programs. By June 1985, there were a total of 73,700 state-owned enterprises covered by insurance. However, there were also many state-owned enterprises which had refused to purchase insurance. These enterprises are usually large economic entities which have their own hazard prevention facilities (such as fire stations). See Ren Baowen, *Jiakuai Fazhan Woguo de Boaxian Shiye (Accelerating the Development of the Insurance Industry of Our Country)*, [1985] 1 ZHONGGUO JINRONG [CHINA FINANCE] 45.

135. People's Daily, June 18, 1986, at 3.

136. Economic Contract Law of the People's Republic of China, adopted at the Fourth Session of the Fifth National People's Congress on Dec. 13, 1981, arts. 25-26, reprinted in *English in CHINA'S LAWS FOR FOREIGN BUSINESS* (CCH Australia) ¶5-500.

137. Regulations of the People's Republic of China on Property Insurance Contract, State Council, Sept. 1, 1983, reprinted in *CHINA'S LAWS FOR FOREIGN BUSINESS* (CCH Australia) ¶ 9-580 [hereinafter Regulations on Property Insurance Contract].

138. *Id.*, art. 22 (marine insurance is covered by the property insurance regulations

Economic Contract Law which applies only to Chinese legal persons, and thus logically the Regulations will not apply to insurance contracts involving individuals and foreign parties. However, the Regulations specifically provide that property insurance involving foreign parties or insurance contracts with citizens come under the regulations as well.<sup>139</sup> The phrase "property insurance" is broadly defined in Chinese law and includes property insurance, credit insurance, liability insurance, guaranty insurance and other types of insurance having property or economic interests as insured subjects.<sup>140</sup> Thus, except for personal insurance, most of the insurance contracts in current Chinese insurance practice are covered by the insurance contract law. Insurance contract law is particularly helpful in the PRC's insurance practice, because insurance policies are usually very short and broadly worded. The insurance contract law will provide important guidance by filling gaps and resolving issues not provided for in the insurance policies. The following discussion highlights the major elements of current Chinese insurance contract law.

#### A. *Formation, Modification and Assignment of an Insurance Contract*

An insurance contract can be formed only upon the request of the insured.<sup>141</sup> After the insured fills out an insurance policy, attaches his signature and the parties determine through consultations the method of payment of the insurance premium, an insurance contract is established. The insurance company must promptly issue, in accordance with the insurance contract, the insurance policy or insurance certificate.<sup>142</sup> The insured ordinarily is the owner of the insured property. The insured may also be any person who is entitled to manage and operate the insured property, or who has an insurable interest in the insured subject.<sup>143</sup> The person with an "insurance interest" includes any person who has a legitimate economic interest in the property. For instance, a dry-cleaning shop, hotel, trucking company, lessee, or warehouse all may become the insured for the property in their custody. This provision also enables state-owned enterprises to purchase insurance for enterprise property owned by the state and operated and managed by the enterprises.

Once the contract is formed, the insurance company may not termi-

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unless the law provides otherwise).

139. *Id.*, art. 20.

140. *Id.*, art. 2.

141. *Id.*, art. 5.

142. *Id.*

143. *Id.*, art. 3.

nate the insurance contract during the effective term of the insurance policy, unless the law or the insurance contract so provides.<sup>144</sup> Some insurance policies in the PRC contain cancellation provisions,<sup>145</sup> while many other policies do not.<sup>146</sup> The rule prohibiting termination applies when the insurance contract fails to make specific provisions regarding terminability. When the insurer terminates the insurance contract before the term of the contract ends, it shall refund to the insured the premium for the remaining contract period.<sup>147</sup>

The insured has the freedom to terminate the contract.<sup>148</sup> When the insured requests termination of the contract before the effective term expires, the insurer is entitled to recalculate the premium in accordance with the rate for short-term insurance and may then retain or collect the recalculated premium for the period from the effective date of the insurance coverage to the date of termination.<sup>149</sup> Because the short-term rate is more expensive than the long-term rate, this provision enables the insurer to charge a higher rate than if the insurance were not terminated. In any event, the insurer must refund that part of the premium in excess of the amount due.<sup>150</sup> This rule apparently may be modified through contractual arrangement. For instance, the long-term investment insurance provided by the People's Insurance Company contains a minimum three year coverage, and early cancellation by the insured will entitle the insurer to retain the prepaid premium.<sup>151</sup>

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144. *Id.*, art. 10.

145. For instance, the property insurance policy and personal accident insurance policy both provide that the insurance company may terminate the policy with fifteen days prior notice, whereas the insured may cancel the policy at any time. *See* People's Insurance Company of China Personal Accident Insurance Policy, art. 6 *reprinted in* QIAN YIMING, *supra* note 101, at 118, 120; *see also* Property Insurance Policy, *reprinted in id.*, at 118.

146. *See, e.g.*, People's Insurance Company of China, Ocean Transportation Insurance Clauses, Contractors' All Risks Clauses, and Erection All Risks Clause.

147. Regulations on Property Insurance Contract, *supra* note 137, art. 10.

148. *Id.* The regulations do not specifically accord such freedom to the insured. The regulations, however, expressly forbid the insurer to terminate the contract before the term expires unless the law or contract provides otherwise. The regulations are silent about the rights and obligations of the insured.

149. *Id.*

150. *Id.*

151. *See* People's Insurance Company of China Investment Insurance Policy, *reprinted in* QIAN YIMING, *supra* note 101, at 92-93. Article 10, paragraph 2, reads:

Where the insured requests cancellation, the Insurer is entitled to collect [the] premium due for the period from the effective date to the termination date of the contract in accordance with the short term premium rate set by the State Insurance Administrative Authority. The insurer shall return the prepaid premium ex-

Chinese insurance contract law contains special provisions dealing with voyage insurance covering the transportation means or the goods transported. For voyage insurance, the insured may not request termination unless the insurance contract so provides.<sup>152</sup> Once the insurance coverage starts, the insurance contract may not be terminated nor the premium refunded.<sup>153</sup> The law does not require the insurer to give prior notice to terminate the contract, but the standard insurance policy in current use typically contains provisions requiring the insurer to give ten to fifteen days notice of termination so as to allow the insured to arrange for other coverage.<sup>154</sup>

Insurance contracts may be modified through consultations and agreements between the insured and the insurer.<sup>155</sup> When the insurance contract is modified, the insurer must either make an appropriate endorsement on the original policy or certificate or attach additional documents embodying the endorsement.<sup>156</sup> An insurance policy for transportation of goods may be transferred through endorsement by the insured without obtaining the agreement of the insurer.<sup>157</sup> In all other circumstances, transfer of the subjects of insurance must be reported in writing to the insurer.<sup>158</sup> The original coverage will continue to be effective only after the insurer extends its agreement and executes appropriate changes on the insurance policy or certificate;<sup>159</sup> otherwise, the insurance coverage will terminate when the subject of the insurance is transferred.<sup>160</sup>

### B. *Rights and Obligations of the Insured and Insurer*

The insurer is required to provide the insured with certain information regarding insurance which the insured has inquired about purchasing.<sup>161</sup> The insured is obligated to supply, in accordance with the request of the insurer, information regarding major dangers or perils the insured

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ceeding the amount due. However, in the event of voyage insurance for transportation of goods or transportation facilities, once the responsibility of insurance commenced, the insured may not terminate the contract or request for refund of the premium unless the contract provides otherwise.

152. *Id.*

153. *Id.*

154. *See supra* note 145.

155. Regulations on Property Insurance Contract, *supra* note 137, art. 9.

156. *Id.*

157. *Id.*, art. 11.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*, art. 7.

faces. The insurer uses such information in determining whether it can underwrite the policy for a given premium.<sup>162</sup> The insurer is entitled to terminate the contract or refuse to render compensation if the insured fails to disclose or misrepresents the requested information.<sup>163</sup>

The insured is obligated to pay the premium within the time limit provided in the insurance contract.<sup>164</sup> If the insured fails to do so, the insurer may opt to either terminate the insurance contract or demand interest.<sup>165</sup> If the insurance is terminated for this reason, the insurer remains entitled to the premiums and interest payable during the effective term of the insurance contract.<sup>166</sup>

The insured is required to exercise due care with respect to the subject matter covered by the insurance policy. It must conform with safety, production, operating and labor protection rules provided by the State,<sup>167</sup> including fire prevention regulations.<sup>168</sup> The law does not specify whether the insurer is nonetheless liable to pay on the policy when the insured fails to follow the above rules; this matter is often provided for in the insurance contract.<sup>169</sup> The insurer is authorized to inspect the safety condition of the subject matter of the insurance.<sup>170</sup> It has the obligation to promptly render reasonable recommendations if it identifies unsafe factors in the course of inspection.<sup>171</sup> The insured must then take timely measures to eliminate these unsafe factors;<sup>172</sup> otherwise, the insurer will not be liable for loss or damage due to the failure of the insured to follow the reasonable recommendations of the insurer.<sup>173</sup> The insured is also required to give prompt notice to the insurer when a danger is increased or the subject matter is used for purposes other than its original use.<sup>174</sup> If the insurer then requests an increase in the premium, the insured must

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162. *Id.*

163. *Id.*

164. *Id.*, art. 12.

165. *Id.*

166. *Id.*

167. *Id.*, art. 13.

168. *Id.*

169. Under most of the insurance policies, the insurer can be relieved only where the insured willfully violates the law or regulations or is guilty of gross negligence, resulting in loss or damage. *See* People's Insurance Companies, Contractors All Risks Clauses, ch. 2, *reprinted in* QIAN YIMING, *supra* note 101, at 95, Erection All Risks Clauses, ch. 2, *reprinted in id.* at 99, and Property Insurance Policy, ch. 4, *reprinted in id.* at 118.

170. Regulations on Property Insurance Contract, *supra* note 137, art. 13.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*, art. 14.

render the appropriate payment.<sup>175</sup> The insurer is released from liability if the insured fails to comply with requests for additional premium payments.<sup>176</sup>

After the insured subject matter suffers damage or other form of loss, the insured is obligated to promptly inform the insurer and take all necessary measures to minimize the damage or loss.<sup>177</sup> The insurer will not be liable for any loss resulting from the insured's failure to take these reasonable measures.<sup>178</sup>

### C. *Compensation*

The insurer is obligated to make compensation, in accordance with the provisions of the insurance contract, for loss of or damage to the subject matter of the insurance.<sup>179</sup> Unless otherwise provided in the contract, the limit of the insurer's liability is the actual loss or damage the insured suffered at the time of the incident.<sup>180</sup> Thus, the loss of business profits is not ordinarily covered by the insurance contract unless specifically provided for in the policy. The insurer's liability may not in any case exceed the amount for which the subject matter is insured.<sup>181</sup> The insurer is entitled to deduct any residual value of the insured subject matter from the amount of compensation.<sup>182</sup> It may also deduct from its payment any indemnity that the insured has obtained from third-parties for the same loss or damage.<sup>183</sup>

The insurer must compensate for all necessary and reasonable expenses which the insured incurred in order to mitigate the loss or damage covered by the insurance.<sup>184</sup> These expenses include those resulting from protecting or rescuing the damaged subject matter and related litigation fees. In addition, the reasonable expenses incurred in inspection, appraisal and sale for the purpose of determining the actual amount of loss or damage are also borne by the insurer in accordance with the insurance contract.<sup>185</sup> The liability of the insurer including reimbursement for expenses, however, may not exceed the insured amount speci-

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175. *Id.*

176. *Id.*

177. *Id.*, art. 15.

178. *Id.*

179. *Id.*, art. 16.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*, art. 17.

185. *Id.*

fied in the insurance contract.<sup>186</sup>

When the insured demands compensation, it must supply all the necessary accounts and documents.<sup>187</sup> Upon receipt of the required documents, the insurer shall determine, in accordance with the provisions of the insurance contract, whether it will pay the compensation.<sup>188</sup> When the insurer reaches an agreement with the insured regarding the amount of compensation, it must make the payment within ten days of the agreement.<sup>189</sup> Failure to do so is a breach of contract, and the insurer will be liable for subsequently accruing interest.<sup>190</sup>

When the loss or damage to the insured occurs because of acts of a third-party, the insured must proceed to seek compensation from such party.<sup>191</sup> If the insured demands payment from the insurer, the insurer may render the compensation in accordance with the insurance contract.<sup>192</sup> In exchange, the insured is required to assign its claim to the insurer and assist the insurer in seeking recovery from the third-person.<sup>193</sup>

#### D. A Case Study: *He Dongchang v. Shenze County Sub-branch of the People's Insurance Company*

For many years, Chinese courts did not publish their opinions. The Supreme People's Court of China recently began to publish bulletins on a regular basis, reporting some important rulings and decisions which had nationwide impact. Among the few cases so far reported, one concerns resolution of a dispute over an insurance contract. Though the issues decided relate only to some aspects of insurance contract law, discussion of the case nevertheless helps provide a general understanding of how insurance contract law is implemented in the PRC.

The basic facts of the case<sup>194</sup> are as follows: Mr. He Dongchang, a

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186. *Id.*

187. *Id.*, art. 18.

188. *Id.*

189. *Id.*

190. *Id.* Article 18 reads: "Where the insurer fails to provide timely compensation, it shall be liable for breach of contract to the insured for damages equal to the prevailing short-term interest rate of the People's Bank of China calculated beginning 10 days after the amount of compensation is determined." *Id.*, art. 18.

191. *Id.*, art. 19.

192. *Id.*

193. *Id.*

194. The discussion in this subsection is based on *He Dongchang v. Shenze Sub-branch of the People's Insurance Company of China*, *Zuigao Renmin Fayuan Gongbao* [Bulletin of the Supreme People's Court of the People's Republic of China], June 20,

resident of Shenze County, Hebei Province, purchased a fire insurance policy on June 3, 1984 to cover his wheat under harvest. The produce was estimated to be 2,066 kilograms and the sum insured was 826 yuan (approximately \$220.27). The premium for the insurance was 0.1 percent of the sum insured, or 0.826 yuan. The contract provided that the insurer was liable for losses resulting from a fire in the threshing ground. The insurer was not to be liable, however, for losses caused by a willful act of the insured, or natural disasters other than fire. The obligations of the insured under the contract included paying the premium, conforming with laws and regulations, diligently adopting fire prevention and safety measures, and making best efforts to mitigate losses in the event of fire.

The coverage started on June 10, immediately after Mr. He paid the premium. On June 16, a fire broke out in the threshing ground. The fire consumed all but about 215 kilograms of the wheat. Mr. He filed a report and requested that the People's Insurance Company pay the insured sum less the price of the remaining 215 kilograms of wheat. The People's Insurance Company insisted that the actual amount of produce harvested was far less than the estimate on which the insured sum was based. The People's Insurance Company determined that it would pay only for the losses calculated on the basis of the actual produce, instead of the insured sum. On September 3, 1984, Mr. He brought suit in Shenze County People's Court.

The court conducted mediation. After its efforts failed, it entered judgment on November 24, 1984, deeming the loss caused by the fire to be the insured sum less the value of the remaining wheat, and that the People's Insurance Company should bear eighty percent of the loss. Both parties appealed from the judgment. The Intermediate Court of the Shijiazhuang District, Hebei Province, affirmed the trial court's judgment on March 30, 1985 and made the following findings. First, the court held that there was a valid insurance contract, and because the People's Insurance Company was unable to prove that the loss was within the contracted exemptions, the People's Insurance Company had to compensate for the loss. Second, the court found that the insurance contract and the premium were based on an estimate of the produce. The People's Insurance Company was unable to prove that the actual produce was less than the estimate and it was estopped from claiming the actual loss as the basis of the compensation. The court upheld the finding of the trial court as to the amount of the loss. Third, because Mr.

He failed to put water in the fire prevention pot located in the threshing ground, and he was away from the threshing ground when the fire broke out, the court ruled that Mr. He contributed to the loss. Therefore, the court affirmed his liability for twenty percent of the total loss. The Judicial Committee of Supreme People's Court of China examined the case on June 5, 1985 and held that the lower courts had appropriately disposed of the case. The Committee directed that the case be made available to various levels of the People's Courts for reference.

## VI. INSURANCE PRACTICE IN THE PRC

Currently, the People's Insurance Company has a total of over 130 forms of insurance coverage, including more than eighty relating to international economic transactions.<sup>195</sup> These forms of insurance coverage generally encompass two broad sets of circumstances: loss or damage to the insured, and liabilities to third parties. Property insurance, personal accident insurance and commercial transportation insurance cover loss or damage to the insured, while product liability insurance protects against claims by third parties. Contractors all-risks insurance, erection all-risks insurance and motor vehicle insurance usually cover both loss or damage to the insured and liabilities to third parties.

The two broad categories of insurance coverage reflect two different standards for determining the compensation responsibilities of the insurer. In general, the insurer assumes much more extensive liabilities towards third parties than towards the insured. For instance, under a third-party liability insurance contract, the insurer is relieved from the liability only when the insured intentionally causes the loss or damage. This is the case with product liability insurance and motor vehicle insurance, as well as third-party liability insurance for erection all-risks insurance and contractors all-risks insurance.<sup>196</sup>

On the other hand, with insurance against loss or damage to the insured, the insurer may be relieved from liabilities when the negligence or gross negligence of the insured is the cause of the loss or damage. For instance, under marine cargo shipment insurance, the insurer is not liable for loss or damage attributable to the negligence of the insured,<sup>197</sup> in

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195. *Woguo Baoxianye Jinnian Fazhankuai*, *supra* note 1, at 1.

196. See People's Insurance Company Product Liability Insurance Clauses, ch. 2, reprinted in ZHAO YUCHEN, *supra* note 103, at 240; Motor Vehicle Insurance Clauses, ch. 2, reprinted in QIAN YIMING, *supra* note 101, at 122; The Contractors' Third Party Liability Clauses, art. 3, reprinted at *id.* at 95; The Erection Third Party Liability Clauses, art. 3, reprinted in *id.* at 99.

197. Chapter 2 of the People's Insurance Company, Marine Cargo Insurance

the case of property insurance, the insurer is not liable for loss or damage owing to the gross negligence of the insured.<sup>198</sup> Under erection all-risks insurance and contractors all-risks insurance, the insurer's liability to the insured does not extend to loss or damage resulting from gross negligence or a willful act of the insured.<sup>199</sup> Under personal accident insurance, however, negligence on the part of the insured may not relieve the insurer of liability.<sup>200</sup>

The following section will introduce a few major areas of insurance coverage in the PRC and help the reader understand the major elements of Chinese insurance practice.

#### A. *Investment Insurance*

Investment insurance,<sup>201</sup> also called "political risks insurance", was developed in the late 1970s in response to increased foreign investment in China. Investment insurance covers losses to investors caused by governmental confiscation or expropriation. It also covers losses due to war, warlike operations, insurrections, strikes, or riots. The insurance also covers losses resulting from Chinese government foreign exchange remittance restrictions, which can render investors unable to repatriate lawful earnings in accordance with the investment contract.

The liability of the insurer is limited to the amount of insurance stated in the policy. In addition, the insurer is not liable if the loss is caused by confiscation or expropriation by the government as a result of the investors' breach of the investment contract or intentional illegal acts, or is due to failure of the investors to perform within the time limit provided

Clauses, *reprinted in* QIAN YIMING, *supra* note 101, at 89, reads: "2) Excluded Liabilities: The Present insurance does not cover: i) loss or damage due to the wilfull or negligent act of the insured; . . ."

198. Chapter 4 of the People's Insurance Company, Property Insurance Clauses, *reprinted in id.* at 118 reads: "4) Excluded Liabilities: The Company shall not be liable for: . . . ii) loss or damage to the insured property caused by intentional act or gross negligence of the insured or its representatives; . . ."

199. Chapter 2 of the People's Insurance Company, Contractors' All Risks Clause, *reprinted in id.* at 95 reads: "2) Excluded Liabilities: The Company is not liable for the following: i) loss or damage or expenses or liabilities caused by wilfull act or gross negligence of the insured or its representatives; . . ." Chapter 2 of the Erection All Risks Clauses, *reprinted in id.* at 99, reads: "2) Excluded Liabilities: The Company is not liable for the following: i) loss or damage or expenses or liabilities caused by wilfull act or gross negligence of the insured or its representatives; . . ."

200. People's Insurance Company, Personal Accident Insurance Clauses, *reprinted in id.* at 120.

201. The discussion in this subsection is based on the Investment Insurance Policy of the People's Insurance Company, *reprinted in id.* at 92-93.

by the government. Note that breach of ordinary contracts would not relieve the insurer's liabilities; only when the investment contract is breached may the insurer claim this defense. While breach of contract is not necessarily an intentional act, illegal acts of the investors must be intentional to constitute a defense for the insurer. Investment insurance does not cover any commercial losses incidental to or resulting from the loss or damage of an investment. Thus, the policy does not cover what is commonly known as consequential loss. The coverage also excludes losses resulting from nuclear weapons and losses resulting from confiscation or expropriation of assets beyond coverage of the investment contract.

Investment insurance is available for a term of one year or longer. One-year investment insurance may be renewed upon expiration. Long-term investment insurance coverage can last as long as fifteen years, but may not be shorter than three years. At the end of three years, the insured may cancel a long-term policy without penalty, but the insured must pay the full three-year premium if he cancels the policy prior to the completion of three years. When the insured purchases long-term investment insurance, it must designate the maximum insured amount for the entire investment project. The insured also must advise the insurer in writing of the annual amount to be insured fifteen days prior to the expiration of each insurance year. The premium is calculated on the basis of the amount insured.

The People's Insurance Company is required to pay compensation within six months after the loss occurs or the evidence of loss is surrendered. When foreign exchange remittance restrictions cause the loss, the payment will be made within three months after the insured files a claim. The compensation is determined in accordance with the ratio of the actual investment to the total insured amount. Thus, an insured who sustains a \$1 million loss in a \$10 million investment project would have \$1.5 million in compensation if the total amount insured is \$15 million or \$500,000 if the total amount insured is \$5 million. The expense incurred by the insurer to recover the confiscated or expropriated assets is also shared by the insured and insurer in accordance with the above formula.

### B. *Product Liability Insurance*

Chinese product liability law today is in the early stages of development.<sup>202</sup> The General Principles of the Civil Law (the Civil Code) make

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202. Discussion in this subsection is based on the Product Liability Insurance Policy

clear that manufacturers and sellers will be liable for losses or injury resulting from a product which fails to meet the established standards.<sup>203</sup> The Civil Code does not specify whether the liability imposed is strict liability. This ambiguity probably implies that at least some liability arising from injuries caused by certain types of products will be strict. Thus, operating a business without carrying necessary liability insurance may turn out to be extremely expensive.

Product liability insurance covers any property loss or personal injury incurred by the consumer, user, operator or other persons as a result of production, sale or distribution of products by the insured and for which the insured is found liable. The policy also covers litigation expenses arising from the accident or other expenses that the People's Insurance Company has agreed to pay prior to the accident. The liability of the insurer is limited to the amount agreed upon in the insurance policy.

Product liability insurance does not cover any property loss or personal injury or death resulting from the insured's willful and illegal acts in production, sale or distribution of products. It also excludes the liability of another person assumed by the insured through contract or the liability of the insured imposed by labor law. The loss of the product itself, the loss of property the insured owns or controls, and the liability of the insured to its employees arising out of the employment relationship are also excluded from coverage.

The premium calculated is based on the value of the products produced, sold or distributed during the effective term of the insurance policy, and the insured must pay an estimated premium in advance. After the policy expires, the insured must inform the insurer of the total value of the products sold, produced or distributed during the term of the insurance, which serves as the basis for calculating the actual premium due. If the actual premium exceeds the advance payment, the insured must render additional payment to make up the difference. If the advance payment exceeds the actual premium, the insurer must reimburse the insured.

The insurer may request that the insured supply documents or accounts to substantiate the claimed value of the products. The insurer

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of the People's Insurance Company, *reprinted in ZHAO YUCHEN, supra* note 103, at 246.

203. See General Principles of the Civil Law of the People's Republic of China (Civil Code), adopted by the Fourth Session of the Sixth National People's Congress on Apr. 12, 1986, *reprinted in People's Daily*, Apr. 17, 1986, at 2-4, art. 122. The Civil Code took effect on January 1, 1987. See *id.*, art. 156. For an English translation, see 34 AM. J. COMP. L. 715-743 (1986). For a review of the Civil Code, see Zheng, *China's New Civil Law, id.* at 669.

may also dispatch agents to inspect the accounts or records of the insured to verify the information. The insurer is entitled to inspect the buildings, machinery, equipment, operations and products of the insured. In the event of product liability litigation or an accident caused by the insured's product, the insured must promptly notify the insurer in writing and provide detailed information. The insured may not refuse or undertake an agreement to make payment or compensation without the assent of the insurer. The insurer is entitled to handle any lawsuits for damages or arrange for settlement in the name of the insured. Either the insured or the insurer may cancel the insurance with ten days prior notice.

### C. *Property Insurance*

Property insurance<sup>204</sup> may cover any property which the insured owns, operates, or manages. Coverage for gold, silver, pearls, art, and the like, however, must be specifically agreed upon between the insured and insurer and stipulated in the policy. Property insurance does not cover securities, bills, bank notes, documents, or the like.

The insurer will be liable for losses or damage to the insured property as a consequence of fire, lightning, explosion, storm, hurricane, flood, earthquake, and other acts of God. Losses or damage caused by the crashing of airplanes or falling of flying objects is also covered. The insurer is not responsible for losses or damage to the insured property resulting from war or warlike operations, acts of hostility, strikes, riots, or confiscation. Losses or damage caused by the willful acts or gross negligence of the insured is likewise not covered. The insurance also excludes losses or damage as a result of nuclear reaction or nuclear radiation. Indirect losses resulting from interruption of business or production caused by the accident is also excluded from the coverage.

In the event of damage or losses that may give rise to a claim, the insured must immediately notify the insurer of the incident and provide a detailed written report. The insured is obligated to carry out all measures necessary to minimize the loss or damage, and the insurer is required to reimburse reasonable expenses incurred as a result of these measures. The compensation, however, cannot exceed the insured amount of the damaged property. The insurer will indemnify against the losses or damage covered by the insurance according to the market value of the property at the time of the loss or damage. When the prevailing market value of the damaged property is lower than the insured amount,

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204. Discussion in this section is based on the Property Insurance Policy of the People's Insurance Company, *reprinted in* QIAN YIMING, *supra* note 101, at 117-18.

the insurer will indemnify the insured on the basis of the market value. When the market value of the insured property exceeds the amount insured, the excess is considered to be self-insured by the insured, and the insurer is liable for the proportion of losses or damage equal to the ratio of the amount insured to the market value. Thus, when the market value of a piece of property is \$12 million and the insured amount is \$10 million, the insurer will bear five-sixths of the loss.

When the insured sustains a partial loss, the insurer may choose either to pay cash in an amount equal to the actual depreciation resulting from the loss or to pay the expenses incurred restoring the damaged property to its original condition. If the property is considered to have sustained total loss, any residual value of the property shall be deducted from the indemnity. After the payment of the indemnity, the amount insured shall be reduced accordingly; however, the insurer will not return the paid-in premium. The property insurance may be cancelled by either party with fifteen days prior notice.

Property insurance for enterprises merits further discussion. Currently, the People's Insurance Company classifies all business establishments into three broad categories according to the nature of the business engagement: manufacturing industry, warehouse and storage, and other establishments like commerce, trade, construction, communications, and transportation.<sup>205</sup> Within each category, the People's Insurance Company has established six different groups according to the level of risk of the business activities,<sup>206</sup> and the premium rate is calculated according to the level of risk. The average rate currently in effect is approximately 0.3 percent of the insured amount for a one-year policy,<sup>207</sup> although rates can run as high as 0.7 percent or as low as 0.05 percent. Additionally, the People's Insurance Company offers a preferential ten percent discount on the premium for those establishments that incurred claims of less than ten percent of the insured sum during the previous one-year term.

#### D. *Personal Accident Insurance*

Personal accident insurance<sup>208</sup> enables the insured to obtain compensation from the insurer when an accident covered by the insurance causes

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205. GUO DESHENG, BAOXIAN ZHISHI WENDA [QUESTIONS AND ANSWERS OF INSURANCE] 57-60 (1985).

206. *Id.*

207. *Id.*

208. Unless noted otherwise, discussion in this subsection is based on the Personal Accident Insurance Policy of the People's Insurance Company, *reprinted in id.* at 119-

injury or death to the insured. Injury or death as a result of war, rebellion, strike, riot, or nuclear radiation is not covered. In addition, injury or death resulting from illness, infectious disease, childbirth, pregnancy, and medical operation and treatment are not covered. Injury or death caused by suicide, criminal activity, hunting, climbing, racing, skiing, fighting, intoxication, drugs, or insanity are also excluded.

Compensation is based on the extent of injury and the amount insured. Compensation for death is 100 percent of the amount insured, while compensation for the loss of a toe may be one percent of the amount insured. The insurance policy is accompanied by an indemnity scale which specifically provides the amount of compensation for most injuries.<sup>209</sup> The amount insured is determined by the insured. The minimum currently is 5,000 yuan and there is no ceiling for the maxi-

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209. *Id.* The scale reads as follows:

<u>Extent of Injury</u>	<u>Benefits</u>
Death (accidental death shall not in any way be presumed by reason of disappearance of the insured except in the event of the total loss by wreck of the ship or airplane on which the insured was travelling).	100%
Total paralysis (resulting in being permanently bedridden or permanently disabled from engaging in or giving attention to profession or occupation).	100%
Loss of two limbs (actual physical severance through or above wrist or ankle joints), or loss of sight of both eyes, or loss of one limb and sight of one eye.	100%
Loss of either one limb or sight of one eye	50%
Loss of Fingers and Toes (on each hand or foot):	
(1) Loss of four fingers;	40%
(2) Loss of thumb (both phalanges);	25%
(3) Loss of thumb (1 phalanx) or index finger (3 phalanges);	6%
(4) Loss of index finger (1 or 2 phalanges), or middle finger (3 phalanges);	6%
(5) Loss of middle finger (1 or 2 phalanges), or ring finger (3 phalanges), or little finger (3 phalanges);	3%
(6) Loss of ring finger (1 or 2 phalanges), or little finger (1 or 2 phalanges);	1%
(7) Loss of toes — all;	15%
(8) Loss of toe — great (both phalanges);	5%

mum.<sup>210</sup> The current premium rate is 0.6 percent of the amount insured.<sup>211</sup> The insured may also purchase additional coverage for medical expenses, the premium for the additional medical expenses being 0.9 percent of the amount insured.<sup>212</sup>

When an accident results in death, the owner of the policy or his or her beneficiary must immediately inform the insurer in writing. If the accident results in injury, the insured must provide the insurer with written notice within fifteen days of the accident. The insured or his beneficiaries are required to produce evidence substantiating the injury or death, and expenses incurred in collecting evidence are not borne by the insurer.

### E. *Social Welfare and Unemployment Insurance*

Social welfare insurance in the PRC was initially established in 1951 under the Regulations of the People's Republic of China on Labor Insurance, which was reinforced in 1953 by separate implementing regulations.<sup>213</sup> The labor insurance system established by these regulations required employers to set aside three percent of their total payrolls in the trust of the union to set up a fund for providing maintenance for employees who were unable to work because of illness, injury or age.<sup>214</sup> That system was basically designed to protect employees working in the private sectors that had not yet been nationalized. After 1956, private enterprises were largely wiped out through nationalization, and state-owned and collective enterprises became dominant in the industrial and commercial sectors. Since these enterprises exercised a tenured employ-

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(9) Loss of toe — great (1 phalanx) or any other toe (both phalanges);	2%
(10) Loss of toe — any other than great (1 phalanx).	1%
Other injuries such as deafness, fracture of bones and etc.	Such proportion to be assessed by the hospital.
Weekly Compensation: Disablement from engaging in or attending to usual occupation being identified by the hospital	During the period of disablement at the rate of 1% of the insured amount per day.

210. People's Daily, Mar. 24, 1986, at 5.

211. *Id.*

212. *Id.*

213. *Supra* note 19.

214. Labor Insurance Regulations, *supra* note 19, art. 8.

ment system providing employees with all the benefits given under the previous labor insurance system,<sup>215</sup> the labor insurance program was largely abandoned by the late 1950s.

Since the early 1980s, the Chinese government has begun to experiment with a contractual labor system in order to provide greater economic incentive for employees to work hard and for enterprises to adjust personnel needs in accordance with business operations.<sup>216</sup> Since the old welfare insurance system was provided by each employer and available only to tenured employees, the contractual employees were unable to enjoy retirement pensions and other benefits after the contract expired. Furthermore, since the late 1970s, the Chinese government has significantly relaxed its policy towards private business and by 1986, over 17 million people were employed in the private sector.<sup>217</sup> Since private business is usually small and cannot afford to provide the same subsidies to its employees as state-owned enterprises in terms of retirement pensions and medical benefits, these employees face the same problems as contractual employees. In addition, the new labor system based on contract allows the employer to dismiss employees and also allows employees to leave the employment upon the termination of contract.<sup>218</sup> It thus makes possible the existence at any given time of a certain number of people waiting for employment. The introduction of a bankruptcy system will

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215. The old tenured labor system was summarized by the Minister of Labor Personnel as possessing the following features: "the state is completely responsible for the employment of the laborers in cities and towns, using administrative means to assign the laborers uniformly to the enterprises and using tenure employment to keep a life term and fixed relationship between enterprises and employees." See *Laodong Zhidu Gaige Shiguan Zhongda (Significance of the Labor Reform)*, People's Daily, Sept. 10, 1986, at 2. Another article summarized the old welfare system as follows:

For a long time in the past, the labor system of our country adopted a "taking-care-of-all" policy by which the state-owned enterprise had to shoulder all the support for its employees when they were unable to work because of illness, age, retirement, etc. This increased the burden of enterprises.

See Huang Shiling, *Tan Gaige Laodong Zhidu Sige Guiding Dui Zengqiang Oiyue Huoli De Zuoyong (The Impact of the Four Labor Reform Regulations on Activating Enterprises)*, Zhongguo Fazhibao [Daily of China's Legal System], Sept. 29, 1986, at 3.

216. See *Woguo Yonggong Zhidu Jinxing Zhongda Gaige, Yinian Xinzhaohetonggong San Bai Wushiwan (Important Reform of Our Recruitment System, Contractual Employees Recruited in One Year Reached 3.5 Million)*, People's Daily, July 19, 1986, at 1.

217. See *infra* note 289.

218. See Interim Regulations on Labor Contract System of State-Owned Enterprises, promulgated by the State Council on July 12, 1986, arts. 12, 15, reprinted in People's Daily (Domestic Ed.), Sept. 10, 1986, at 2.

further add to the displaced labor force.<sup>219</sup> These new developments require a new social welfare insurance system to provide unemployment benefits for displaced workers and medical and retirement benefits for workers not employed under the old tenure system.

Since the early 1980s, some regional governments have begun to establish social welfare and unemployment insurance programs. In November 1983 Shenzhen enacted the Interim Regulations of Labor Insurance, and two years later it enacted the Interim Regulations of Uniform Retirement Funds for the State-Owned Establishments.<sup>220</sup> These regulations provide that a certain percentage of the employees' payroll be set aside to establish a social insurance system managed by a Social Labor Insurance Company established in late 1983 by the city government.<sup>221</sup> The Shekou government likewise established a Social Insurance Program requiring all establishments to pay into a Social Insurance Company \$170 (Hong Kong) per month per employee.<sup>222</sup> In exchange, the Company provides medical insurance, retirement pensions, and unemployment benefits for employees.<sup>223</sup>

In 1986, the central government launched a nationwide labor reform and, as part of the package, set up an unemployment and social welfare insurance program.<sup>224</sup> In addition to requiring the employer to provide

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219. The Enterprise Bankruptcy Law of the People's Republic of China, adopted by the 18th Session of the Standing Committee of the Sixth National People's Congress and promulgated on Dec. 2, 1986, *reprinted in Chinese in People's Daily*, Dec. 3, 1986, at 4, *translated in English in Zheng, Enterprise Bankruptcy Law of the People's Republic of China for Trial Use*, 19 VAND. J. TRANSNAT'L L. 733 (1986).

220. *Shenzhen Laodong Baoxian Zhubu Shehuihua, Hetongzhi Gongren Jiechu Hougu Zhiyou (Labor Insurance in Shenzhen Gradually Socialized and Contractual Employees Revised Worryingness)*, *People's Daily*, July 22, 1986, at 1.

221. *Id.*

222. *Sheko Gongyequ Laodong Baoxian Shehuihua (Socialized Labor Insurance in Shekou Industrial Zone)*, *People's Daily*, Aug. 5, 1986, at 3.

223. *Id.*

224. The labor reform consists of four regulations. For the first one *see supra* note 218 and additional regulations promulgated by the State Council on the same date (July 12, 1986): Interim Regulations on Dismissal of Employees in Violation of Disciplines by State-Owned Enterprises; and Interim Regulations of Unemployment Insurance for Employees of State-Owned Enterprises [hereinafter Regulations of Unemployment Insurance]. These regulations appeared in *People's Daily (Domestic Ed.)*, Sept. 10, 1986, at 3. "Unemployment" here and throughout this article translates to Chinese "daiye," meaning literally, "waiting for employment." Chinese newspaper and official documents consistently use "daiye" to refer to the phenomenon of people in China without employment. Another word, "shiye," meaning literally "out of employment," is used to refer to unemployment in the West. The author uses "unemployment" in this article in place of "waiting for employment" purely for the sake of simplicity. Readers should read into

contractual workers with benefits similar to those given to tenured employees, the program set up an unemployment insurance fund (Fund) that provides unemployment compensation for employees who become unemployed due to bankruptcy, reorganization of enterprises, termination of employment contract or dismissal.<sup>225</sup> The Fund consists of three items: (i) a payment equivalent to one percent of the total payroll of the enterprise's contractual employees; (ii) interest arising from the Fund, (iii) local government appropriation.<sup>226</sup> The Fund is supervised by the labor service company established as an affiliate of the labor administrative department of the local government. The Ministry of Labor Personnel and the Ministry of Finance jointly enact the rules for the administration of the Fund.<sup>227</sup> The program also mandates that the regional government appropriation provide support where the Fund is inadequate.<sup>228</sup>

In terms of specific benefits, the Fund covers medical expenses for eligible people during their period of unemployment and provides unemployment compensation for a limited period of time.<sup>229</sup> The Fund also covers the following: (i) training expenses of the unemployed; (ii) expenses for supporting the unemployed to provide self-help; (iii) expenses incurred for the management of the Fund; (iv) compensation for funeral expenses and other related expenses for former employees of a bankrupt or reorganized enterprise.<sup>230</sup>

The unemployment compensation provided by the Fund is based on the average wages of the person within two years from the date when he or she became unemployed.<sup>231</sup> Compensation is provided during the period of unemployment until he or she either becomes employed or reaches the maximum compensation period. The amount of compensation for the first twelve months is sixty to seventy-five percent of the average wages; for the following twelve months the amount is fifty percent.<sup>232</sup> The figure in the draft was initially a flat payment of fifty per-

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"unemployment" in this article any implications the Chinese "daiye" may have.

225. The unemployment and social welfare program is provided in Regulations of Unemployment Insurance. Regulations of Unemployment Insurance, *supra* note 224, arts. 3, 6.

226. *Id.*, art. 3.

227. *Id.*, art. 13.

228. *Id.*, art. 4.

229. *Id.*, art. 6.

230. *Id.*

231. *Id.*, art. 7.

232. *Id.*

cent of the average wages.<sup>233</sup> Because some lawmakers felt that this amount might not be sufficient to maintain basic living standards, the amount was thus increased to sixty to seventy-five percent for the first twelve months.

The maximum compensation period is based on seniority. For persons who have a history of employment of five years or more, the maximum compensation period is twenty-four months.<sup>234</sup> For persons with an employment history of less than five years, the maximum compensation period is twelve months.<sup>235</sup> The payment of compensation will cease if the recipient declines twice, without justification, employment introduced by pertinent agencies or if the recipient commits a crime and is imprisoned under the criminal law.<sup>236</sup>

## VII. DISPUTE SETTLEMENT

When disputes arise over an insurance contract, Chinese law encourages parties to reach an accord through friendly consultations. Chinese insurance practice also promotes consultations; indeed, the standard insurance contract itself contains provisions requesting parties to attempt initially to resolve disagreements through friendly consultations.<sup>237</sup> If consultations fail, parties may either resort to judicial settlement or commence arbitration proceedings.<sup>238</sup> Due to space limitations here, discus-

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233. *Renda Changwei Zantong Laodong Zhidu Gaige (The Standing Committee of the National People's Congress Is in Favor of Labor Reform)* (Xinhua News Agency, press release, Sept. 3, 1986).

234. Regulations of Unemployment Insurance, *supra* note 224, art. 7.

235. *Id.*

236. *Id.*

237. The typical dispute settlement clause in the insurance policies of the People's Insurance Company reads:

Treatment of Dispute: All disputes between the insured and the Company shall be settled through friendly negotiations according to the principles of seeking truth from facts and of fairness and reasonableness. Where a settlement fails after negotiations, such a dispute shall be submitted to arbitration or to court for legal actions. Unless otherwise agreed, arbitration or legal actions shall be carried out in the place where the defendant is domiciled.

See Investment Insurance Clauses, ch. 5, *reprinted in* QIAN YIMING, *supra* note 101, at 93; Contractors' All Risks Clauses, ch. 7, *reprinted in id.* at 95; Erection All Risks Clauses, ch. 7, *reprinted in id.* at 99; Offshore Oil Exploration and Development Insurance Policy, art. 16, *reprinted in id.* at 102; Property Insurance Clauses, ch. 6, art. 4, *reprinted in id.* at 118; Personal Accident Insurance Clause, art. 6, *reprinted in id.* at 120; Motor Vehicle Insurance Clauses, ch. 5, art. 4, *reprinted in id.* at 122; Product Liability Insurance, art. 9, *reprinted in* ZHAO YUCHEN, *supra* note 103, at 240-242.

238. See *supra* note 237.

sions on judicial settlement are omitted. The following discussion first focuses on statutes of limitations on settlement of disputes arising from insurance contracts and then highlights major issues of arbitration in the PRC.

### A. *Time Limitations*

With respect to the disputes arising from insurance contracts, the Property Insurance Contract Regulations provide that parties requesting arbitration in accordance with article 50 of the Economic Contract Law shall submit the petition within one year from the time when the insured event is known or should have been known.<sup>239</sup> Chinese arbitration institutions generally do not hear cases when the parties fail to meet this time limitation. For judicial settlement, the statute of limitations varies depending upon the nature of the subject matter in dispute. According to the Civil Code which became effective on January 1, 1987, the time limit for personal injury, product liabilities, and loss or damage of property in bailment is one year.<sup>240</sup> In all other instances, the time limit is two years unless otherwise provided by law.<sup>241</sup> Thus, the time limitation for judicial settlement of disputes arising from investment insurance contracts will be two years, whereas disputes arising from personal accident insurance will probably have one year time limitations. The running of these time limitations will be suspended if, in the last six months, a *force majeure* or other obstacle makes pursuing the claims impossible,<sup>242</sup> and will begin to run again when the cause for suspension ceases to exist.<sup>243</sup> Additionally, the calculation of the time limit shall discontinue when one party brings a lawsuit, when it requests performance or when it agrees to render the performance.<sup>244</sup>

### B. *Arbitration*

Arbitration clauses are found in many of the standard insurance contracts currently used by the People's Insurance Company.<sup>245</sup> In addition, Chinese law expressly allows parties to an insurance contract to com-

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239. Regulations on Property Insurance Contracts, art. 4.

240. Civil Code, *supra* note 203, art. 36.

241. Civil Code, *supra* note 203, art. 135.

242. *Id.*, art. 139.

243. *Id.*

244. *Id.*, art. 140. The time limit shall begin again from the time when it was discontinued. *Id.*

245. See *supra* note 237.

mence arbitration proceedings to resolve disputes.<sup>246</sup> Arbitration is thus one of the major channels of dispute settlement. Chinese arbitration law is divided into two bodies of rules and institutions: one applies to domestic arbitration and the other applies to international arbitration. Depending on the nature of the insurance, the subject matter and the parties involved, a dispute arising from an insurance contract may be within the purview of either domestic arbitration or international arbitration, but Chinese law does not provide clear rules to determine which body of rules governs such a dispute. Provisions of a few statutes, however, do shed light on the understanding of this issue. Generally, the insurance contracts concluded by equity joint ventures, Sino-foreign contractual joint ventures and wholly-foreign-owned subsidiaries set up in China are regarded as domestic economic contracts because the entities are regarded as Chinese legal persons regardless of their foreign ownership.<sup>247</sup> Disputes arising from these contracts are subject to the domestic arbitration system and are covered by the Economic Contract Law, which deals exclusively with domestic contractual relations.<sup>248</sup> On the other hand, foreign entities not established in China are not considered Chinese legal persons. Consequently, their contractual relations are governed by the Foreign Economic Contract Law,<sup>249</sup> and disputes arising from insurance contracts they concluded will ordinarily be subject to the PRC's interna-

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246. Regulations on Property Insurance Contracts, *supra* note 137, art. 4.

247. Article 41 of the Civil Code provides: "[T]he joint venture, or Sino-foreign cooperative enterprise or foreign enterprises set up in the People's Republic of China acquires the status of a legal person after fulfillment of the requirements of a legal person and [after it is] examined and approved by the administrative authority of industry and commerce." *See also* Foreign Enterprises Law, art. 8.

248. "Economic contract" is defined as an agreement between legal persons for the purpose of achieving certain economic purposes and clarifying rights and obligations of each. *See* Economic Contract Law, art. 2. Since joint ventures, cooperative enterprises and foreign subsidiaries within the territory of the PRC are deemed Chinese legal persons, their contractual relations are governed by domestic economic contract law. A legislative report concerning the Foreign Economic Contract Law clearly affirms this position. *See* Shen Hong, *Guanyu Zhonghua Renming Gongheguo Shewai Jingjihetongfa Caoan Xiugaigao Jidian Xugai Yijian de Shuming (Explanations on Revising Proposal to the Revised Draft of the Foreign Economic Contract Law of the People's Republic of China)*, [1985] 2 QUANGUO RENDA CHANGWEIHUI GONGBAO [BULLETIN OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS] 15.

249. Foreign Economic Contract Law of the People's Republic of China, adopted by the Tenth Session of the Standing Committee of the Sixth National People's Congress on Mar. 21, 1985, *reprinted in English in CHINA'S LAWS OF FOREIGN BUSINESS* (CCH Australia) ¶15-550, art. 2. For a review of the Foreign Economic Contract Law, *see* Zheng, *A Comparative Analysis of the Economic Contract Law of the People's Republic of China*, 4 U.C.L.A. PACIFIC BASIN L.J. 30 (1985).

tional arbitration system.

Domestic arbitration is in the charge of the State Administration of Industry and Commerce or its regional branch and is guided by a set of rules which the State Council enacted.<sup>250</sup> The Foreign Trade Arbitration Commission, set up by China's Council for Promotion of International Trade (CCPIT), conducts international arbitration, which is governed by a different set of rules enacted by the CCPIT.<sup>251</sup> The two systems are different in several major aspects. First, international arbitration is based on an arbitration agreement between the disputants or, at least, an arbitration clause in the contract.<sup>252</sup> Domestic arbitration rules, however, do not require such an agreement or consensus; one party to a domestic economic contract may commence the arbitration process of its own will.<sup>253</sup> Second, domestic arbitration rules greatly resemble Chinese judicial procedure in that they impose responsibilities on the arbitrators to verify evidence, investigate facts and collect data for determining the case.<sup>254</sup> On the other hand, international arbitration largely places the burden of proof on the parties making allegations.<sup>255</sup> Finally, arbitral awards issued by domestic arbitration institutions are subject to judicial review if one party commences the judicial proceeding within the above-

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250. Arbitration Regulations of the People's Republic of China on Economic Contracts, State Council, Aug. 22, 1983, *reprinted in* CHINA LAWS OF FOREIGN BUSINESS (CCH Australia) ¶10-620 [hereinafter Arbitration Regulations]. Article 2 provides: "The arbitration authority of economic contracts is the Arbitration Commission set up by the State Administration of Industry and Commerce or its regional branches."

251. Interim Regulations of the China Council for Promotion of International Trade on Arbitration Procedures of the Foreign Trade Arbitration Commission, adopted on Mar. 31, 1956, *reprinted in* CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia) ¶ 10-500. Article 2 provides that the jurisdiction of the Foreign Trade Arbitration Commission extends to all disputes on transportation, insurance, bailment, etc., that relate to foreign economic transactions.

252. *Id.*, art. 3.

253. Article 48 of the Economic Contract Law provides: "Where disputes arise from economic contracts, the parties shall conduct timely consultations for settlement. Where consultations fail, any party may petition to the contract administrative authority provided by the State for mediation and arbitration or bring the lawsuit directly to the People's Court." The Arbitration regulations also adopt a similar approach: either party may initiate arbitration proceeding[s] without the necessity of pre-agreement of the other party.

254. Arbitration Regulations, *supra* note 250, art. 21 ("arbitrators must carefully examine and read the applications, answers, conduct investigations and collect evidence. . .").

255. The Arbitration Procedure for the Foreign Trade Arbitration Commission does not contain similar provisions.

mentioned time limitation.<sup>256</sup> The international arbitral awards, however, are final, and Chinese law does not allow a court to interfere in any way other than to assist in enforcement.<sup>257</sup> Because there is relatively extensive literature on China's international arbitration, the following discussion highlights the major components of the domestic arbitrations relevant to insurance contracts.

### 1. An Introduction

Arbitration of disputes on domestic contracts is in the charge of Arbitration Commissions of Economic Contract established by the State Administration of Industry and Commerce (SAIC) or its regional branches.<sup>258</sup> On May 15, 1980, SAIC issued the Interim Regulations on Economic Contract Arbitration Procedure which served as the first rules governing domestic contract disputes.<sup>259</sup> On August 22, 1983, the State Council promulgated more detailed and comprehensive Regulations of the People's Republic of China on Economic Contract Arbitration which superseded the earlier rules.<sup>260</sup> These regulations, in addition to some other rulings and practice, constitute the basic legal framework of domestic contract arbitration in the PRC. The regulations apply to the contractual disputes between legal persons, and between legal persons and private businesses.<sup>261</sup> Whether these arbitration rules apply to disputes between individuals and insurance companies arising from personal accident insurance contracts, however, is unclear. Because there are no arbitration rules regulating these insurance relations, issues of arbitration will likely be resolved by reference to the rules applicable to disputes arising from economic contracts.

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256. Economic Contract Law, art. 49, provides that parties who do not accept arbitrators' awards may bring a lawsuit within 15 days from the date of the award.

257. Law of the People's Republic of China on Civil Procedure (For Trial Implementation), adopted by the 22nd Session of the Standing Committee of the Fifth National People's Congress on Mar. 8, 1982, art. 193, *reprinted in* 2 LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 225, 227 (1984).

258. *See supra* note 250 and accompanying text.

259. Interim Regulations of the State Administration of Industry and Commerce on Contract Arbitration Procedure, May 15, 1980, *reprinted in* GUONEI JINGJI FAGUI XUANJI [SELECTIONS OF DOMESTIC ECONOMIC LAWS] 170-75 (1985).

260. *See supra* note 250.

261. Arbitration Regulations, *supra* note 250, art. 8.

## 2. Organizations and Jurisdictions

SAIC and its various governmental branches each set up an Arbitration Commission of Economic Contracts consisting of a director, one or two assistant directors and a few commissioners.<sup>262</sup> Each commission appoints several professional arbitrators and invites specialists to serve as interim arbitrators to handle cases.<sup>263</sup> An arbitral chamber, consisting of two arbitrators and one chief arbitrator appointed by the Commission, determines each case,<sup>264</sup> although a single arbitrator can arbitrate simple or small cases.<sup>265</sup> The law does not provide that parties may select arbitrators. Although parties may object to the appointment of the arbitrators, the arbitration institution determines whether such objections may stand. The arbitration chamber decides cases by majority vote.<sup>266</sup> Difficult cases may be referred to the Commission for determination.<sup>267</sup>

Jurisdiction is often provided in the arbitration clause in the insurance contract. Under the standard insurance contracts used by the People's Insurance Company, arbitration is usually to be held at the place of defendant or the place of the conclusion of the insurance contract or at the place of the insured subject matter.<sup>268</sup> These provisions conform to the Chinese arbitration rules currently in effect.<sup>269</sup>

Arbitration commissions at different rankings of government also have differing jurisdictions. Ordinarily, arbitration commissions of counties, small cities or districts in large cities have jurisdiction over most contractual disputes,<sup>270</sup> and higher-level arbitration commissions handle disputes involving values over 500,000 yuan or having unusual signifi-

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262. *Id.*, art. 14.

263. *Id.*, art. 16.

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. For instance, under Product Liability Insurance, Property Insurance, Contractors All Risks Insurance, Erections All Risks Insurance, Investment Insurance, Ships Insurance, etc., the place of arbitration is the place of the defendant's domicile. Under Motor Vehicle Insurance, the place of arbitration is the place where the insured vehicle is located, and under Personal Accident Insurance, the place of arbitration is the place where the insurance policy is executed.

269. Arbitration Regulations, *supra* note 250, art. 9. Article 9 provides that arbitration of disputes resulting from economic contracts shall be generally within the jurisdiction of the arbitration authority where the contract is performed or concluded. The arbitration authority of the defendant may also have jurisdiction if to do otherwise will lead to difficulties in execution.

270. *Id.*, art. 10.

cance.<sup>271</sup> Disputes involving interprovince transactions, between central government agencies or between the central government and the provinces, cities or autonomous regions and with disputed value over 10 million yuan are within the jurisdiction of arbitration commissions at the SAIC level.<sup>272</sup> Additionally, higher-level arbitration commissions may refer cases within their own jurisdiction to lower-level arbitration commissions and vice versa.<sup>273</sup>

Dispute settlement clauses in insurance contracts often provide the parties with the option of either bringing the lawsuit or commencing arbitration proceedings.<sup>274</sup> This choice is consistent with the provisions of the Economic Contract Law. In practice, a potential jurisdictional conflict could arise if one party were to bring an action in court and the other party were to initiate an arbitration proceeding, but Chinese law resolves this conflict by granting jurisdictional priority to the court.

### 3. Procedures, Judicial Review and Other Related Matters

To commence an arbitration proceeding, a party must file an application with the appropriate arbitration commission.<sup>275</sup> The application is the same as a complaint filed in a judicial proceeding and must set forth the names and addresses of the petitioner and respondent, the foundation of the complaint and remedies requested, and evidence and information about witnesses.<sup>276</sup> The arbitration commission must, within seven days, either accept the case or dismiss the case stating its reason for dismissal.<sup>277</sup> After deciding to hear a case, the arbitration commission must notify the respondent and furnish him with a copy of the application.<sup>278</sup> The respondent must file an answer containing relevant evidence within fifteen days.<sup>279</sup> The arbitrators will investigate the facts, verify the evidence and consider the application and answer.

As in cases of judicial proceeding, arbitrators are required to conduct mediation.<sup>280</sup> If the parties reach an agreement through mediation, the

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271. *Id.*

272. *Id.* Under article 10, disputes involving 500,000 yuan to 5,000,000 yuan are within the jurisdiction of cities directly led by provinces. Disputes involving 5,000,000 to 10,000,000 yuan are within the jurisdiction of the provinces and autonomous regions.

273. *Id.*, art. 11.

274. *See supra* text accompanying note 238.

275. Arbitration Regulations, *supra* note 250, art. 19.

276. *Id.*

277. *Id.*, art. 20.

278. *Id.*

279. *Id.*

280. *Id.*, art. 25. Mediation results in settlement in a majority of cases. Since the

case is considered settled. The arbitration commission will render a "mediation document" setting forth the details of the agreement reached and signed by all parties including arbitrators.<sup>281</sup> The mediation document is binding and enforceable by courts.<sup>282</sup>

If the parties fail to reach an accord through mediation,<sup>283</sup> the arbitration commission will then set up an arbitral chamber and hold a hearing.<sup>284</sup> At the hearing parties will have the opportunity to make oral presentations and argument and to object to the selection of arbitrators.<sup>285</sup> The arbitrators will make one more attempt to mediate and if the effort once more fails, the chamber will consider the case and issue the award.<sup>286</sup> Parties unable to accept the award may bring a lawsuit requesting judicial review within fifteen days from the receipt of the award.<sup>287</sup> The arbitration commission's award will become unassailable if no legal action is taken within the applicable statute of limitations.

### VIII. CONCLUSION

The Chinese insurance industry has expanded substantially in the past several years and will continue to grow at an similar pace. The current economic reform provides the basic social and economic basis for such growth. The new economic policy, in effect since 1979, has reformed substantially the economic relations between the state and enterprises. Most state appropriations have been replaced by repayable, interest-bearing loans,<sup>288</sup> and enterprises have began to assume independent economic status. The state no longer serves as the ultimate insurer which renders free budgetary appropriation to compensate for loss or damage suffered by enterprises. Maintaining basic insurance to prevent interruption of production and guarantee orderly business development has be-

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establishment of the current arbitration system in September 1983 until November 1985, arbitration institutions have heard 65,000 cases. 70% of these cases were settled through mediation. *Woguo Jingji Hetong Zhongcai Gongzu Huoyu (Arbitration Activities of Economic Contract are Active in Our Country)*, People's Daily, Jan. 12, 1986, at 1.

281. Arbitration Regulations, *supra* note 250, arts. 26, 27.

282. *Id.*, art. 35.

283. *Id.*, art. 30.

284. *Id.*

285. *Id.*, art. 31.

286. *Id.*

287. *Id.*, art. 33.

288. Interim Regulations of the State Planning Commission, the Ministry of Finance and People's Construction Bank of China Concerning Replacing All Capital Construction Appropriation with Bank Loans, Dec. 14, 1984, *reprinted in THE STATE COUNCIL BULLETIN*, Feb. 10, 1986, at 71-77.

come a fundamental responsibility of each enterprise.

China's new economic policy has led to the emergence of a private business sector employing over 17 million people within the socialist economy.<sup>289</sup> These private businesses do not have direct financial support from the state and most of them bear unlimited liability under current Chinese law.<sup>290</sup> The availability of insurance furnishes the basic assurance and predictability promoting the normal operation of these private businesses.

Finally, international insurance has been an important source of foreign exchange for the PRC. Even during the ten-year Cultural Revolution,<sup>291</sup> the Chinese international insurance industry remained in operation. The current open-door policy has substantially increased Chinese international commercial exchanges with foreign nations. The growth of Chinese foreign economic relations, on the one hand, has increased the demand for foreign currency and has intensified the need for further development of the insurance industry, yet it has also created increased business opportunities and markets for Chinese insurance business.

The growth of insurance likely will lead to further development of Chinese insurance law. This development will increase predictability and assurance for Chinese economic cooperation with foreign nations.

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289. *Woguo Jiang Jixu Fazhan Geti Jingji (Our Country Will Continue to Develop Private Business)*, People's Daily, Jan. 23, 1983, at 1.

290. Civil Code, arts. 26-35.

291. The Cultural Revolution refers to the 10-year period from 1966 to 1976 when China was thrown into unprecedented civil and economic turmoil. It was started by Mao Zedong, the late Chinese leader, and allegedly targeted capitalists inside the Chinese Communist Party. But it soon got out of control and turned into a national disaster. The Culture Revolution officially ended in 1976 shortly after the death of Mao.

