

Reflections on Legal Risks in China's Online Insurance Based on the Principle of Utmost Good Faith

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Abstract: Although the online insurance has great influence on the transformation and innovation of traditional insurance, but its rapid development has also brought a series of risks. In order to prevent the new risks in the online insurance, based on the principle of utmost good faith in the Law of Insurance, this paper compares the relationship and difference between traditional insurance and online insurance in fulfilling the principle of utmost good faith and puts forward the special requirements of the principle of utmost good faith of online insurance. It also summarizes the legal risks of China's online insurance and proposes corresponding suggestions.

1. Introduction

Online insurance innovates, upgrades and transforms the traditional insurance industry with the help of network platforms and technologies. [1]The rise of online insurance has broken the traditional thinking mode of China's insurance industry, bringing the advantages of its efficiency, convenience and environment protection. This has had a profound impact on China's insurance industry. [2] However, online insurance has also brought networked risks to the insurance sector, making it more difficult for online insurance risk management. In 2015, the China Insurance Regulatory Commission issued the *Interim Measures for the Supervision of Online Insurance Businesses*, which to some extent made up for the lack of China's online insurance laws.[3] Subsequently, it also introduced some rules and regulations, but overall lacked legal support with low level and legal loopholes, which cannot effectively constrain and standardize online insurance disputes. In order to prevent the new risks in the online insurance, based on the principle of utmost good faith in the *Law of Insurance*, this paper compares the relationship and difference between traditional insurance and online insurance in fulfilling the principle of utmost good faith and puts forward the special requirements of the principle of utmost good faith of online insurance. It also summarizes the legal risks of China's online insurance and proposes corresponding suggestions.

2. Meaning and Main Content of the Principle of Utmost Good faith in China's Law of Insurance

2.1 Meaning of the Principle of Utmost Good Faith

The principle of utmost good faith can be used as a reference for China to formulate relevant laws. In China's *Contract Law*, the rights and obligations of both parties are required to be based on faith and credit, that is, to follow the principle of good faith. However, in China's *Law of Insurance*, there is a higher requirement for the faith and credit of the parties, and the word "utmost" is added on the basis of the principle of good faith, which is the principle of utmost good faith. As the insurance contract is to stipulate that the insurer will compensate for losses or insurance premiums for future insured accidents. The occurrence of insurance accidents is aleatory, so it is a typical aleatory contract. If in the process of insurance contract formulation it is not strictly constrained by the principle of good faith, it will increase the possibility of moral hazard or adverse selection of the parties. At the same time, when the insurance contract is concluded, the insurer has no knowledge of the insured, and can only ask the insured to fulfill the obligation of truthful disclosure by stipulating the principle of utmost good faith. In addition, as the insurance contract is attached, the

contractual clause of the insurance is formulated by the insurer and the insured can only accept or not, so the policy holder can only passively obey, accept or reject the insurer's conditions, which are classified as weak parties. *Law of Insurance* requires the insurer to effectively perform the obligation of disclosure, clarifies the terms of the insurance contract to the insured and cannot cause ambiguity or misleading by the principle of utmost good faith.

2.2 Main Content of the Principle of Utmost Good Faith

The main content of the principle of utmost good faith in insurance contracts includes two aspects: on the one hand, the requirements of the insured and on the other hand, the requirements of the insurer. Among them, the requirements for the insured include truthful disclosure and guaranteed obligations; the requirements for the insurer include the obligation to disclose and abstain as well as the estoppel.

3. Legal Risks in China's Online Insurance Based on the Principle of Utmost Good Faith

3.1 Legal Risks Arising from the Specificity of Electronic Policy

As policy holders have great differences in terms of education level and comprehension ability, the universal template provided by the insurer of online insurance should have higher requirements and if it cannot be understood by ordinary people, or there is ambiguity, legal risks will arise. [4] An electronic policy, like a traditional policy, is also a format contract. Whether the insurer properly interprets and explains its exemption clause is directly related to the legal effect of the exemption clause. If the disclaimer simply appears in the electronic policy and does not clearly explain to the insured, it will result in legal risks not fulfilling the obligation. In addition, how the insurer has already explained the obligation of the insurance exemption clause is more likely to cause legal risks. In addition, there is a big difference between online insurance and traditional insurance. It is legally difficult to determine whether the insurer is properly performing the obligation to disclose in the exemption clause.

3.2 Legal Risks Arising from the Unauthorized Operation of the Agent

China's *Law of Insurance* stipulates that "an insurance agent refers to a unit or individual that collects commissions from the insurer according to the entrustment of the insurer and handles the insurance business within the scope authorized by the insurer". [5] The insurance agent's agency right is limited to the insurer's authorization and the legal risk will be caused by the unauthorized operation. In online insurance, the insurance agent activates the online policy for the incurred beyond the authority without the consent of the policyholder or the insured's unknown circumstances. The insurance agent will read the exemption clause that should be read by the policyholder and click "agree to accept" directly after reading. In this kind of behavior, the agent apparently fails to perform the obligation of disclosure and exceeds the authority of the agent, which is prone to legal risks.

3.3 Legal Risks Caused by Unqualified Subjects of the Insured

When insuring, the insured must issue an offer to the insurer in the form of filling out the insurance policy. In online insurance, the filling and entry of insurance policies are operated on the webpage and the applicants need to fill in independently. According to China's *Law of Insurance*, the insured must have full capacity for civil conduct and the insured who does not have full civil capacity does not have the subject qualification. Due to the widespread popularity of Internet in China and the large number of online users at lower ages, online insurance will not have full civil capacity, so there will be corresponding legal risks.

3.4 Legal Risks Arising from the Third-party Network Platforms

3.4.1 Legal risks Arising from the Boastful Publicity of Third-party Network Platforms

In the era of information explosion, various information is flooding and overwhelming online. In

order to attract the attention of prospective customers, third-party insurance network platforms must have a bright spot in publicity. In the practice of online insurance, third-party platforms often exaggerate publicity or false promises, making the content of the promotion on the online platform and the content on the electronic policy different or even contradictory. Especially for the content of the disclaimer, if the content promoted on the online platform is inconsistent with the content on the electronic policy, it will lead to more serious consequences. In addition, if the insurer does not clearly define the division of responsibilities between the parties and the third-party network platform, when the third-party network platform makes exaggerated publicity and false promises, this legal risk will be transmitted to the insurer. The insurer shall clarify the relationship with the entrusted agent of the third-party platform, and constrain the corresponding behavior of the third-party platform according to the relevant requirements of *Law of Insurance* and in accordance with the standards of the insurance agent.

3.4.2 Legal Risks Arising from the Payment of Funds from Third-party Network Platforms

The security of fund payment has always been the most concerned issue in online transactions, and also the most worrying issue for online consumption. It is no exception for online insurance. Although the third-party payment platform represented by Alipay has been rapidly developed in China, many online platforms, including the online insurance platform, have violations of lacking third-party payment licenses. As the development of China's Online insurance has begun to take shape, there are more online insurance users, resulting in a large amount of insurance funds. Third-party platforms have not transferred to the insurer within a limited time after receiving the insurance premium, or there are legal risks such as illegal occupation and misappropriation. In addition, the security of the third-party platform payment system, whether the system has loopholes, whether there are phishing websites, will lead to legal risks of third-party network platform funds payment.

4. Enlightenment from the Improvement of the Principle Utmost Good Faith in China's Relevant Laws

4.1 Legal Risk Prevention for the Specificity of Electronic Policy

Based on the particularity of the electronic policy, the insurer shall, in the design of the electronic policy, adopt a certain method in accordance with the requirements of Article 11 of the Judicial Interpretation (II) of the Supreme People's Court, highlighting the exemption clause or the content requiring explanation. For example, add special symbols to the electronic policy for key marking, or use different colors, backgrounds, fonts to highlight the key points. At the same time, the insurance clauses, especially the exemption clauses, should be explained in the form of an annotated form in the electronic policy if the insurance terminology appears. The content of the explanation should be comprehensive, objective and specific and reach the standard that ordinary people can understand.

4.2 Legal Risk Prevention Caused by Agents

In online insurance, the problem of insurance agent's over-authorization is mainly related to the agent's quality and interest temptation. Therefore, the Chinese insurance industry association should strengthen the insurance agent's access system. It is better to set a specific target for online insurance agents into the standard and separate the traditional insurance agent from the online insurance agent, which also helps the regulatory agencies to carry out classified supervision. In addition, when the insurer conducts performance appraisal of online agents, it is urgent to introduce corresponding laws and regulations, focusing on combating the unauthorized actions of agents.

4.3 Legal Risk Prevention Caused by the Subject of the Insured

In response to such legal risks, online insurers can control the process, such as establishing a standardized and strict underwriting to avoid risks; when the insurance contract is established and effective, it still needs to adopt dynamic monitoring methods to prevent hidden risk. In addition, for

the online environment, insurers can use modern technology, such as speech, fingerprint and iris recognition to verify the identity of the insured and use big data to confirm whether the subject of the insured is qualified.

4.4 Legal Risk Prevention Caused by Third-party Network Platform

The third-party network platform can perform as agents for multiple insurers at the same time, which belongs to professional insurance agent. AS China's *Law of Insurance* lacks legal norms to clarify the legal relationship between the network platform as a professional insurance agent and the insurer, it will cause corresponding legal risks. In order to ensure that their rights and interests are not infringed, the insurance company shall clearly identify the ownership of the funds with the third-party network platform and sign the relevant agency contract, clarifying that the insurance premiums received by the third-party platform are owned by the insurance company, and shall not arbitrarily occupy and transfer. In addition, the insurer should enhance the risk awareness. If the agent cancels the agency relationship, issue a statement in time to avoid the risk caused by the agency problem.

4.5 Improving the Diversified Dispute Resolution Mechanism of Insurance Consumption

Firstly, a series of measures have been taken, such as further promoting the docking mechanism for insurance disputes. In accordance with the guidance of "coordination and guidance of the regulatory, construction platform of the industry, and active participation of the insurance organization", the industry mediation system and the organic connection and cooperation of litigation mediation will be further improved. By constructing a corresponding sharing mechanism, adopting the concept of stratified progressiveness to resolve insurance disputes, it is necessary to speed up the judicial interpretation of insurance law and the formulation of guiding cases, strengthen the guidance training for mediators and the establishment of financial guarantees, unify dispute charging standards and expand litigation docking mechanism, such as the coverage of the docking mechanism. Secondly, it is to build a network rights protection platform and channels of appeal. On the one hand, it is to set up relevant websites. By joining the government's popular heart network, it is necessary to open official microblogs, and set up an online rights protection platform. The company will urge the industry to receive hospitality, conscientiously implement the responsibility system, and announce specific complaint handling procedures and time to make the insurance consumers' rights protection channels more public. On the other hand, it is to implement network access and strive to achieve "one complaint, one place; one complaint, one satisfaction." Thirdly, it is to establish a relatively independent resolution agency to resolve insurance dispute. China should learn from foreign experience, establish a unified, independent, statutory insurance dispute resolution agency, set the procedure as a legal pre-procedure for litigation and arbitration, optimize the allocation of judicial resources as well as quickly resolve insurance disputes as a way to improve the level of rule of law in the online insurance industry.

5. Conclusion

With the advancement of network technology and the introduction of "Internet Plus", online insurance has developed rapidly, gaining a stage to show its talents. However, various types of risks cannot be ignored. In order to prevent new risks in the online insurance, this paper starts from the principle of utmost good faith in the *Law of Insurance* and needs to absorb and learn from the lessons and experiences of the past. It puts forward the special requirements of the principle of utmost good faith of online insurance. Due to the particularity of the electronic policy under the online environment, there are many legal risks with online characteristics in the performance of the insured's obligation to inform, the insurer's performance of the obligation to explain and the third-party platform. This paper believes that the prevention and control of legal risks should be strengthened from the design of electronic insurance, the standardization process on the Internet, the correct identification of the incurred, the identification of the relationship between the third party network platform as well as the insurer's agent and fund ownership issues.

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