

Reconstruction of Insurable Interest in Life Insurance: A Perspective from Insurance Trust and Relevant Products

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Abstract

Given insurable interest is a fundamental principle in insurance law, whether it would be applied in life insurance is highly controversial. The American law's developments and responses to insurance trust, stranger-originated life insurance, and company-owned insurance, right trigger the three important perspectives of developments of insurable interest rule: liberalization of insurable interest, emphasis of substantial element, and reconsideration of insured's consent. For solving the issue of insurable interest in insurance trust, the U.S. begins to recognize that trustee also has insurable interest for the insured. However, with the cover of trust, the abuse of stranger-originated life insurance is even more aggravated. Thus, the U.S. law requires a bona fide transaction and a real intent for insured to be covered by insurance. The relationship between insurable interest and insured's consent can be further observed from the perspective of company-owned insurance. The majority of states requires both insurable interest and consent of insured, whereas the minority of states have different rules. Since Taiwan is considering the reform of insurable interest and insurance trust, developments in the U.S. are worthy of more attention. This paper analyzes the three perspectives of developments of the U.S., compares with the rules in relevant jurisdictions, and then reorganizes the insurable interest theory in Taiwan. We find that Common Law has significant developments in the content and

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consequence of insurable interest rule, and it is still an important mechanism to control moral hazard and relevant insurance products. For Taiwan, this paper justifies the insurable interest rule in life insurance and the current categories of insurable interest shall be modified. Meanwhile, a substantial element in insurable interest should be considered, and statutory insurable interest is presumed to satisfy such element. In addition, this paper will also provide suggestions for issues of group insurance, timing of insurable interest, and effect of a lack of insurable interest.

Keywords: insurable interest, life insurance, consent of insured, insurance trust, trustee, stranger-originated life insurance, company-owned insurance, statutory trust, moral hazard, economic interest