

Comments on CIRC Administrative Regulations on the Informatization of Insurance Institutions (draft for comments)

October 30, 2015

Introduction

The American Chamber of Commerce in the People's Republic of China, The American Chamber of Commerce in Shanghai, The American Chamber of Commerce in South China, American Council of Life Insurers (ACL), American Insurance Association (AIA), BSA | The Software Alliance, Canada China Business Council (CCBC), Canadian Life and Health Insurance Association Inc. (CLHIA), Coalition of Services Industries (CSI), Communications and Information Network Association of Japan (CIAJ), Council of Insurance Agents & Brokers (CIAB), DIGITALEUROPE, European Services Forum (ESF), Information Technology Industry Council (ITI), Insurance Europe, Japan Business Machine and Information System Industries Association (JBMIA), Japan Electronics and Information Technology Industries Association (JEITA), Japan Chamber of Commerce and Industry in China (JCCIC), National Foreign Trade Council (NFTC), Property Casualty Insurers Association of America (PCI), Reinsurance Association of America (RAA), Semiconductor Industry Association (SIA), Software and Information Industry Association (SIIA), Telecommunications Industry Association (TIA), US-China Business Council (USCBC), US Chamber of Commerce (USCC), United States Council for International Business (USCIB), and United States Information Technology Office (USITO) and their member companies appreciate the opportunity to comment on the Regulations on the Informatization of Insurance Institutions (draft for comments) (the "Draft Informatization Regulations") affecting insurance institutions operating and/or engaging in business with China. We welcome the release by the China Insurance Regulatory Commission (CIRC) of the Draft Informatization Regulations for comments. Our organizations represent companies from North America, Europe and Asia and engage in insurance and other industry sectors in China, including the provision of informatization hardware and software to the insurance industry (both domestically- and foreign-invested insurance institutions). Among our members are both financial institutions and global technology and innovation leaders. These companies have made significant investments in China that have contributed greatly to China's economic and technological development over the past three decades.

Chinese companies have developed world class technologies and Chinese policymakers have an important role to play in informatization. Our organizations support China's desire to create a secure and reliable operating environment for insurance institutions, which should include efforts to employ secure products and solutions without interrupting the reliability of insurance products and services provided by insurance institutions to their customers. Events that disrupt the integrity of China's insurance infrastructure or impair the efficiency of insurance business operations not only impact the affected insurance institutions, but also undermine the confidence of consumers and investors, and threaten the stability of global financial systems. As a consequence, effectively addressing informatization concerns in the insurance sector is critical to maintaining public confidence in this industry which is essential to the financial security of the populace and the management of risks by businesses. While the focus of the Draft Informatization Regulations is on China, the growing size of Chinese insurance institutions, as reflected in the designation of Ping An Insurance (Group) Company of China, Ltd. by the Financial Stability Board (FSB) as one of only nine global systemically important insurers (G-SIIs), makes China's Draft Informatization Regulations a matter of global concern. We trust that this submission will help achieve those shared goals for secure

and reliable insurance products and services.

We therefore encourage CIRC and other relevant Chinese government departments to substantially revise the Draft Informatization Regulations to enable all insurance institutions operating in or doing business with China, or considering entry into China's insurance market, to choose secure and reliable informatization solutions from vendors anywhere in the world. We believe that any regulatory effort to restrict such choice in the name of national security is overbroad when applied to financial institutions, and that any effort to favor domestic vendors of hardware, software or encryption technology will risk compromising the security and reliability of the information systems. On a related note, the Chinese Government committed at the 2015 U.S.-China Strategic and Economic Dialogue "to ensure that such bank regulations [governing the commercial banking sector] will be nondiscriminatory, are not to impose nationality-based requirements, and are to be developed in a transparent manner."¹ Our members believe that this commitment with respect to commercial banking should be equally applicable to commercial insurance.

Indeed, consistent with our comments, President Xi Jinping and President Barack Obama during their meeting last month committed

"that generally applicable measures to enhance information and communication technology cybersecurity in commercial sector (ICT cybersecurity regulations) should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily."²

This issue has also been raised on many occasions in recent weeks with European leaders and EU senior officials calling for deeper dialogues and close cooperation in areas of ICT.³

Global Informatization Environment

We believe that several crucial issues should be recognized at the outset before a decision is made to elevate the current Guidelines for the Management of the Informatization Work of Insurance Companies (for trial implementation) to the status of administrative regulations and the Draft Informatization Regulations are finalized.

First, informatization generally and cybersecurity in particular are global issues which require globally consistent and interoperable solutions to be truly effective. Insurance institutions need information technology systems that are widely available and interoperable with other international system to provide their products and services to a broad range of customers. Such systems tend to be the most secure and reliable because they are the most used and most widely tested. Cybersecurity risks transcend national borders, so countries – through their governments, multilateral associations of supervisors, and private sector institutions – need to work together to develop safeguards that protect the integrity of domestic as well as global markets in an integrated global economy.

¹ <http://www.treasury.gov/press-center/press-releases/Pages/jl0094.aspx>.

² <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-us-china-economic-relations>.

³ [EU-China Summit recommendations on 29 June 2015 \(§ 9 & 11\)](#) and EU-China High Level Economic and Trade Dialogue in September 2005 in Beijing dedicated to Digital economy. See as well <https://www.gov.uk/government/news/uk-china-joint-statement-2015>.

To that end, we urge CIRC to avoid the risks associated with exclusive reliance on localized solutions, prescriptive technologies and restrictions on data flows.

In particular, the Draft Informatization Regulations indicate that insurance institutions should give priority to the procurement of indigenous hardware and software in Article 53 and to domestic encryption technologies in Article 54. By excluding foreign technology that may be the most secure, this approach is likely to result in less secure digitalized operations. Moreover, focusing only on domestic technologies raises interoperability issues, putting Chinese insurance companies at a disadvantage as they increasingly compete globally. Leveraging internationally accepted approaches to encryption – as in the United Kingdom and many other countries - minimizes conflicts across systems in different countries and ensures that client data is as well protected as possible. Such approach is consistent with the Encryption Best Practices developed by the World Semiconductor Council (WSC) adopted by China and five other countries on September 27, 2012. The WSC Best Practices allow regulation of commercial encryption technologies only in narrow and justifiable circumstances and where such regulation is based on international standards, is non-discriminatory, and does not favor specific technologies or create unnecessary burdens.

In the same vein, we see no need for the proposed requirement in Article 21 para. 2 of the Draft Informatization Regulations for use or ownership rights to source code with respect to outsourced development of information systems as few if any technology providers will be prepared to share their source code lest their own security be compromised. So long as insurance institutions are allowed the latitude to devise their own solutions and negotiate their own technology contracts without being required to comply with mandatory provisions, they will be able to negotiate adequate protections for the security of their information. Such negotiations take place worldwide in the insurance industry.

Cybersecurity risks and the technologies that mitigate such risks shift faster than regulations and standards can respond. As a consequence, policies that mandate specific technology requirements, detailed technical reviews or other procedures by regulators will be reactive to the environment and to adversaries that seek to take advantage of vulnerabilities. In addition, written regulations and prescriptive standards (notably the requirements in Articles 22, 41 and 54) become quickly outdated as cyber risks and the technology to address them evolve and create an obstacle to protecting insurance institutions and their clients. As recognized by the approaches taken by policymakers in a number of markets, effective regulations go beyond assessing whether an institution is **compliant** with a particular standard and instead ensure that sufficient people, processes, and technology are in place to **manage risks**.

Second, because insurance institutions, both Chinese and non-Chinese, are increasingly international in nature with business interests, including reinsurance for example, and investors in different parts of the world, data localization policies are increasingly incompatible with the growth of the industry. We believe that mandatory data localization is both expensive and impractical. So long as data security measures are taken, we believe that the data localization requirement specified in Articles 8(8) and 31 of the Draft Informatization Regulations is unnecessary and unwise.

General Principles for Enhancing IT Security in the Insurance Sector

Given the global and constantly evolving nature of technology in the insurance industry, we encourage China to base its regulations on the following high-level principles for workable and effective informatization regulations.

- **Transparency** in the policymaking process – together with **sufficient time for consultation** with industry on proposed approaches – will help address and resolve complex and challenging policy issues. We encourage CIRC to release its revised regulations in draft form in sufficient time prior to implementation so that insurance institutions, technology companies, their member associations and other interested parties will have an opportunity to provide formal feedback.
- Given the growing and evolving nature of cyber threats, regulations need to be **flexible and adaptable** to confront emerging threats while enabling companies to continue to innovate. It is important for regulators to avoid a “one size fits all” approach in developing IT security guidelines in the insurance industry. Policies should be flexible to accommodate different approaches to address cybersecurity risks. Insurance institutions face unique risks and cybersecurity threats as well as risks and threats common to the financial services sector as a whole, so regulations, guidelines and standards should allow insurance institution to choose specific technology solutions to meet their unique needs and ensure the integrity of global financial networks. Regulations that call for specific technologies will never be able to keep pace with innovation and the creation of new solutions driven by the needs of the market and the evolution of threats to security faced by the insurance industry. Regulators should not limit the options that are available for insurance institutions to protect themselves and their clients.
- Take a **risk-based approach to examining whole systems** for cyber threats to foster a prudential regulatory framework that can be more efficient and more effective than focusing on individual functions or processes. Insurance institutions make significant investments to protect client data and to limit disruption and preserve the integrity of data processing from those who seek to attack corporate networks. To do so, international insurance institutions leverage global platforms to limit the number of attack surfaces to ensure the highest level of security possible for their customers. This enables them to maximize system security, efficiency and interoperability across their operations around the world. In policy terms, for example, requiring the use of specific localized technologies or processes - without regard to industry best practices and already established global platforms and investments - runs counter to international norms, which base technology decisions on holistic assessments of risk. This approach applies to Chinese insurance institutions as well as they go out to engage in business in other parts of the world.
- Reliance on **global information security standards** based on consensus industry processes will ensure that the best practices from around the world are incorporated and that security requirements will be regularly updated to respond to evolving threats.
- Foster **market-based approaches** that achieve desirable outcomes. Regulators in major economies work closely with insurance institutions, vendors, and their counterparts in other markets to help achieve those goals sustainably and mindful of both the local and international context. To do so, they use a successful approach of empowering insurance institutions to implement risk-based cybersecurity policies and protections that are specific to their individual circumstances. Network security is an ongoing process, so effective informatization policies should enable insurance institutions to respond rapidly to constantly changing threats and use the most

appropriate and innovative technologies for their unique business circumstances. Coordination between regulators and insurance institutions creates an environment that meets the needs of all sides.

Several regulatory authorities around the world have incorporated these principles in their domestic insurance technology requirements.

Conclusion

The best approach for developing technology policies is open and transparent formulation and implementation, which allows stakeholders to provide helpful input to regulators. This helps ensure that the resulting regulations are effective, compatible with global norms, and unlikely to cause unintended consequences. In particular, effective prudential frameworks and policies must allow companies to conduct their own risk assessments and determine what technology best meets their security needs.

As a consequence, we respectfully urge CIRC to reconsider the Draft Informatization Regulations in accordance with internationally accepted principles that insurance regulators elsewhere have used as described above to ensure that information systems in the insurance industry in China and elsewhere are as secure as possible.

—END—

Local Contacts:

American Chamber of Commerce in the People's Republic of China, The

Contact Person: Ian Curtiss, Senior Manager for Policy Initiatives

Phone: +8610-8519-0854

E-mail: icurtiss@amchamchina.org

American Chamber of Commerce in Shanghai, The

Contact Person: Veomayoury Baccam, Director, Government Relations

Phone: +8621-6279-8066

E-mail: v.baccam@amcham-shanghai.org

American Chamber of Commerce in South China, The

Contact Person: Harley Seyedin, President, Government Relations

Phone: +8620-8335-1476

E-mail: h.seyedin@amcham-southchina.org

American Council of Life Insurers (ACLI)

Contact Person: Lester Ross, Counsel

Phone: +8610-5901-6588

E-mail: lester.ross@wilmerhale.com

American Insurance Association (AIA)

Contact Person: Stephen Simchak, Director of International Affairs

Phone: +1-202-828-7100

E-mail: ssimchak@aiadc.org

BSA | The Software Alliance

Contact Person: Jared Ragland, Director, Policy - APAC
Phone: +65-6262-9609
E-mail: jaredr@bsa.org

Canada China Business Council (CCBC)

Contact Person: Travis Joern, Managing Director
Phone: +8621-6236-6370 x 808
E-mail: travis@ccbc.com.cn

Canadian Life and Health Insurance Association Inc. (CLHIA)

Contact Person: Susan Murray, Vice-President, Government and International Relations
Phone: +1-613-230-0031
E-mail: smurray@clhia.ca

Coalition of Services Industries (CSI)

Contact Person: Peter Allgeier, President
Phone: +1-202-289-7460
E-mail: allgeier@uscsi.org

Communications and Information Network Association of Japan (CIAJ)

Contact Person: Toshiharu Kiyomoto, Vice President, International Affairs
Phone: +81-3-5403-9353
E-mail: kiyomoto.toshih@ciaj.or.jp

Council of Insurance Agents & Brokers (CIAB)

Contact Person: Joel Kopperud, Vice President of Government Affairs
Phone: +1-202-783-4400
E-mail: joel.kopperud@ciab.com

DIGITALEUROPE

Contact Person: Diane Mievis, Senior Policy Manager
Phone: +32-2-609-53-10
E-mail: diane.mievis@digitaleurope.org

European Services Forum (ESF)

Contact Person: Pascal Kerneis, Managing Director
Phone: +32-2-275-75-14
Fax: +32-2-230-61-68
E-mail: p.kerneis@esf.be

Insurance Europe

Contact Person: Jesus Cisneros, Policy Advisor, International Affairs & Reinsurance
Phone: +32-2-894-30-31
E-mail: cisneros@insuranceeurope.eu

Japan Business Machine and Information System Industries Association (JBMIA)

Contact Person: Naoki Shibuya, Director
Phone: +81-3-6809-5187
E-mail: shibuya.naoki@jbmia.or.jp

Japan Electronics and Information Technology Industries Association (JEITA)

Contact Person: Akiko Harada, Deputy Manager, International Affairs Department

Phone: +81-3-5218-1060

E-mail: ak-harada@jeita.or.jp

Japan Chamber of Commerce and Industry in China, The (JCCIC)

Contact Person: Katsuya Igarashi, Secretary General

Phone: +8610-6513-0829

E-mail: igarashi@postbj.net

National Foreign Trade Council (NFTC)

Contact: Bill Reinsch, President

Phone: +1-202-887-0278

E-mail: breinsch@nftc.org

Property Casualty Insurers Association of America (PCI)

Contact Person: David Snyder, Vice President, International Policy

Phone: +1-202-349-7463

E-mail: david.snyder@pciaa.net

Reinsurance Association of America (RAA)

Contact Person: Karalee Morell, Vice President and Assistant General Counsel

Phone: +1-202-638-3690

E-mail: morell@reinsurance.org

US-China Business Council (USCBC)

Contact Person: Jake Laband, Manager, Business Advisory Services

Phone: +8610-6592-0727

Fax: +8610-6512-5854

E-mail: jlaband@uschina.org.cn

US Chamber of Commerce (USCC)

Contact Person: Jocelyn Chan, Director for China

Phone: +1-202-463-5451

E-mail: jchan@uschamber.com

United States Council for International Business (USCIB)

Contact Person: Rob Mulligan, Senior Vice President, Policy and Government Affairs

Phone: +1-202-682-7375

E-mail: rmulligan@uscib.org

USITO Associations (ITI, SIA, SIIA, TIA, USITO)

Contact Person: Xiyun Gu, Policy Manager

Phone: +86-156-1896-5695

Fax: +8610-8429-9075

Email: xgu@usito.org