

# KIRKLAND ALERT

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## New Rules Impact Private Fund Advisers Managing Chinese Insurance Capital

While Chinese insurance companies have been active in making commitments to private investment funds recently, several new regulations imposed on the insurance sector by the Chinese government may slow the trend, and private fund managers may wish to reevaluate the regulatory and ongoing compliance burdens associated with managing Chinese insurance capital.

Most notably, new reporting requirements recently imposed by Chinese insurance regulators require private fund managers that have Chinese insurance companies among their investors to report extensive, and potentially sensitive, information to Chinese government authorities.<sup>1</sup>

In March 2018, the Insurance Asset Management Association of China (“IAMAC”), an industry self-regulatory organization in the People’s Republic of China, started requiring “investment institutions” that make equity investments with Chinese insurance capital — including any private fund manager that manages Chinese insurance capital through a fund structure, joint venture or other structure — to report extensive information regarding the manager and its funds to the IAMAC.<sup>2</sup>

Information required from each such private fund manager includes:

- basic information about the manager, including assets under management, number of funds under management, registration status with the Asset Management Association of China — an industry self-regulatory association that regulates private fund managers in China — and any existing legal proceedings;
- the manager’s ownership structure, including names and ownership percentages, which, for certain fund managers, may be highly sensitive as it could effectively reveal internal governance arrangements, as well as ownership of incentive and fee stream allocations;
- information about the manager’s investment team, including the name and relevant experience of each key team member; and
- copies of internal policies on governance, decision-making, risk management and incentive and co-investment programs.

A private fund manager must also disclose, in respect of each private fund that has admitted Chinese insurance capital<sup>3</sup>:

- the identity and the capital contributions of each other investor in such fund; and

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- the identity, investment amount, date of investment and industry/sector of each portfolio investment made by the fund, both as of the time when the Chinese insurance company investor was admitted to the fund and subsequently on a quarterly and annual basis or upon the occurrence of material changes.

Non-disclosure is expressly permitted only under very limited circumstances (e.g., when explicitly mandated by applicable law or regulation, or when concerning national security or sensitive industries). A private fund manager would generally not be exempt from disclosure solely because of its preference to maintain privacy, investors' internal policies limiting disclosure, or confidentiality or non-disclosure agreements entered into with investors or portfolio companies in the normal course of business.

The IAMAC's extended reporting deadline was April 25, 2018, and included a requirement that each private fund manager submit a written certificate summarizing the completion status of each specific section of its online filing.<sup>4</sup>

The governmental regulator of Chinese insurance companies, formerly known as the China Insurance Regulatory Commission<sup>5</sup> ("CIRC"), indicated that it may conduct an inquiry into any private fund manager that fails to comply with the IAMAC's reporting rules and may even include such private fund manager on a "blacklist" whereby such manager is banned from providing asset management services to any Chinese insurance company for three years.

In addition to the IAMAC's new reporting regime, there have been a few other recent related regulatory developments that may impact Chinese insurance companies' investments into offshore private investment funds:

- ***New Governmental Approval Requirement.*** The *Administrative Measures for Outbound Investments by Enterprises* ("Circular 11") issued by the National Development and Reform Commission of China ("NDRC") and effective on March 1, 2018 requires that the NDRC approve any Chinese insurance company's investments in an offshore private investment fund. In particular, an investment in an offshore private fund "without any pre-identified investment targets" is now categorized as a "sensitive investment" under the NDRC outbound investment regulations and therefore subject to the NDRC's prior approval before such investment can be made. This additional governmental approval requirement may have the effect of delaying or preventing a Chinese insurance company's investment in an offshore investment fund.
- ***Prohibition of Related Financing Structure.*** On January 5, 2018, the CIRC and the State Administration of Foreign Exchange of China jointly issued the *Notice on Matters Related to the Regulation of Nei Bao Wai Dai Businesses Conducted by Insurance Institutions* ("Circular 5"). Circular 5 prohibits Chinese insurance companies from utilizing "onshore guarantee offshore financing," a structure that has been used by a few Chinese insurance companies to fund their offshore investments.

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- **Recent Integration of Regulatory Bodies.** On April 8, 2018, the CIRC merged with the former banking regulator. The new China Banking and Insurance Regulatory Commission is charged with regulating banks and insurance companies in an integrated manner to counter significant financial risks in China.

Taken together, these new measures and developments are indicative of the Chinese government's enhanced scrutiny over both the Chinese insurance industry in general and offshore investments by Chinese insurance companies in particular. As a result, private fund managers face a more challenging environment for attracting, securing and managing capital from Chinese insurance company investors, who are now confronted with a more burdensome and rapidly evolving regulatory regime.

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- <sup>1</sup> The information reporting is to be completed through an IAMAC web portal. Although the reported information will not be available to the general public, the IAMAC has indicated that it expects to share such information with other Chinese regulators.
  - <sup>2</sup> Although the IAMAC does not have direct regulatory authority over managers established outside of China, certain managers have nevertheless decided to comply with the reporting requirement because, among other things, failure to do so could impact (i) relationships with their Chinese insurance company investors, (ii) contractual obligations under the "Undertaking Letter" each non-Chinese manager is required to enter into with the China Insurance Regulatory Commission ("CIRC") at the time of a Chinese insurance company's investment (this letter usually includes obligation for the manager to provide additional information to CIRC), and (iii) potentially, the manager's other business interests in China.
  - <sup>3</sup> The reporting requirements on their face apply to all private funds managed by a manager, but certain managers have taken the position that only a private fund that has admitted a Chinese insurance company as an investor is subject to the reporting requirements.
  - <sup>4</sup> The IAMAC's initial reporting deadline was March 31, 2018; however, many foreign private fund managers were not able to compile all requisite information or complete the filing by the initial deadline. The IAMAC therefore extended the initial reporting deadline to April 25, 2018.
  - <sup>5</sup> As discussed below, on April 8, 2018, the China Banking and Insurance Regulatory Commission replaced CIRC as the regulator overseeing the Chinese insurance industry.
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