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## Use of social media by insurance companies in Asia: Opportunities and challenges

By Paul Chen and Margaret A. Keane

With the huge amount of communications going on in the digital world today and the blurring of distinction between personal and business encounters, the issue of legal compliance can crop up very quickly if companies are not careful. Mr Paul Chen and Ms Margaret Keane, both from Dewey & LeBoeuf LLP, spell out what insurers need to do to protect themselves adequately in this new media platform so as to leverage best the huge potential possible.

The advent of social media hubs such as Facebook and Twitter, coupled with mobile technology which makes the digital world accessible to the masses virtually anywhere at any time, has created a powerful and dynamic (and potentially dangerous) medium of communication. A message can be broadcast to the world and, if the communication strikes the right chord, the message can “go viral” in lighting speed as thousands of people interact with each other in real-time to form a virtual community.

### Consistency is key

These virtual cyberspace communities can be a powerful marketing and sales tool for insurance companies. If used appropriately, social media can complement and enhance traditional marketing and sales efforts.

One of the potential benefits of social media is the ability of an insurance company to market its brand to a target audience who will then share the key branding messages with others with similar interests – with almost no incremental cost. As an executive of a leading technology company said: “A brand is no longer what we tell the consumer it is – it is what consumers tell each other it is.”

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However, there are also many business and legal issues to consider when an insurance company, its agents or its employees use social media. Consistency is key from a business standpoint.

The insurer must manage multiple interactions with consumers in real time while maintaining a consistent message across the company's marketing efforts. Actively participating in social media can enhance a company's reputation when, for example, the company quickly responds to consumer complaints and concerns.

However, this positive customer experience can quickly turn for the worse if the company, its agents or its employees send inappropriate messages (including employees complaining about the company in blogs or twitter messages) or mistreat consumers in social media interactions. Due to the dynamic nature of social media, negative news about the company can be quickly disseminated to the virtual community.

### **Legal compliance issues**

Use of social media by an insurance company and its personnel can also pose legal compliance challenges.

Insurance companies should consider whether its proposed social media activities comply with a particular jurisdiction's telecommunications/internet laws, insurance regulations relating to market conduct (including advertising and "know your customer" rules) and data privacy laws.

For insurance companies operating in multiple jurisdictions in Asia, legal compliance is even more challenging due to different laws in each jurisdiction (many of which have not yet been fully developed to address social media issues) and the fact that electronic communications originating in one jurisdiction can easily cross into another jurisdiction in which an insurance company operates.

The following are examples of potential legal compliance issues in select jurisdictions.

### **Telecommunications/Internet laws**

In China, designated categories of internet content may be censored and foreign parties may be restricted from operating certain internet businesses.

Since the recent use of social media to criticise and disrupt several government administrations in the Middle East and Xinjiang Province in China, the Chinese Government has increased its efforts to examine potential new policies to regulate the use of social media within China.

While it is unlikely under current Chinese laws and policies that generic messages relating to insurance would fall directly under a censored category, Chinese regulators have disabled access to certain social media sites in the past, such as Facebook, Twitter, Fanfou and Youku during the July 2009 Urumqi riots and have censored messages containing certain restricted words. Facebook, Twitter and similar foreign social media sites are still blocked in China.

These restrictions could cause inadvertent disruptions in social media communications for business purposes. For a foreign insurance company (excluding its authorised China incorporated subsidiary) to use social media communications to promote its products directly to Chinese users, there is also a question as to whether unauthorised insurance sales activities have occurred within China.

In addition, given the uncertainty of future regulations concerning social media in China, it may be prudent for insurance companies to monitor or restrict the use of social media by its agents and employees during business hours to ensure that the company does not become liable for posting inappropriate internet content by its personnel.

In addition, several insurance companies in the United States have been using on-line games to raise brand awareness to potential customers. A foreign insurance company (including its China incorporated subsidiary), however, may not be able to directly operate such an on-line gaming platform in China due to licensing restrictions applicable to non-Chinese individuals and entities.

### **Market conduct concerns**

In Hong Kong, market conduct is overseen by the Insurance Authority of the Hong Kong Government through the Office of the Commissioner of Insurance and the Hong Kong Federation of Insurers, a self-regulatory body. The Hong Kong Federation of Insurers (HKFI) is mandated by the Hong Kong Insurance Companies Ordinance to set forth and enforce a Code of Conduct applicable to insurers and intermediaries.

In general, Hong Kong market conduct regulations require that insurers and their agents conduct their marketing and sales honestly and fairly for the public interest. Neither the Hong Kong Insurance Companies Ordinance nor the HKFI Code of Conduct directly addresses potential issues in connection with the use of social media.

We note, however, that the Hong Kong Government is considering overhauling its insurance regulatory structure by establishing a new insurance regulator independent of the government that would be the sole authority in the regulation of insurance in Hong Kong. This could result in new market conduct regulations in the future.

The HKFI Code of Conduct sets forth the general principle that insurers and agents “in the course of public relations activities” should “promote and enhance (and should not damage) the insurance industry’s reputation and standing...” Questions abound as to how these broad principles will be applied and enforced in the context of social media where communications among insurers, agents and the general public are necessarily interactive and may stray from the initial message.

Unlike printed materials, television and radio advertisements, websites and even personal sales calls where messages can be scripted and largely controlled, messages transmitted through social media channels can be transformed and manipulated, sometimes through inadvertent or sloppy communications by the insurer or agents themselves. If not adequately monitored and addressed, these communications and conversation threads (all of which are in writing and accessible to scrutinizing regulators) may have the unintended result of providing misleading product information to a particular policyholder or the general public, ultimately harming the reputation of the insurer and leading to potential market conduct violations.

In addition, in some parts of Asia, marketing materials relating to certain insurance-linked investment products require prior approval from regulators. Accordingly, insurers must have policies and procedures to ensure consistent adherence to the approved message and the supervision of agent communications.

This article is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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One of the legal compliance challenges for insurers is to ensure that emails, text messages, blogs and twitters by employees and agents are accurate and comply with appropriate market conduct, advertising, data privacy and securities/investment laws and regulations. Unlike more discrete marketing and sales channels, social media interactions oftentimes blur the distinction between personal and business encounters so monitoring employees' and agents' communications during both business and off-business hours can be a difficult task. In addition, insurers may also need to ensure that its on-line customer complaints and responses are retained to comply with applicable record retention policies and regulations.

Again, consistency of message and consistent application of policies and procedures that govern social media communications are essential.

### **General guidelines**

Although particular laws relating to social media will be different in each Asia jurisdiction, many of the legal concepts and issues that insurance companies may face will be similar. At minimum, given the increasing use and importance of electronic communications (both fixed and mobile), an insurance company should develop an electronics communication/social media policy for each Asia jurisdiction in which it operates covering such topics as:

- the general use of social media by employees and agents both at work and outside of work;
- electronic communication guidelines to ensure compliance with market conduct and advertising regulations;
- which personnel are allowed to respond, and how to respond, to customer complaints or other criticisms on the internet to protect the company's reputation and brand image;
- electronic transmittal guidelines to protect customer data and to ensure compliance with data privacy laws;
- record retention guidelines, including maintaining a record of on-line customer complaints and responses, to comply with record keeping regulations; and
- in light of the pervasive use of mobile devices by employees and agents as a social/business communication tool, policies for securing mobile devices and reporting lost or stolen devices to protect against potential data security breaches.

In conclusion, becoming a social media participant will most likely require additional legal compliance and risk management considerations, especially after insurance regulators begin to address market conduct, data privacy and other issues arising from the increasing use of social media and other electronic forms of communication.

If an insurance company's social media strategy is well thought out and appropriate safeguards are put in place, there could potentially be tremendous value created in terms of brand recognition, product marketing and customer goodwill through continually interacting with existing and potential customers in ways that an insurance company simply could not do in more traditional static communication platforms.