

## **The Function and Regulation of Credit Insurance in China**

Since the issuance of *Several Opinions of the State Council on Accelerating the Development of the Modern Insurance Service Industry* on August 10, 2014, credit insurance has been increasingly applied in insurance practice. However, “credit insurance” is different from “warranty” in Chinese Guarantee Law, and there is a heated discussion on the nature of a credit insurance.

In the Chinese P2P or the other transactions, credit insurance is often used to protect creditors’ benefits. In this paper, we are going to discuss the points creditors need to be aware of.

### **1. Legal compliance**

According to Article 95 and Article 77 of the *Insurance Law of the People’s Republic of China* (hereinafter the “*PRC Insurance Law*”), credit insurance is one of the products of an insurance company; furthermore, the establishment of an insurance company shall conduct the registration formalities with the administrative authority for industry and commerce by presenting the insurance business license approved by CIRC (China Insurance Regulatory Commission), and obtain a business license.

**Therefore, investors can log in to National Enterprise Credit Information Publicity System on the Internet to make sure if an insurance company has the qualification to operate credit insurance business.**

In addition, according to Article 135 of the *PRC Insurance Law*, credit insurance belongs to “other insurance products” and its premium and insurance clause should be submitted to the insurance regulatory authority for the record rather than approval.

**Thus, investors can log in to the official website of CIRC, Insurance Association of China or the insurance company to search the recorded policy clauses and ensure its legal compliance.**

### **2. The validity of an insurance contract after modifying the insurance clauses**

In some situations, with requirements of policyholder, the policyholder and insurance company may reach an agreement to modify the insurance clauses in a credit insurance that have already been recorded with CIRC. Will such modifications have any influence on the validity of an insurance

contract?

According to Article 2 of *Circular on Issues Concerning the Implementation of the Administrative Measures for the Insurance Terms and Premium Rates of Property Insurance Companies* [Bao Jian Fa [2010] No.43] issued by CIRC on May 11, 2012, “If an insurance company makes modifications to the insurance liabilities in the insurance clauses that have already been filed for record or makes adjustments to the premium rates beyond the scope filed for record, it shall report such modifications and adjustments to the CIRC for record-filing again. Modifications to the insurance liabilities shall refer to increase, reduction, or exemption of the liabilities of the insurer, the policy holders, the insured, or the rights of the beneficiaries, including but not limited to modifications made to the clauses on insurance liabilities and liability exemption through insurance clauses and insurance policies.” Based on the stipulation above, modifying insurance clauses without authorization may lead to violations of regulations.

In contrast, according to Article 52 of *Contract Law of the People's Republic of China*, “A contract shall be null and void under any of the following circumstances: ……the mandatory provisions of the laws and administrative laws are violated.” Since circulars regulated by CIRC is neither a law nor an administrative law, a violation of such circular will not make the insurance contract invalid. In addition, CIRC also replied this issue in the *Reply of China Insurance Regulatory Commission on Record Filing of Insurance Clauses* [Bao Jian Ban Han [2002] No. 106], “Whether insurance clauses are put on records at financial supervision and regulation department or not will not influence the validity of signed insurance contracts.”

**Above all, modifying insurance clauses may lead to administrative penalty from CIRC, while it will not affect the validity of the insurance contract.**

### **3. Coverage and exclusions**

#### **3.1 Coverage and exclusions in an insurance contract**

Insurance liability refers to insurer’s liability for compensation of economic losses stipulated in the insurance contract. Coverage refers to the scope of the insured events, which is stipulated within the scope of the insurance contract. For risk-aversion or commercial considerations, insurer may set some stipulations in insurance clauses to avoid liability for some losses of the insured object within the

coverage, these stipulations are called exclusions.

**Policyholders should pay attention to the coverage and exclusions in an insurance contract.**

First, policyholders should study the insurance liabilities. If a loss not within the coverage, insurer will not compensate for it. Second, policyholders should focus on the exclusions in insurance clauses, which are listed as a separate chapter and in bold form. It's vital to figure out if the exclusions stipulated in an insurance product will affect the creditors' benefits or not.

**3.2 Statutory exclusions**

According to *PRC Insurance Law*, the insurer shall not be liable for losses when:

3.2.1 the degree of peril is greatly increased due to the assignment of the subject insured;

3.2.2 the degree of peril of the subject insured is greatly increased during the term of the contract, the insured didn't notify the insurer timely in accordance with the contract;

3.2.3 the insured waives the right to indemnity against the third party after the occurrence of an insured incident and before the insurer pays the indemnity;

3.2.4 the policyholder fails to perform his obligation of making an honest disclosure intentionally or out of gross negligence, thereby materially affecting the insurer making a decision whether or not to provide the insurance or whether or not to increase the premium rate, the insurer rescinded the insurance contract;

3.2.5 after being aware of the occurrence of an incident covered by insurance, the policyholder, insured or beneficiary fails to notify the insurer in a timely manner intentionally or out of gross negligence, making it difficult to ascertain the nature, cause, extent of the loss, etc., of the incident covered by insurance (the undeterminable part );

3.2.6 the policyholder or the insured fabricates the occurrence of an incident covered by insurance on purpose;

3.2.7 the policyholder, the insured or the beneficiary, following the occurrence of an incident covered by insurance, fabricates the cause of the occurrence of the such incident or exaggerates the extent of the loss with forged or altered relevant evidence, information or other proofs.

**Upon occurrence of any of the foregoing situation, insurance company may refuse payment fully or partly. Therefore, it's vital for creditors to focus on statutory exclusions.**

#### **4. Solvency of an insurance company**

*According to PRC Insurance Law*, Article 68 provides a minimum amount of net asset for establishing an insurance company. Article 97, Article 100 and Article 103 require an insurance company to ensure the solvency through drawing a guarantee fund, contributing to an insurance protection fund and arranging reinsurance.

An insurance company can also strengthen solvency by increasing capital, issuing subordinated debt or capital supplement debt, etc. In practice, there were no precedents that an insurance company went into bankruptcy liquidation in PRC.

**As a consequence, the solvency of an insurance company is usually guaranteed.**

#### **5. Conclusion**

During the process of transaction, the significant issue is to focus on the quality of the project itself and control the risk. In addition, relying on the economic strength of an insurance company, as a measure to enhance credit, credit insurance is also a good choice.