

Notice of China Insurance Regulatory Commission on Printing and Distributing the Opinions on Regulating the Bylaws of Insurance Companies
(No.57 [2008] of the CIRC)

All insurance companies and insurance asset management companies:

To regulate the contents of the bylaws of insurance companies and make them perfect the governance structure, this Commission has formulated the Opinions on Regulating the Bylaws of Insurance Companies, which are hereby printed and distributed to you. You are to earnestly implement them in light of your actual situation.

China Insurance Regulatory Commission
July 8, 2008

Opinions on Regulating the Bylaws of Insurance Companies

The bylaws of an insurance company are an important document with legal force which is to regulate the organization and behaviors of the company and stipulate the rights and duties of the company and its shareholders, directors, supervisors and managers. They are the systematic basis for regulating the corporate governance structure of an insurance company. To promote the legal operation of insurance companies, strengthen supervision over the bylaws of insurance companies, regulate the contents of bylaws and specify the procedures for formulating and amending bylaws, we hereby put forward the following opinions in accordance with the Insurance Law of the People's Republic of China, the Company Law of the People's Republic of China and other relevant laws, administrative regulations and supervisory provisions:

I. Basic Contents

The bylaws of an insurance company shall expressly stipulate the following issues, and the contents thereof shall satisfy the requirements of laws, administrative regulations and supervisory provisions.

a. Basic issues

The following issues stipulated in the bylaws of an insurance company shall be 100% consistent with the contents stipulated in the administrative license of the company:

1. name and domicile;
2. registered capital and operating period;
3. scope of business;
4. legal representative;
5. form of organization;
6. the document number of the approval of its opening and the date of issuance of the business license (unless the bylaws are submitted for approval before opening business);
7. promoters (a list of promoters shall be made to keep the detailed information about the promoters, including the full name, number of shares subscribed by and share-holding proportion of each promoter. If a promoter has transferred all shares held in the company, he/it shall still remain in the list with a note made thereon); and
8. shareholding structure (a shareholding structure table shall be made to keep detailed information about the share holding situation, including the total number of shares, and the full name, number of shares and share-holding proportion of each shareholder).

Any transfer of shares shall be stated in the remark of the table, including the number of the shares transferred, the party buying the shares, the time of transfer, and the approval document number of the CIRC or the number of the document filed by the insurance company for archival purposes.

A shareholder who has transferred out all shares held shall be removed from the table, but the shareholding record of the shareholder shall be saved in the remark of the table.

If the company has been listed, the shareholding structure table shall state the shareholding situation of all tradable shareholders with trading restrictions, including the full name, number of shares, proportion of shares and lockup period of tradable shares under trading restrictions of each shareholder.

If the shareholding structure table bears too much information, the table may be attached to the bylaws as an annex.

If the list of promoters and the shareholding structure table is completely identical with each other in terms of contents, the two may be combined into one.

b. Shareholders and share rules

1. Rights and obligations of shareholders. The bylaws shall clearly specify the rights and obligations of shareholders, and, when necessary, the conditions and ways for exercising such rights shall be clearly specified.

If the promoters' agreement, the shareholders' contribution agreement or other shareholders' agreement has special stipulations on the rights and obligations of shareholders, it is necessary to amend the relevant clauses of the bylaws accordingly or note such special provisions in the bylaws. The bylaws shall declare that the bylaws shall prevail where there is any inconsistency between any agreement and the bylaws.

The bylaws shall stipulate that where the company's solvency fails to reach the supervisory requirements, the principal shareholders of the company shall support the company in improving its solvency.

2. Share rules. The bylaws shall stipulate the procedures and power limits for issuing new shares, repurchasing shares, transferring shares and pledging shares.

The bylaws of a non-listed company shall stipulate that a shareholder shall, when transferring or pledging the shares held in the company, notify the company of the relevant situation in a timely manner.

The bylaws shall stipulate that a shareholder shall, when the shares held by him/it in the company is involved in any litigation or arbitration process, notify the company in a timely manner, and the bylaws shall stipulate the ways and time limit for the notification as well. The company shall notify other shareholders of the relevant situation.

If the company has set forth that shareholders have the preemptive right to buy the shares transferred, the bylaws shall stipulate the way for exercising the preemptive right in details.

3. Declaration of affiliated shareholders. The bylaws shall stipulate that a shareholder holding 5% or more shares in the company shall make a report to the company when it/he becomes affiliated with another shareholder holding 5% or more shares in the company. The bylaws shall also stipulate the procedures and ways for making such report.

c. Organizational institutions and the duties thereof

The bylaws shall specify the organizational institutions and the powers thereof in accordance with the requirements of laws, administrative regulations and supervisory provisions.

1. Shareholders' meeting. The bylaws shall clearly stipulate the powers of the shareholders' meeting.

The bylaws shall prohibit the shareholders' meeting from authorizing its legitimate powers to the board of directors or any other institution or individual to exercise.

2. Board of directors. The bylaws shall clearly stipulate the composition of the board of directors, including the number of executive directors, non-executive directors and independent directors, respectively. The number of members of the board of directors shall be a specific, definite one instead of an interval number.

The bylaws shall stipulate the powers of the board of directors, including the scope of issues subject to the deliberation and resolution of the board of directors. When investment or asset trading issues are involved, a specific line or proportion shall be set.

The bylaws shall specify the ways for the board of directors to authorize any other institution of the company to exercise its powers and the scope of such powers. The bylaws shall prohibit the board of directors from authorizing its statutory powers in a too broad sense or in a permanent way to any other institution or individual of the company to exercise.

An insurance company may, in light of the supervisory provisions and its actual needs, stipulate in the bylaws that there may be special committees under the board of directors, and may determine the name, composition and main functions and duties of each special committee.

3. Board of supervisors. The bylaws shall stipulate the composition and powers of the board of supervisors. The proportion of employee representatives in the board of supervisors shall be in line with the provisions of the Company Law.

The number of members of the board of supervisors shall be a specific, definite one instead of an interval number.

4. Managers. The bylaws shall stipulate the composition and powers of the managers.

If the company has set both the post of chief executive officer and the post of general manager, the bylaws shall specify their respective powers and the way the person holding the post is determined. The provisions set out by the bylaws on the chief executive officer may not go against laws, administrative regulations and supervisory provisions.

5. Legal representative. The bylaws shall set out the specific powers of the legal representative, the requirements on performing such powers and the ways they are exercised when the legal representative fails to perform or is incapable of performing them.

6. The bylaws shall stipulate the power to deliberate and the way to decide such issues as asset trading, big investments, external guarantee, important business contracts and big affiliated transactions, etc.

d. Appointment, dismissal, powers and duties of directors, supervisors and senior managers

1. Directors and the chairman of the board of directors. The bylaws shall set down the conditions for holding the post of directors, the procedures for appointing or dismissing a director, and the powers and duties of directors in accordance with the supervisory requirements. The bylaws shall specify the special powers, rights and duties of independent directors.

Insurance companies are encouraged to elect directors by accumulative voting.

The bylaws shall specify the powers of the chairman of the board of directors. If the company has set any vice chairman, the bylaws shall specify the specific number of vice chairman.

The bylaws shall stipulate the way in which the powers of the chairman of the board of directors should be exercised when the chairman fails to perform or is incapable of performing them. If the company has more than one vice chairman, the bylaws shall make clear the succession sequence and the way for determining one to perform the said powers.

The bylaws may not present any provision like: the chairman of the board of directors may exercise the powers of the board of directors on behalf of the board.

The bylaws shall state that when the negative votes and the affirmative votes are equal among the board of directors, the chairman of the board of directors has no right to cast another vote.

2. Supervisors and the chairman of the board of supervisors. The bylaws shall set out the conditions for holding the post of supervisors, the procedures for appointing or dismissing a supervisor, and the powers and duties of supervisors.

The bylaws shall stipulate the way in which the powers and duties of the chairman of the board of supervisors should be exercised when the chairman fails to perform or is incapable of performing them.

3. Senior managers. The bylaws shall stipulate the scope of senior managers, the conditions for holding the post of senior managers and the procedures for appointing or dismissing a senior manager in accordance with the requirements of laws, administrative regulations and supervisory provisions.

e. Major rules of procedures

1. The bylaws shall set out general rules of procedures for the general meeting of shareholders, the board of directors and the board of supervisors, or separate rules of procedures and attach them to the bylaws as annexes.

2. The rules of procedures shall cover the convening, bill-proposing and noticing, holding and presiding of meetings, voting, resolution-making, safekeeping of meeting files, and reporting of resolutions, etc.

The rules of procedures for the general meeting of shareholders and the board of directors shall be drafted by the board of directors and subject to the approval of the general meeting of shareholders.

The rules of procedures for the board of supervisors shall be drafted by the board of supervisors and subject to the approval of the general meeting of shareholders.

3. The rules of procedures for the board of directors shall meet the requirements set down in the Guidelines for the Operation of the Board of Directors of Insurance Companies.

The rules of procedures for the general meeting of shareholders and the board of supervisors shall be set down in accordance with the Guidelines for the Operation of the Board of Directors of Insurance Companies by analogy.

f. Financial and accounting rules

1. An insurance company shall set down in the bylaws the major financial and accounting rules in accordance with the relevant state laws, administrative regulations and rules, including accounting year, accounting report and profit distribution, etc.

The bylaws shall stipulate that the company is not allowed to distribute profits to shareholders when the company's solvency fails to reach the supervisory requirements.

2. An insurance company shall set down in the bylaws the major issues, such as the withdrawal, payment and operation of various guaranty funds, funds of insurance guarantee and liability reserve funds, in accordance with the relevant state laws, administrative regulations and rules.

3. The bylaws shall stipulate the procedures for hiring and dismissing an accounting firm as well as the deliberative powers thereon.

g. Other rules.

1. The bylaws of an insurance company shall make it clear that the insurance company may not provide any forms of financial aids for any director, supervisor or senior manager to buy the shares of the company.
2. The bylaws shall set principles in general on affiliated transactions, information disclosure, internal control, regulation-compliance and internal auditing, etc.
3. The bylaws shall set down provisions on the split, merger, dissolution and liquidation of the company. If the company operates life insurance business, the bylaws may not contain any cause of dissolution beyond the legal circumstances.
4. The bylaws shall state the measures for making notifications and announcements.

II. Formulation and Amendment of Bylaws

a. Formulation

An insurance company shall formulate the bylaws according to the following procedures when it is established:

1. the institution founding the company drafts the draft of bylaws;
2. the draft is deliberated and voted at the general meeting of incorporation of the company;
3. the applicant submits the bylaws adopted at the general meeting of incorporation as one of the application materials for opening business to the CIRC for examination and approval;
4. the institution founding the company amends the bylaws according to the examination opinions of the CIRC, and, if the amended bylaws satisfy the relevant provisions, the CIRC shall give a reply according to law; and
5. the final bylaws of the company shall be those approved by the CIRC through the reply.

b. Amendment

1. In the case of any of the following circumstances, the company shall hold a general meeting of shareholders within three months to amend the bylaws:

- (1) the bylaws go against the relevant provisions of the Company Law, the Insurance Law or other laws, administrative regulations or supervisory provisions after the said law, regulations or provisions are amended;
 - (2) the basic issues or the relevant rights, duties, powers or rules of procedures as stipulated in the bylaws change;
- or
- (3) other circumstances requiring the amendment of the bylaws.

2. The bylaws shall be amended by the following procedures:

- (1) a shareholder or institution with the power to issue proposals presents a proposal on amending the bylaws to the general meeting of shareholders;
- (2) the amendment proposal is voted on at the general meeting of shareholders, and the resolution shall be adopted by 2/3 or more of the voting right held by shareholders present at the meeting;
- (3) the company files an application for approving the amendment with the CIRC;
- (4) the company amends the bylaws according to the examination opinions of the CIRC, if the amended bylaws satisfy the relevant provisions, the CIRC shall give a reply according to law, and the final bylaws of the company shall be those approved by the CIRC through the reply; and
- (5) the company handles registration of changes at the organ handling company registrations.

3. Amendment record. An insurance company shall list in tabular form the formulation and amendments of the bylaws in front of the text of the bylaws, including the time when each amendment resolution is made, the name of the meeting at which each resolution is made and the number of the corresponding approval document issued by the CIRC.

III. Examination and Approval & Registration of Bylaws

The CIRC shall examine and approve the bylaws of insurance companies in accordance with the Insurance Law, the Provisions on the Administration of Insurance Companies, the Rules of the China Insurance Regulatory Commission for the Implementation of Administrative Licensing Matters and other relevant laws, administrative regulations and supervisory provisions.

a. Application materials

The general meeting of shareholders of an insurance company shall, within 10 workdays after adopting a resolution on amending the bylaws of the company, submit the following materials in triplicate to the CIRC for approval:

1. an application for amending the bylaws of the company
2. the resolution adopted by the general meeting of shareholders on amending the bylaws, the contents of which shall cover:
 - (1) the time, place and presiding person of the meeting, and a list of the directors, supervisors and senior managers present at the meeting as non-voting members;
 - (2) a list of the shareholders attending the meeting, and the number of shares held by each of them;
 - (3) the total number of shares with voting right held by the shareholders attending the meeting, and the proportion of that number against the total shares of the company;
 - (4) the voting result; and
 - (5) the signature of the shareholders attending the meeting, or if there are too many shareholders, the signature of the presiding person of the meeting shall be made, provided that he shall be responsible for the authenticity of the meeting and the voting result.
3. An explanation on the amendment of the bylaws, including the amended contents and the reasons for making the amendment. If only a few contents are amended, the amended contents shall be listed in the explanation item by item; otherwise, a list shall be separately made to check the new ones with the old ones and the amended contents shall be listed item by item.
4. The bylaws before and after amendment and the electronic versions thereof.
5. Annex of the bylaws. If any annex of the bylaws is amended, the company shall also make an explanation on the amendment.

The CIRC may, in the process of examining the bylaws, ask the company to submit a legal opinion of a lawyer on the regulation-compliance of the bylaws.

b. Handling of matters subject to advanced approval and matters of record involved in the amendment of bylaws

1. Matters subject to advanced approval and matters of record include: the company's name, domicile, form of organization, registered capital, change of scope of business, split or merger, and change of shareholders which is required to be subject to examination and approval or put on records.
2. If the bylaws are amended due to any matter subject to advanced approval or any matter of record, an application for amending the bylaws may be filed simultaneously.
3. If any matter subject to advanced approval is amended in the bylaws without advanced approval, the reply to the amendment shall not be taken as a basis for claiming that the matter has been approved, and the amendment concerning this matter shall be invalid.

c. Effectiveness and registration of bylaws

1. The bylaws of an insurance company shall not become effective until they are approved by the CIRC.
2. An insurance company shall, after its bylaws are approved by the CIRC, handle the registration of changes at the organ handling company registrations in a timely manner.

IV. Miscellaneous

1. The board of directors of an insurance company shall make sure that the bylaws of the company are observed in the company and undertake the regulation-compliance of the contents of the bylaws and the procedures for amending the bylaws.
2. If the bylaws of an insurance company fail to be amended as required within a prescribed time limit or the bylaws submitted to the CIRC obviously go against laws, administrative regulations or supervisory provisions or have more omissions, the CIRC will criticize in public the chairman of the board of directors, the secretary of the board of directors and other relevant chiefs of the company.
3. Where any insurance company illegally changes the bylaws or provides false application materials for amending the bylaws, the CIRC shall subject the company and the directly liable person to legal liabilities in accordance with the relevant laws, administrative regulations and supervisory provisions.
4. These Opinions apply to all insurance companies and insurance asset management companies established in China according to law. Where there are other provisions on exclusively state-owned insurance companies and foreign-funded insurance companies in laws and administrative regulations, such provisions shall apply.

These Opinions shall come into force on October 1, 2008.