

Legal Binding of Principle of Equilibrium in Insurance Law

Chi-Chou Yeh *

Abstract

By insurance's very nature, it is an economic system to distribute risk among risk pooling. Owing to the principle of equilibrium, the insurer should maintain the equilibrium between the premium and the risk so as to sustain the operation of insurance economic system.

Although there is no specific statute named as the principle of equilibrium in the Taiwan Insurance Act, the scholars and courts in Taiwan usually refer the principle of equilibrium in the the interpretation of Insurance Act, such as article 64 (duty of disclosure), article 59 and 60 (legal effects of rising hazard and duty of notification) and article 26 (the decrease of hazard).

Nevertheless, there are tremendous disparities in the economic position, professional knowledge and bargaining power between the insured and the insurer. In addition to the principle of equilibrium, Taiwan Insurance Act highly emphasizes the importance of insurance consumer protection (e.g. policyholder, the insured and beneficiary).

This paper proposes that regulations regarding the principle of equilibrium mentioned above should be the minimum of insurance consumers protection and be interpreted as unilaterally compulsory provisions because of the principle of equilibrium. According to section 1 of article 54 of Taiwan Insurance Act, if there is any insurance clause differed from the above regulations, it should be considered invalid.

As for the scope out of these regulations, it is improper to directly interpret the principle of equilibrium as a binding norm in order to prevent destroying the

* Professor, College of Law, National Chenchi University; Dr. iur of University of Freiburg im Breisgau, Germany.

E-mail: ccye@nccu.edu.tw

self-rule of private law and market mechanism. In the interpretation of insurance contracts (especially coverage), the principle of equilibrium can be regarded as one of the factors in explaining insurance contract clause. As a typically standard form contract, the ambiguity rule of insurance contract (i.e. section 2 of article 54 of Taiwan Insurance Act) should be placed in top priority for the interpretation of contract.

Keywords: Principle of Equilibrium, duty to disclose, increase or decrease of risk, Ambiguity Rule, Unilaterally Compulsory Provisions