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China to Boost Regulatory and Antitrust Scrutiny of Financial Services Sector

China's National People's Congress (***NPC***) confirmed plans last week to merge China's three antitrust authorities into a single agency under a new government body called the State Administration for Market Supervision. At the same time, the NPC also confirmed plans to merge China's banking and insurance regulators, the China Banking Regulatory Commission (***CBRC***) and the China Insurance Regulatory Commission (***CIRC***), into a new agency called the China Banking and Insurance Regulatory Commission (***CBIRC***). The NPC approved both proposals on 17 March and the CBIRC was formed on 21 March.

The proposal to merge China's banking and insurance regulators is part of broader institutional reforms currently underway in this sector in China. The policy functions of CBRC and CIRC will be transferred to the People's Bank of China (***PBOC***), China's central bank, which until now has exercised certain fiduciary duties over banking institutions in China. China's securities regulator, the China Securities Regulatory Commission, will remain separate for the time being.

China's financial services sector has been undergoing significant reforms in recent years. Late last year, the Chinese government relaxed restrictions of foreign investment in financial services companies in China. For example, in 2020, the cap of foreign ownership in Chinese life insurance companies will increase to 51%, thereby allowing foreign investors to hold a majority interest, and this cap is expected to be lifted completely in 2022.

The latest move to merge the banking and insurance regulators into the CBIRC is one of the most significant reforms for the regulation of financial services in recent years. The reforms highlight the Chinese government's determination to strengthen oversight over China's increasingly sophisticated and acquisitive financial institutions. The new agency's powers include supervising China's banking and insurance sectors, maintaining financial stability, ensuring compliance, preventing systematic financial risks, and generally protecting consumers.

Full details of the reforms have yet to be published. In the meantime, we highlight some of the likely implications of the reforms for the financial services sector.

Strengthened oversight over financial services. The combination of CBRC and CIRC will streamline and strengthen the Chinese government's supervision of the financial services sector and is expected to lead to rationalized and more effective financial sector regulation in China. The reforms seek to resolve at times overlapping jurisdiction and regulatory gaps, which have emerged as financial institutions begin to offer products and services over which both authorities may have jurisdiction. In addition, granting increased policy-making powers to the PBOC will expand its remit and limit the discretion that CIRC and CBRC each had and increase transparency in law enforcement.

Increased focus on financial stability and financial risk management. The reforms come at a time of heightened scrutiny of the performance and management of financial institutions. Recent examples include Anbang Insurance Group, which sold high-yield short-term insurance products to fund its significant overseas investments. Its extensive foreign debt incurred and risk exposure ultimately led to the CIRC's decision, in February 2018, to take over management of Anbang with a view to ensuring the company's solvency and, generally, protecting China's continued financial stability.

Robust enforcer. Mr. Guo Shuqing, former chairman of CBRC, has been appointed CBIRC's first chairman, and the former deputy chairmen of CBRC and CIRC have all been appointed deputy chairmen of the new agency. Further details of the new agency, including internal structure and staff arrangements, will be determined shortly. Mr. Guo is a veteran senior regulator in the financial services sector, having led China's central bank, securities, banking and foreign exchange regulators. He is a rigorous pro-reformist and is known for robust financial regulation policies. Under Mr. Guo's leadership, the new watchdog is expected to pursue reforms actively and to boost regulation of China's financial services sector.

General focus on financial services could intensify antitrust enforcement in the sector. It is not uncommon in China to see antitrust investigations in sectors that are under broader regulatory scrutiny. In recent years, the Chinese antitrust authorities have increasingly focused on anti-competitive conduct in the financial services sector as overall sectoral scrutiny has intensified. In 2017, the National Development and Reform Commission (NDRC) investigated certain banks for alleged manipulation and price-fixing in relation to trading in certain bonds, so-called supranational, sub-sovereign and agency market or SSAs, following similar alleged investigations in the EU and litigation in the US. In the same year, a senior NDRC official indicated that the authority had also expanded its antitrust probe into the Internet-based fintech sector and had conducted inspections of certain fintech companies in China. In previous years, the Chinese antitrust authorities have also conducted several investigations involving companies active in the financial services sector covering areas including price-fixing, charging excessive fees and tying. With the Chinese government's increased focus on the financial services sector, it is expected that antitrust enforcement will similarly pick up.

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