

## III. Regulated Industry

### (i) Regulators

#### 1. Financial Stability and Development Committee of the State Council

In November 2017, with the approval of the State Council, the Financial Stability and Development Committee of the State Council was established. As a body under the State Council for the deliberation and coordination of the major issues concerning financial stability, reform and development, the committee aims to implement the national financial decisions, review major plans for the reform and development of the financial sectors, and work on the major issues regarding financial regulation.

#### 2. People's Bank of China

The People's Bank of China ("PBC" or "PBOC") is the central bank of China and a component of the State Council. Under the leadership of the State Council, it is mainly responsible for formulating strategic plans for financial reform and development, drafting laws and administrative regulations, improving the operating rules of financial institutions, formulating and implementing monetary policies, preventing and resolving financial risks in an effort to maintain financial stability.

On 13 March 1979, with the approval of the State Council, the State Administration of Foreign Exchange ("SAFE") was established as a functional agency engaged in the management of foreign exchange. It is a national bureau under the centralized management of the PBOC. The main duties and responsibilities of the SAFE<sup>13</sup> are set out below:

- ※ To study and put forward policy suggestions in respect of the reform of the foreign exchange administration system as well as risk prevention and improvement of the balance of international payments; to evaluate policy options for gradually promoting RMB's convertibility under capital accounts, fostering and developing the foreign exchange market, and to make proposals to the PBOC for the formulation of its RMB exchange rate policy.
  
- ※ To participate in the drafting of relevant laws, regulations and ministry rules on foreign exchange administration, and to issue regulatory documents when discharging its duties;

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<sup>13</sup> Article 2 of the *Circular of the General Office of the State Council on the Issuance of Provisions on the Establishment of Institutions and Staffing of the Main Duties of the State Administration of Foreign Exchange* (Guo Ban Fa No.[2009]12) issued 1 March 2009.

- ※ To oversee the statistics and monitoring of the balance of payments and external credit and debt, publishing relevant information in accordance with regulations, and to undertake the related work concerning the monitoring of cross-border capital flows;
- ※ To be responsible for the supervision and management of the national foreign exchange market; to undertake the supervision and management of the settlement and sale of foreign exchange; to cultivate and develop the foreign exchange market;
- ※ To be legally responsible for the supervision and inspection of the authenticity and legality of the receipts and payments in foreign currencies made from and to current accounts; to be responsible for implementing foreign exchange administration of capital accounts; to continuously improve management in line with the capital accounts RMB convertibility progress; and to standardize the management of foreign exchange accounts at home and abroad;
- ※ To be responsible for the implementation of foreign exchange supervision and inspection according to law and to punish violations of foreign exchange regulations;
- ※ To undertake operations and management of national foreign exchange reserves, gold reserves and other foreign exchange assets;
- ※ To formulate plans and standards for the development of an IT-based foreign exchange administration, to standardize and organize its implementation, and to share regulatory information with relevant administrative departments according to law;
- ※ To participate in relevant international financial activities;
- ※ To undertake other matters assigned by the State Council and the PBOC.

Prior to the establishment of the former China Banking Regulatory Commission ("**CBRC**") and the former China Insurance Regulatory Commission ("**CIRC**"), the PBOC assumed the role of direct supervision of the Chinese banking and insurance sectors. Later, the former CIRC and then the former CBRC were set up, and the regulation mechanism of China's financial sectors was formed. On 18 March 2018, the National People's Congress published the *Institutional Reform Plan of the State Council* ("**Institutional Reform Plan**"), according to which the responsibilities of the former CBRC and the former CIRC in drafting important laws and regulations for the banking and insurance sectors and their duties to exercise prudent supervision were assigned to the PBOC.

### 3. China Banking and Insurance Regulatory Commission

At present, the CBIRC is responsible for regulating the banking and insurance sectors. As part of the Institutional Reform Plan, the former CBRC and the former CIRC were integrated into the CBIRC.

The main duties of the CBIRC are to supervise and manage the banking and insurance sectors in accordance with laws and regulations, protect the legitimate rights and interests of financial consumers, safeguard the legal and stable operation of the banking and insurance sectors, prevent and resolve financial risks, and maintain financial stability.

According to the *Regulations on Function Allocation, Institutions and Staffing of the China Banking and Insurance Regulatory Commission*<sup>14</sup>, the CBIRC has set up 26 internal bodies and a Communist Party Committee. A comparison of the internal bodies with those of the former CBRC and the former CIRC, as well as the responsibilities of the internal departments of the CBIRC, can be found in Annex 3 of this Guide.

Before the introduction of the Institutional Reform Plan, the former CBRC and the former CIRC were respectively the regulatory bodies for the banking sector and the insurance sector. The former CIRC was set up in November 1997 as the regulatory authority of all commercial insurance companies. Its administrative functions, authorized by the State Council, included supervising and administrating the national insurance market as well as maintaining the legal and stable operation of the insurance sector. The former CBRC was officially established on 28 April 2003, authorized to supervise and administer banks, financial asset management companies, trust investment companies and other deposit-based financial institutions in a unified manner. The setting up of CBRC showed that China had a segregated regulatory framework for its financial sectors, i.e. "One Bank Three Commissions".

On 8 April 2018, the CBIRC was officially established to bring banking and insurance regulators under one authority, i.e. the era of "One Bank Two Commissions"<sup>15</sup> started. This act of institutional reform was a clear sign of China's intention to align fragmented regulations spanning an increasingly large and complex financial sector. CBIRC's debut has been widely regarded as a positive

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<sup>14</sup> *Regulations on Function Allocation, Institutions and Staffing of the China Banking and Insurance Regulatory Commission*, enacted by the General Office of the Central Committee of the Communist Party of China and the General Office of the State Council on 13 November 2018.

<sup>15</sup> Before the adoption of the *Institutional Reform Plan*, China's financial sector was under the supervision of the PBOC, the China Securities Regulatory Commission ("CSRC"), the former CBRC and the former CIRC, known as "One Bank Three Commissions". After the adoption of the *Institutional Reform Plan*, the main regulatory authorities in China's financial sectors are the PBOC, the CSRC, and the CBIRC, known as "One Bank Two Commissions".

development that is particularly appropriate in China, given the entrenched linkages between insurers, banks and other financial institutions. The consolidation of regulations within a single body will help reduce any blurred lines of responsibility, overlapping supervisory areas and the exploitation of regulatory loopholes.

In summary, China's current regulatory system is led by the State Council Financial Stability and Development Committee, with the PBOC keeping the function of formulating important laws and regulations in the financial sectors, and the CBIRC acting as the leading regulatory body and its local counterparts covering the whole country. In addition to the supervision by governmental administrations and regulators, several industry self-regulatory organizations such as the China Banking Association, the IAMAC, and the Insurance Association of China also play an indispensable role in the careful supervision of the entire financial sector.

## **(ii) Laws and Regulations**

### **1. The core laws and regulations governing foreign investment in the banking sector are as follows:**

- (1) *The PRC Regulations on the Administration of Foreign Invested Banks*
- (2) *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Banks*
- (3) *Implementation Measures of the China Banking Regulatory Commission on the Administrative Licensing for Foreign Invested Banks*
- (4) *Implementation Measures of China Banking and Insurance Regulatory Commission on Administrative Licensing for Non-Bank Financial Institutions*

### **2. The core laws and regulations governing foreign investment in the insurance sector are as follows:**

- (1) *The PRC Regulations on the Administration of Foreign Invested Insurance Companies*<sup>16</sup>

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<sup>16</sup> *The PRC Regulations on the Administration of Foreign Invested Insurance Companies*, Decree of the State Council No. 336, enacted on 12 December 2001, amended by the *Decision of the State Council to amend Several Administrative Regulations*, Decree of the State Council No. 666, issued on 6 February 2016.

- (2) *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies*<sup>17</sup>
- (3) *Interim Provisions on the Administration of Insurance Asset Management Companies*<sup>18</sup>
- (4) *Notice of the China Banking and Insurance Regulatory Commission on Allowing Foreign Investors to Operate Insurance Agency Business in China*<sup>19</sup>

## IV. Foreign Investment in the Banking Sector

In China, four legal forms account for the bulk of foreign investments in the banking sector (hereinafter collectively referred to as "**foreign invested banks**")<sup>20</sup>, which are:

- (1) A wholly foreign-invested bank, which is a commercial bank solely established by a foreign bank or jointly established by a foreign bank and other foreign financial institutions;
- (2) A Sino-foreign joint venture bank, which is a bank jointly established by a foreign financial institution<sup>21</sup> and a Chinese company or enterprise;
- (3) A foreign bank's branch;
- (4) A representative office of a foreign bank.

In China, wholly foreign-invested banks, Sino-foreign joint venture banks and branches of foreign banks are collectively referred to as **foreign invested bank's business entities**. We will briefly introduce the requirements for the establishment of these three types of business entities and the criteria that the shareholders of wholly foreign-invested banks and Sino-foreign joint venture banks need to meet.

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<sup>17</sup> *Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies (2018)*, the former CIRC [2004] No. 4, issued on 13 May 2004, amended by the *Decision of the former CIRC on Amending Four Regulations including Rules for the Implementation of the PRC Regulations on the Administration of Foreign Invested Insurance Companies*, the former CIRC [2018] No. 4, issued by the former CIRC on 13 February 2018.

<sup>18</sup> *Interim Provisions on the Administration of Insurance Asset Management Companies (2011)*, the former CIRC [2004] No. 2, issued on 21 April 2004, amended by *Notice on Amending Relevant Rules of Interim Provisions on the Administration of Insurance Asset Management Companies*, the former CIRC [2011] No. 19, issued on 7 April 2011.

<sup>19</sup> *Notice of the China Banking and Insurance Regulatory Commission on Allowing Foreign Investors to Operate Insurance Agency Business in China*, CBIRC [2018] No. 30, issued on 19 June 2018.

<sup>20</sup> Article 2 of the *PRC Regulations on the Administration of Foreign Invested Banks*.

<sup>21</sup> A foreign financial institution referred to in these Regulations shall mean a financial institution that is registered outside the PRC and approved or licensed by the finance regulatory authority of the country or region where it resides.