

A Study on Insurance Broker's Duty: A Reexamination of Fiduciary Duty and Recent Amendments of Taiwan Insurance Law

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Abstract

This paper aims to comparatively analyze the duty of insurance broker in Anglo-American law and Taiwanese law, with the focus on recent modifications and controversies in Taiwan, and then proposes draft amendment for Taiwan insurance law. Taiwan modified insurance law in 2015 to declare insurance broker's duty of loyalty, the duty of care, and relevant duties. But such modification is still subject to suspicion. The analysis firstly explores the content of fiduciary duty, and then examines three critical issues, including insurance brokerage business, transferring of premium, as well as disclosure of commission and other benefits, and finally reorganizes the duty system of insurance broker. This paper argues that except for special circumstances the regular insurance brokerage is not sufficient to establish fiduciary relation. The duty of loyalty of Article 163 should be constrained to avoid conflict of interests, and is not equivalent to fiduciary duty. Also, transferring of premium by insurance broker does not create express trust or fiduciary relation. For the purpose of enhancing the protection of premium and relevant obligation, Taiwan may consider to modify insurance law to apply *mutatis mutandis* to the rules concerning trust property in trust law. The duty of providing a written analysis report as well as expressly advising the standard of remuneration shall be modified and remedies

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shall be added. For receiving contingent commission and other benefits, they are not sufficient to establish fiduciary duty, either. This study argues that an insurance broker may receive that benefit but have the duty to disclose it. Violation of this duty will generate liability of damage. However, an insurance broker can prove receiving that benefit is in accordance with general business custom to overrule that liability. In conclusion, this study finds that Anglo-American law is cautious with establishing duties of insurance broker, and this experience shall be considered for Taiwan, which seems to aggravate the duty of insurance broker.

Keywords: insurance broker, fiduciary duty, duty of care, duty of loyalty, contingent commission, trust, brokerage, interest conflict, special relation, disclosure