UNIVERSITY OF ESSEX **DISSERTATION**

SCHOOL OF LAW

LLM/MA IN: International Business and Commercial Law
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DISSERTATION TITLE The reform of the duty of Warranty and Utmost good faith under UK marine insurance and the enlightenment to Chinese Legislation – an analytical study

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2018-2019

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DISSERTATION

The reform of the duty of Warranty and Utmost good faith under UK marine insurance and the enlightenment to Chinese Legislation – an analytical study

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Registration Number (optional):1807601
Number of Words: 12124
Date Submitted: 11 September 2019

Introduction

On September 21, 2018, ‘The first round table conference on maritime rule of law and China Maritime Code BBS (2018)’ was held, focusing on Maritime Code of PRC (revised draft). This shows that China is starting to pay attention to the innovation of Marine insurance. As the developer of Marine Insurance, the UK made a series of modifications to Marine Insurance in Insurance Act 2015.This includes the two major insurance mechanisms, which are the warranty and the utmost good faith. Chinese Maritime Code Marine Insurance Chapter is based on the framework of British Marine Insurance Act 1906, which was adopted on November 7, 1992 and came into force on July 1, 1993. The reform of Marine insurance has been taken seriously by China. It is necessary to learn some changes from the Insurance Act 2015.

However, the common law system in Britain is fundamentally different from civil law system in mainland China. The rules for some details are very different. For example, Britain embodies the principle of utmost good faith in the form of legal provisions, and makes comprehensive provisions in the written form in the insurance law. China, on the other hand, takes the principle of utmost good faith as a principle and applies it in daily practice in a less clear way. Of course, although they are implemented in different ways, the basic requirements inherent in both are the same. Both parties stress that the parties to an insurance contract should have an honest and kind attitude when concluding a contract.

This paper will be divided into two parts. They are warranty and utmost good faith respectively. In their respective parts, there will be three parts of the analysis for each :(1) in-depth discussion of China in terms of these two systems and analyse what problems are existing.(2) review the reform history of Britain Insurance law and analyse the principles behind it; (3) discuss the aspects from which China can learn the insurance law of Britain.

The author aims to critically analyse the insurance law reform in the UK and bring some good ideas to the future reform in China.

1. Warranty

1.1. Chinese legislation on the Marine insurance warranty and its existing problems

The provisions of China's current law on maritime insurance warranty system mainly exist in the Maritime Code (MC) and “The interpretation provisions on certain issues concerning the trial of maritime insurance disputes” issued by the supreme people's court (The Interpretation). Although Marine insurance is a kind of insurance, but according to "Insurance law of the People's Republic of China" (" Insurance law ") Article 182,[1] Marine insurance applies Maritime Code. The provisions of the maritime insurance warranty system in the maritime law of China are embodied in Article 235, which recognizes the legal effect of the "warranty", and the "warranty" here is different from the way of undertaking a debt in the "warranty law" and "contract law" of China, but specifically refers to the "warranty" in the Marine Insurance contract. The article also stipulates what could happen when a violation of the warranty occur: the insured has the obligation to notify the insured in writing, and the insurer is enabled to end the contract.[2]

At the same time, clauses 6 to 8 in the above "Interpretation" are also relevant to the warranty.[3] Clauses 6 and 7 of the "interpretation" clearly provide that the insured shall be informed in writing of a breach of warranty .If the insured does not inform the insurer, the insurer has the right to terminate the contract .If the insurer has received notice at the time of payment of the indemnity, then the insurer shall not terminate the contract on the ground that the assured has breached the warranty. Article 8 stipulates that after the insurer receives the written notice from the insured, both parties shall modify the insurance conditions and increase the insurance premium together. If no agreement is reached,

[1] Insurance law of the People's Republic of China Article 182 stipulates: "the relevant provisions of the Maritime Code of the People's Republic of China shall apply to Marine insurance; if not, the relevant provisions of this law shall apply.
[2] Maritime Code Article 235: "in case of breach of the guarantee terms stipulated in the contract, the insured shall immediately notify the insurer in writing. Upon receipt of the notice, the insurer may terminate the contract or request modification of the underwriting conditions to increase the premium."
[3] The Interpretation Article 6: "The people's court shall support the insurer's request to terminate the insurance contract from the date of the breach of the warranty clause, on the ground that the insured has not immediately notified the insurer in writing of the breach of the warranty clause."
The Interpretation Article 7:"The people's court shall not support the insurer who, after receiving the written notice from the insured that he or she has violated the guarantee terms stipulated in the contract, still pays the insurance indemnity and requests the termination of the contract on the ground that the insured has violated the guarantee terms stipulated in the contract."
The Interpretation Article 8: "After the insurer receives the written notice from the insured for breach of the warranty terms stipulated in the contract, it fails to reach an agreement with the insured on the modification of underwriting conditions, increase of insurance premium and other matters, and the insurance contract is terminated on the date of breach of the warranty terms."

the contract of insurance is terminated naturally from the date on which the insured breaches the warranty .It can be seen that "Interpretation" is a supplement to article 235 of MC and a detailed provision for specific details. In addition, China has no other relevant legal provisions on the Marine insurance guarantee system. The existing law of China is too rough on the provisions of the maritime insurance guarantee system. Article 235 of MC and articles 6 to 8 of "Interpretation" do not make clear provisions on the definition, nature, type and violation of the warranty, etc. This makes the provisions of the current law of China on the warranty category too vague.

Frankly speaking, there are several problems with the China Marine insurance warranty under current system:

1. There is no clear definition for Warranty. The definition of warranty of China Marine insurance is not clear. Article 235 of MC only points out "warranty clauses stipulated in the contract", and there is no complete and clear description of the concept of warranty. The scope of use of the warranty is unclear and the concept and nature of the warranty have not been specified. This will lead to disputes in maritime practice about the distribution of interests and risks between the parties to an insurance contract.

2. Lack of legal provisions for implied warranties. According to article 235 of China MC, the guarantee in China maritime insurance must be mutually agreed by both parties. And that it is required to be written in the terms of the contract. This means that the maritime warranty in China only has the express warranty, and there are no relevant provisions on the implied warranty. It is only in section 47 of MC that the carrier's ship is required to be seaworthy.[4] MC has added in article 244 that the insurer shall not be liable for the loss caused by unseaworthiness of the ship.[5]

3. The provisions on the consequences of breach of warranty are not comprehensive. According to the interpretation of the above legal provisions, it can be known that in the Chinese Marine insurance field, when the insured breaches the warranty, the law gives the insurer the right to terminate the contract, whether or not the insured has informed the insurer. This right to terminate

[4] Maritime Code Article 47: "The carrier shall, before and at the time of the voyage, exercise due diligence to make the ship seaworthy, properly manned, equipped and furnished, and to make the holds, refrigerated and air-conditioned Spaces and other places where the goods are carried fit and secure for the receipt, carriage and custody of the goods."
[5] Maritime Code Article 244: "Unless otherwise stipulated in the contract, the insurer shall not be liable for the loss of the insured ship due to any of the following reasons :(1) the ship is not seaworthy at the time of sailing, except that the insured is not aware of it in the time insurance of the ship."

the contract is unconditional. The insurer may terminate the contract, whether or not the assured is at fault for the breach of warranty, whether or not the breach of warranty is related to the actual loss. This is a law that tends to protect the interests of insurers. This violates the principle of fairness of the law.

1.2. UK warranty background

There is no doubt that the UK leads the world in terms of the understanding and practice of Marine insurance law. Marine insurance warranty system is one of the most important systems of Britain as a maritime country with a long history. This system originated from the maritime practice of Britain in the 17th century. In the following two centuries, the Marine insurance law in Britain developed rapidly. It was not until the 1906 Marine insurance law (MIA1906) was promulgated in the 20th century that the warranty system of Marine insurance was clearly stipulated in the form of legislation for the first time. The warranty system of Marine insurance is an important basis for the development of British Marine economy and insurance industry, which is a key factor to help the market development in the past when navigation technology is backward and communication technology is poor.

In MIA1906, a very clear definition of warranty was given. This is written in article 33, paragraph 1:[6]

"A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts."

Whether looking back at history now or just from the point of the past time, the provision of the warranty in MIA1906 is of historic significance. As an important part of the Marine insurance contract, the warranty participates in the whole procedure of the Marine insurance contract.

Due to the immaturity of information communication and information asymmetry in the past, the insured can usually obtain some unbalanced benefits from insurance as an advantageous information holder. In order to protect and promote the insurance industry and the healthy development of the market, MIA1906 set up several situations that allow the insurance company to reject to pay for the

[6] MIA1906 Section 33 Nature of warranty

loss of the insured which was agreed in the insurance contract. The warranty system of Marine insurance is one of the most important. At the beginning of the establishment of this system, it was stipulated that once the assured violated the warranty, the insurer's liability would be discharged naturally, no matter whether the warranty content had any relationship with the risk or not, or whether the warranty content had any causal relationship with the actual loss or not. Even if the insured takes remedial measures, even if the accident occurs after the perfect remedy, the insurer's liability is still discharged naturally. This idea, which was completely centered on the warranty in the contract terms, provided great help to the British economic development and insurance market in the background of that time. But it is also very clear that there are some unreasonable aspects in the warranty provisions at that time. Such a provision leans too much towards the interests of the insurer. With the help of the law commission of England and the law commission of Scotland, the UK finally enacted the 2015 insurance law in 2015. The maritime warranty system was significantly altered in 2015 insurance law. Due to the original warranty system was the most common applied system and had a great influence on marine insurance in the world. This change had an important impact on the world's Marine insurance market and all countries. So how does the 2015 Insurance act address and solve the warranty issue in the 1906 Marine insurance act?

First, analysing the Marine insurance guarantee system under MIA1906 is quite important. It can be said that the warranty under MIA1906 is absolute and strict. This guarantee must be strictly adhered to whether or not it is important to the analysis of risk. At the moment when the insured breaches the relevant provisions of the warranty, the insurer's liability is automatically discharged. A breach of warranty cannot be remedied. The 1906 Marine insurance act was originally only used for Marine insurance. With the development of common law system, however, the relevant provisions of the 1906 Marine insurance act were able to be used in all insurance contracts.[7]

As for the warranty system stipulated in 1906 Marine insurance law, its main contents include the following aspects:

1. A warranty can be considered as a confirmation of the existing fact or a promise of the future. According to the definition of warranty in article 33, paragraph 1 of MIA1906, it can be seen that

[7] Law Commission, 'Insurance Contract Law: Business Disclosure, Warranties, Insurers' Remedies for Fraudulent Claims, and Late Payment', <https://www.lawcom.gov.uk/project/insurance-contract-law-business-disclosure-warranties-insurers-remedies-for-fraudulent-claims-and-late-payment/> accessed 22 July 2019

guaranty is composed of two forms. A warranty can be a confirmation that a fact in the past exists or does not exist. For example, the insured can promise that his ship has not had any major accidents in the past and that the ship is regularly maintained. The other type is a promise that something will or will not be done in the future. For example, the insured can guarantee that more than 20 crew members will be brought along during the sea transportation, or they will not stop at other ports during the transportation.

2. Warranties also include express and implied warranties. Paragraph 1 of article 35 of MIA1906 provides that an express warranty may be expressed in any language form in which the intent of the warranty can be inferred.[8] That is to say, the express warranty is not strictly limited to its form, but focusing on showing the intent of the warranty in writing. The other kind is implied warranties. Although implied warranty are not expressed in a written way, they should be confirmed in accordance with the generally accepted customs of society. The implied warranty in MIA1906 mainly includes seaworthiness guarantee, berth guarantee, legality guarantee and loading capacity guarantee.[9]

3. Guarantees must be strictly enforced. In accordance with the relevant provisions of article 33 (3) of MIA1906, an undertaking must be strictly complied with regardless of its effect on the risk. As long as the assured breaches the warranty, the insurer is exempted from insurance liability.MIA1906 to the provisions of the guarantee in this respect is to say: 1) No matter if there is a fault when the insured violating warranty. 2) Whether the violation of warranty will also affect the occurrence or judgment of risk. 3) And whether or not the violation of the warranty is related to the actual loss. 4) Or the insured before the loss occurred has remedied his warranty. As long as there is a violation of the warranty occur, the insurer will automatically be exempted from liability. For example, the insured answers yes to a number of commitments to factual confirmation. The answer to that question should be no if the insurer discovers it later on in the process. The insurer

[8] MIA1906 Section 35 Express warranties (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred. (2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy. (3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith.

[9] MIA1906 Chapter 7 Warranties, &c

may then be excused from liability, whether the answer has any effect on the loss or not, and even if the insured is not at fault for the wrong answer.[10]

4. According to article 33 (3) of MIA1906, the exemption of the insurer shall begin on the date of the breach of the warranty by the insured, but if the insurer's liability occurs before the breach of the warranty by the insured, it shall still be borne.[11] These are the rationalized details of the consequences of breaches of warranty. This provision, in essence, explains that the scope of the exemption from the insurer's liability relates only to the date on which the assured breached the warranty, not to the fact of causation or remedy.

5. As for remedial measures, article 34, paragraph 2, MIA1906 clearly provides relevant provisions.[12] As long as the warranty is broken, the assured cannot use the warranty has been remedied before the loss occurs as a defense to show that the warranty has actually been complied with. In short, if the assured breaches the warranty, all his actions after that have no legal effect. The insurer's liability will be discharged in any event.

6. In certain circumstances, the insured's breach of warranty may also be waived. Article 34 of MIA1906 provides:" ***(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law. (3) A breach of warranty may be waived by the insurer."***[13]

1.3. The problems and the defects of the warranty under MIA1906

The assurance system emerged from the practice of Marine insurance. At that time, under the objective conditions of backward navigation technology and underdeveloped information exchange, it can be said that the insured engaged in Marine transportation or trade is obviously more aware of the relevant risks and some important factors related to risks than the insurer. It can be considered that the guarantee at that time was a benign protection for the insurer under that background, and a

[10] Law Commission, 'Insurance Contract Law issues papers', Issue paper 2: Warranties, <https://www.lawcom.gov.uk/document/insurance-contract-law-issues-papers/> accessed 22 July 2019
[11] MIA1906 Section 33 Nature of warranty Paragraph 3
[12] MIA1906 Section 34 When breach of warranty excused Paragraph 2
[13] MIA1906 Section 34 When breach of warranty excused

reasonable and acceptable existence for the insured who was familiar with shipping. From the perspective of law, MIA1906 protects the insurer from some potential unfair influences in the formulation of insurance contracts. But as mentioned above, all of this can only reasonably exist in the context of the time. With the continuous and rapid development of science and technology and society, insurers can have various channels to learn various information, and they can exchange some necessary information with the insured efficiently. The development of this technology means that the insured are no longer on the side that was obviously disadvantaged in the middle ages. This means that the original Marine insurance guarantee system is quite unfair to the insured under the modern background. Too strict for the insured makes the interests of both sides of the insurance contract unbalanced. Put bluntly, the interest is more in the insurer's favour.MIA1906's guarantee mechanism was criticized by the Law commission. They argue that it is unfair and irresponsible not to judge the details when the insurer must strictly comply with irrelevant warranties and the insurer can simply waive liability even if the breach of warranty and loss have no causal relationship.[14]

As mentioned earlier, assurance consists of two types, namely confirmation of existing facts or a promise of future action. Confirmation of facts usually forms the basis of a contract. When entering into a contract, the insurer usually asks the insured some questions. Usually at the end of a contract, the insurer will require the insured to sign a number of warranties and to agree to the terms on which they form the basis of the contract. Because of these terms, these seemingly ordinary answers form the basis of a contract. This is very detrimental to the insured. Even if the insured does not intentionally wrong answer or even if the malicious made some not affect the risk of incorrect answer, the insurer can still from their liability, which is very adverse and unfair to the insured.

The warranty mechanism under MIA1906 is very insurer-protective. As long as the assured breaches the warranty in any form, regardless of the effect, the insurer may be relieved of liability for the loss by reason of the breach of the warranty. Strict performance of the warranty can be considered an important prerequisite. Only satisfied this premise, just can ask for compensation. In general, this is reasonable. But as mentioned earlier, there is no logic in not requiring guarantees that relate to risk,

[14] Law Commission, 'Insurance Law: Non-Disclosure and Breach of Warranty', <https://www.lawcom.gov.uk/project/insurance-law-non-disclosure-and-breach-of-warranty/> accessed 12 August 2019

or to actual losses. Even if the warranty is remedied before the loss, there is still no legal force that cannot be considered justified.

For example, *Unipac (Scotland) Ltd. V. Aegon Insurance*,[15] Unipac has just been merged and established for less than a year. However, when signing the Insurance contract, Unipac mistakenly claimed that they were the sole operator of the company and had been operating for a year. In subsequent fire claims, the insurer refused to pay on the grounds that Unipac had wrongly answered fact-finding questions about the contract. Unipac filed a lawsuit, claiming that it had provided a good-faith answer based on its own knowledge, but that there was no way to ensure that the answer was accurate. They argue that insurance companies should be exempt from liability only if their wrong answers are important details that change the risk. Unfortunately, Unipac's claim was rejected by the court. The court held that the basis of the contract was the spirit of freedom of contract. However, this result is not satisfactory. It is believed that most insured people do not know exactly what the basis of the contract is and what the warranty is when they sign a contract. Also, they cannot accurately understand the legal effect of these two words. It is an unreasonable existence that the basis of the contract can prevent the insured from obtaining the compensation due to some incorrect information unrelated to the risk. It is more likely a trap from the law.[16]

1.4. The reform of warranty in the Insurance Act 2015 (IA2015)

The defect of the warranty cannot be ignored any longer, and was pointed out by more and more people in the daily practice. On February 12, 2015, the British parliament finally passed the 2015 Insurance law, which came into effect in August 2016.The new insurance law does not completely reset the old warranty system, but makes reasonable modification based on the existing warranty system.

1. Remove the use of basis of the contract.

Section 6 of the consumer insurance act 2012 has set a precedent by abolishing the basis of contracts in consumer insurance contracts.[17] In 2015, the insurance law also abolished the basis of

[15] *Unipac (Scotland) Ltd. v. Aegon Insurance*, 1996, SLT 1197.
[16] Law Commission, 'Insurance Law: Non-Disclosure and Breach of Warranty', <https://www.lawcom.gov.uk/project/insurance-law-non-disclosure-and-breach-of-warranty/> accessed 12 August 2019
[17] Consumer Insurance Act 2012, Article 6 Warranties and representations: (1) This section applies to representations made by a consumer— (a) in connection with a proposed consumer insurance contract, or (b) in connection with a proposed

contracts in the other types of insurance contracts (non-consumer insurance contract).[18] Article 9 of the Insurance law 2015 provides relevant provisions. At this point, the trap of the English insurance contract - the basis of the contract has been completely abolished. According to article 9 of IA2015, it is clearly stipulated that some questions answered by the insured in the insurance contract shall be considered as statements under the obligation of fair representation, rather than a guarantee. At the same time, these answers cannot be translated into warranties by any contractual terms. A valid warranty should be specified in the terms of the contract.

2. The consequences of breach of warranty have been modified

IA2015 article 10 makes a very logical and effective change to the consequences of breach of warranty. It directly changed the consequences under MIA1906 by suspending the liability of the insurer until warranty is fixed. This becomes the result of a breach of warranty, instead of simply automatically exempting the insurer from liability. For the purpose of promoting the performance of the contract and protecting the insured, this provision may encourage the insured to complete the remedy as soon as possible after the breach of the warranty. This method is not only efficient but also meet the needs of modern society. When a warranty is breached, according to article 10 (1) of IA2015: after the insured breaches the warranty (whether express or implied), the insurer's insurance liability can no longer be legally exempted.[19] This clause prevents the automatic termination of a contract when a warranty is breached. From a legal perspective, this provision corresponds to the second sentence of article 33, paragraph 3 MIA1906.[20] It should be noted that according to the provisions of paragraph 2 of article 10 of IA2015, the insurer shall not be liable for the loss occurring before the completion of

variation to a consumer insurance contract. (2) Such a representation is not capable of being converted into a warranty by means of any provision of the consumer insurance contract (or of the terms of the variation), or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise).

[18] Insurance Act 2015, Article 9 Warranties and representations: (1) This section applies to representations made by the insured in connection with—(a) a proposed non-consumer insurance contract, or (b) a proposed variation to a non-consumer insurance contract. (2) Such a representation is not capable of being converted into a warranty by means of any provision of the non-consumer insurance contract (or of the terms of the variation), or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise).

[19] IA2015 Article 10 (1): Breach of warranty (1) any rule of law that breach of a warranty (express or implied) in a contract of insurance results in the discharge of the insurer's liability under the contract is abolished.

[20] MIA1906 Article 33 Paragraph 3 Sentence 2 "If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date."

the remedy when the insured's breach of warranty (whether express or implied) happen.[21] The important point here is that after the assured breaches the warranty, it is also possible to remedy the breach by assured self. It can be said that when a warranty is violated, the insurer's insurance liability changed from terminating by MIA1906 to suspending by IA2015, and article 34 paragraph 2 of MIA1906 has been repealed literally.[22] Where a warranty is a warranty that can be mended :(1) if the assured breaches the warranty, the insurer's insurance liability is suspended, and the insurer shall not be liable for any loss that occurs during the suspension.(2) if the insured breaches the warranty, but the loss occurs after the insured remedies, the insurer shall be liable. It is important to note here that if the cause of the final loss can be considered to have been caused during the recovery period, the insurer is not liable either. There are two types of warranty against which the insured may remedy a breach, the first of them is provided for in article 10, paragraph 6: "***(a) the warranty in question requires that by an ascertainable time something is to be done (or not done), or a condition is to be fulfilled, or something is (or is not) to be the case, and, (b) that requirement is not complied with.***" The second is the more general case. Once the insurer no longer breaches the contents of the warranty, the remedy may be considered as finished.

3. The relationship with the actual loss

From a logical perspective, the existence of a guarantee in an insurance contract is actually to help the insurer to control the relevant risks. When the insured only breaches the warranty in specific condition which related to some certain risks, the insurer does not need to be liable for any risk in any circumstance. This past idea cannot be justified any longer in current society. In order to deal with this situation, article 11 of IA2015 adds the concept "Terms not relevant to the actual loss".IA2015 regulated that insurers can only be exempt from liability if the risk created by a breach of warranty is related to the actual loss.[23] This means when an insurant violated a warranty and added extra risks, the risks must be relevant to the actual loss in terms of the type, place or time. In this case, insurer then can be exempt from liability (Except for a term defining the risks as a whole).. In practice,

[21] IA2015 Article 10 (2): An insurer has no liability under a contract of insurance in respect of any loss occurring, or attributable to something happening, after a warranty (express or implied) in the contract has been breached but before the breach has been remedied.

[22] MIA1906 Article 34 Paragraph 2: Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

[23] IA2015 Article 11 Terms not relevant to the actual loss (1) this section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—(a) loss of a particular kind, (b) loss at a particular location, (c) loss at a particular time. (2)If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3). (3)The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. (4)This section may apply in addition to section 10.

suppose an insured breaks a warranty and causes an actual loss. But he can show that the warranty he broke has no correlation with the actual loss, and that the warranty he broke does not actually increase the risk of the loss. So the insurer cannot abate with any form or exempt his compensation liability. This provision avoids overprotection of insurers. The original provision makes the insurer unconditionally exempt himself from liability even if the actual loss is not related to the warranty. Seeking for causality balances the positions of both sides and achieves practical fairness. It seems to increase the pressure on insurers, but at the same time, it promotes the insurance market and makes both parties of the insurance contract have more confidence in the contract.

1.5. Critical Analysis for the reform of the warranty in UK

Based on the above analysis, there is no doubt that the reform of the insurance guarantee in the Marine insurance field is very successful. As for the reform of the Marine insurance industry, IA2015 considers various factors and pays attention to the interests of all parties.IA2015 is also very cautious. On the road of reform, IA2015 does not randomly test some new mechanisms and methods, but retains the essence under the original guarantee mechanism. Since then, IA2015 has added rules that are more contemporary.IA2015 perfectly solves the problem of the original guarantee mechanism from the perspective of trying to help and improve the original guarantee mechanism. This more mature and prudent approach is also more applicable to the practical needs of the development of the insurance industry in Britain and the world.IA2015 makes the requirements for insurers more strict It is this approach that gives confidence to the insurance market and enables it to develop in a sustainable and positive way in the long run. From the perspective of theory and purpose, IA2015's guarantee reform plan is very consistent with the purpose of the guarantee system when it was launched.IA2015's guarantee system enables the insurer to still control the risks of the insurance, and at the same time promotes the insured to actively remedy the warranty violated by himself. If there is no remedy allowed after the breach of the warranty by the assured, then that kind of provision may result in the assured's malicious concealment in terms of the fact of the breach. In this case, it affects the interests of both parties.IA2015 enables the contracting parties to have a better understanding of the Marine insurance contract and actively promotes the full performance of the contract.

1.6. The enlightenment to Chinese Legislation

After the above series of changes, it can be said that the British Marine insurance warranty system has been very perfect. The warranty has become an independent and complete structural center. IA2015's modification solves most problems of the warranty system in MIA1906. As China often use some of the relevant warranty provisions of MIA1906 in the practice of Marine insurance. Therefore, from the perspective of rationality, IA2015 reform is in line with the development needs of China's insurance industry. Learning from IA2015, the author thinks that China's Marine insurance warranty can be reformed from the following aspects:

1. From the legislative level to specify the meaning and form of the warranty. Although article 235 of Chinese MC on warranty is also borrowed from the British definition. But there are no clear rules for guarantees. As an important part of insurance contract, guarantee plays an important role in insurance contract. If both parties have a better understanding of the contract, then the contract disputes can be effectively reduced and it is easier for both parties to reach a consensus.IA2015 has not modified the definition of the guarantees in MIA1906.MIA1906 was recognized in the world for a whole century and widely studied by countries around the world. In order to be consistent with international standards in the field of Marine insurance and shipping, China should fully accept and apply the definition of warranty in MIA1906.The definition of warranty in China can be amended to read: "a warranty is a term agreed by the two parties in a contract or stipulated by law .A warranty is a promise by the insured to do or not to do something. Or a warranty is a confirmation of a fact that the insured guarantee it is true or not."

2. Introducing implied guarantees from the legislative level. Although Chinese law does not recognize implied guarantees at present, implied guarantees can effectively improve the efficiency of business and solve some disputes over insurance contracts, thus helping the progress of the insurance industry. The author thinks that China can learn from UK IA2015 for a series of implied guarantee regulations, such as seaworthiness implied warranty guarantee, berth guarantee, legality guarantee and loading capacity of guarantee.

3. Modify the consequences of breach of warranty. Provides two consequences: suspension of responsibility and automatic discharge at same time. According to Chinese MC relevant

regulation, after insurant violates the warranty, the liability of the insurer will be removed legally. This kind of warranty system, which focuses more on protecting the interests of the insurer, not only deviates from the international trend of insurance legislation to protect the interests of the insured, but also has defects in theory and cannot meet the needs of China's insurance practice. Therefore, China's maritime law should modify the provisions on the results of breach of warranty. According to IA2015, A breached warranty lead to the automatic suspension of insurance liability which originally refers to the insurer. Although IA2015 gives the insurant the remedy right, there is still no denying that if the insured violate the guarantee which is about a promise for the confirmation to some specific fact, then insurant actually put himself in a situation like a kind of relief-cannot, the underwriter insurance responsibility would always stay automatic stopped. Under this kind of circumstance, the consequence that insurance liability stops automatically has no substantial meaning. In view of this, the author thinks that China can draw lessons from the British IA2015 about the provisions which related to the violation of the guarantee consequences, the insurant consequences depending on the type of violation of the warranty may face two different consequences: if insurant is in violation of the commitment to the specific facts exist or not, automatic lifting of liability of the insurer; If the insured breaches a promise to do or not to do something in the future, the breached warranty's result would be a suspension liability of the insurer.

At the same time, the author thinks that compared the Chinese current maritime provisions (the insurer is entitled to end the contract after insured breaches the warranty), the IA2015 stipulates that the insurant is able to remedy his breach, which is more conducive to protecting the interests of both insurant and insurer, and realizing fundamental purpose for the contract. Accordingly Chinese Maritime Code can stipulate, insurant can remedy after breaking guarantee. If the insured is able to remedies his breach and change the risk state as before, or the insured and the insurer agree to continue to perform the insurance contract after modifying the underwriting conditions and increasing the fee, the insurer's liability will automatically recover. Unless the loss can be attributed to something occurring in the pause period, the insurer is responsible for paying the loss after the risk has been remedied.

For this warranty system, this paper argues that if the insured violates the commitment to the existence or non-existence of a specific fact state (Also, if this is relevant to the risk), it means that once the guarantee is violated, there is no possibility of any remedy, the direct method of its consequences should be the automatic discharge of insurance liability. Because this wrong statement put a bad impact on insurer's risk judge. Thus, this is a beneficial way to reduce the disputes of insurance contract. If the insured violated a warranty that to do or not to do something in the future, after the insurer's insurance liability suspended, the insured can remedy or to negotiate with the underwriter. After the insured's violation and before to remedy has been done, for any damage, the underwriter does not assume liability to pay compensation.

Under this system, if the insured breaches the warranty, he has to bear a relatively severe consequence. But it should be noted that this consequence is not as extreme as that of MIA1906. This approach will promote strict respect for warranties by the insured. At the same time, it also limits the situation that the insurer may abuse the guarantee to exclude his due liability. This method not only promotes the performance of insurance contract, but also respects the intention of both parties

4. MIA1906 does not regulate a causal relationship between the breach of warranty and the actual loss. Even if the insurant slightly break the guarantee, the insurer can refuse to assume all the insurance liabilities. The insurance law of the United Kingdom IA2015 added "terms not relevant to the actual loss", which stipulated that when the insured violated the terms of a specific type, time and place, if it could be proved that his breach of guarantee did not raise the chance for the loss happen, the underwriter should assume the insurance liability. This clause changes unfair state under previous Marine insurance warranty system that does not require this kind of causal relationship. However, if the insurant breaches the "term of risk as a whole", the "term not relevant to the actual loss" shall not apply. This paper argues that when introducing the concept of irrelevance to actual loss or seeking causation between loss and breach of warranty, attention needs to be paid to how to more reasonably establish a set of standards for the insured to prove that his or her actions can or cannot increase the risk of damage. In this way, a fair and complete warranty system can be established.

This paper argues that Britain has formed a set of unique and effective management methods for the Marine insurance industry as early as 1906.The birth of IA2015 is a perfect repair for some details of Marine insurance. Since MIA1906 was born earlier, in order to adapt to the historical background at that time, it is difficult to avoid some characteristics of that time. These inapplicable and contemporary regulations are completely addressed by IA2015.Therefore, it is urgent for China to modify the Maritime Code. It is a very helpful decision to learn the excellent experience of great Maritime power Britain in Maritime insurance. In the author's opinion, in the process of learning and drawing lessons from others, only some localization Settings are needed for some details, which can be applied in daily practice with high efficiency. Of course, these small changes are necessary. If it is just a simple copy, then it may not achieve very good results. UK as a country that has produced the Marine insurance warranty system, has accumulated a lot of practical experience through years. A good warranty system can be an important driving force that help China's rapid development and accelerate its internationalization.

2. Utmost good faith

2.1. Chinese legislation which relevant to the utmost good faith

Chinese law learnt form the utmost good faith system. China, however, does not adopt the expression of "utmost good faith" in the law, but takes the principle of good faith as the principle norm running through a series of laws. Chinese Maritime Code which passed in 1992, Article 222 to Article 224 regulated the duty of disclosure before the conclusion of the insurance contract. Insurance law Article 16, 17 regulated the duty of disclosure for the insurer and insurant under general insurance contract. At the same time, according to the provisions of article 184 of the insurance law, Insurance law is an important supplementary role for the Chinese Maritime Code.

The first paragraph of article 222 of China Maritime Code stipulates the insurance applicant's obligation to inform before the contract is concluded. The second paragraph stipulates the insurer's obligation to inquire. This is different from the way of "only when the insured provides enough information to attract the attention of the insurer, the insurance person has the obligation to inquire" in Britain. Chinese law stipulates that "if the insurer knows or should know the situation in the ordinary business, the insured will not need to inform if the insurer does not inquire.

China has learned from IA2015 the relevant provisions on the insurer's relief when the insured breaches the duty of disclosure. Maritime Code Article 223 stipulates that the difference in the insurer's relief is determined by the insured’s subject. The insurer shall have the right to terminate the contract, not to return the premium, and not to compensate the insured for an insurant intentionally failing to perform the duty of disclosure. If the insured unintentionally fail to perform the disclosure, the insurer may terminate the contract or increase the insurance premiums. In terms of the termination of the contract, if the loss is relevant to the missing disclosure, the underwriter can be exempted from the liability for compensation, if not, the underwriter still need to pay compensation for the actual loss.

2.2. UK utmost good faith background

Article 235 of the maritime law stipulates the obligations to be assumed by the insured when he or she breaches the terms of insurance during the performance of the contract. At the same time, it also prescribes the remedy of the insurer. The insured shall be obliged to notify the insurer in writing of any breach when occur; Based on the notice given by the insured, the insurer has the right to terminate the contract, change the underwriting conditions and increase the premium. As for the insured's breach of warranty obligation in China, the insurer's remedy is just a general listing, which does not make a clear distinction between the degree of violation and subjective fault as the IA2015 in Britain. The insurer enjoys more rights based on this clause.

In addition to the warranty system mentioned above, the principle of utmost good faith is also a system of great significance to the insurance law which produced in Britain. The establishment of the principle of maximum good faith originated from a very famous case in the common law system -- *Carter v. boehm (1776)*.The general situation of the case is that Carter, the party in the case, is responsible for the management of Marlborough castle. He went to Boehm, an insurance company, to insure the castle against enemy occupation. Then the French captured Marlborough castle. Carter immediately sought compensation from the insurance company. At that time, the insurance company claimed that the insurance contract was invalid and refused to pay on the ground that Carter knew that the castle could only defend against the attack of natives, but could not prevent the invasion of foreign countries, and that he did not inform the insurance company of the possibility of invasion by

France. When hearing the case, Lord Mansfield introduced the principle of good faith into the case.[24] He believed that Carter, as an insured person, had the greatest obligation of good faith and should provide the insurer with all the important facts related to risks. He said the insurance contract was in the form of speculation. Below this kind of circumstance a lot of the risk that concern with the fact only have policy-holder oneself to know normally, the underwriter does not know to need to ask a few what commonly, also do not know what risk to have is relevant. The insurer's judgment of risk is based on trust in the facts stated by the insured. The principle of good faith should be fair to both parties to a contract. Take advantage of the other party's ignorance of the truth and trust in themselves, and make the other party produce wrong estimates by concealing some facts. It is unfair to enter into a contract in this way.

Lord Mansfield, in this case, proposed the general rules of the principle of utmost good faith, and also listed some situations that the applicant did not need to inform the insurer in a very comprehensive way. Policyholders do not need to take the initiative to inform some insurers should know the content; Contents borne by the insurer; The insurer waives to know; Risk reduction content; Some understanding of the explicit terms of the policy and general topics of speculation.

Finally, the result of this case is that the court considers that the political situation in this case belongs to the public knowledge and the insurance company should know the existence of this risk according to the situation that the insured person does not need to tell, so the insurance company cannot claim that the contract is invalid. *Carter v. boehm* has a very important historical significance for British insurance law. Based on the insurance Contract is an aleatory contract, in the face of asymmetric information between the policyholder and the insurer, the case applies the principle of good faith to the insurance Contract and develops into the principle of utmost good faith. The case clarified the

[24] Lord Mansfield:' Insurance is a contract based upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation and proceeds upon the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary. Either party may be innocently silent, as to grounds open to both, to exercise their judgment upon.... An under-writer cannot insist that the policy is void, because the insured did not tell him what he actually knew.... The insured need not mention what the under-writer ought to know; what he takes upon himself the knowledge of; or what he waives being informed of. The under-writer needs not be told what lessens the risque agreed and understood to be run by the express terms of the policy. He needs not to be told general topics of speculation. There was not a word said to him, of the affairs of India, or the state of the war there, or the condition of Fort Marlborough. If he thought that omission an objection at the time, he ought not to have signed the policy with a secret reserve in his own mind to make it void."

disclosure obligation and exception of the policyholder and made a reliable preparation for the later British insurance law.

2.3. Utmost good faith under MIA1906

MIA1906 lays down the utmost good faith principle in detail. Among Articles 17 to 20, MIA1906 specify the general rules of the utmost good faith principle, Disclosure obligations of policyholders and insurance agents (before contract conclusion) and Representation of policyholders and agents (before contract conclusion and during negotiation) respectively. Article 17 of MIA1906 points out that "insurance is the utmost good faith" and makes an overall provision on the principle of utmost good faith:[25] based on the principle of utmost good faith, in a Marine insurance contract, if either party violates the principle, the other party has the right to terminate the contract. Although article 17 indicates that the utmost good faith is a two-way obligation, the following clauses only provide for the insurance applicant's disclosure and presentation obligations, and there is no clear provision for the insurer's specific disclosure obligations. This also causes in practice, the policyholder also bears the obvious heavier responsibility than the insurer in the aspect of informing and stating.

Article 18, Paragraph 1 provides that the insured has an obligation to inform the insurer of all material information he knows prior to the conclusion of the contract, and presumes that the insured knows every information he should know in his ordinary business. If the insured violates the obligation, the insurer shall have the right to terminate the contract. Article 18, Paragraph 2, clarifies the criteria for determining "material circumstances": whether such material circumstances affect the assessment of the cost of insurance by a prudent insurer, or whether a decision on underwriting is made. As long as the category of "material circumstances" policyholders have the obligation to actively inform. At the same time, article 18, paragraph 3, provides four exceptions, that is, although it is an important case, as long as the insurer does not ask, the applicant has no obligation to inform:(2) circumstances that the insurer knows or ought to know, or known facts that the insurer ought to know, or facts that the insurer ought to know in its ordinary course of business;(3) where the insurer declares that it is not

[25] MIA1906 Article 17 Insurance is uberrimæ fidei.: A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

necessary to inform;(4) express or implied warranty which the insured is not required to disclose.[26] These four exceptions basically continue the rule which was established by *Carter v. boehm* case.

Article 20 stipulates,[27] in the negotiation process before and after the conclusion of the contract, the important statement that policy-holder makes to the subject matter of the insurance must be true, otherwise the insurer has the right to terminate the contract. The nature of the "important statement" is consistent with the judgment criteria of the "important situation" mentioned above. At the same time, this clause defines the "truthfulness" of material facts: (1) the representation of facts satisfies substantially correct, which implies that a prudent underwriter does not consider that the difference between the content of the representations and actual facts is material; (2) the insured makes a statement of expectation and belief in good faith. For the regulation about policy-holder's disclosure and representation, law explicitly pointed out that the question of whether policy-holder has appropriate statement to inform duty belong to the category of fact, there is no a clear legal definition of specific, therefore in the judicial practice, judges need to combine the specific circumstances to determine case, the judge has discretion.

MIA1906 adopted a single relief mode for breach of the utmost good faith -- the party without breach of contract has the right to terminate the contract. From article 17, regardless of the degree of violation, whether it leads to serious consequences, whether there is a causal relationship between the facts not disclosed and the consequences, it does not affect the other party's exercise of the right

[26] MIA1906 Article 18: Disclosure by assured: (1)Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract. (2)Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. (3)In the absence of inquiry the following circumstances need not be disclosed, namely: (a) Any circumstance which diminishes the risk; (b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know; (c) Any circumstance as to which information is waived by the insurer; (d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty. (4)Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact. (5)The term "circumstance" includes any communication made to, or information received by, the assured.

[27] MIA1906 Article 20: Representations pending negotiation of contract. (1)Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract. (2)A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. (3)A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief. (4)A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer. (5)A representation as to a matter of expectation or belief is true if it be made in good faith. (6)A representation may be withdrawn or corrected before the contract is concluded. (7)Whether a particular representation be material or not is, in each case, a question of fact.

to terminate the insurance contract. From the perspective of civil law, if the non-breaching party is granted the right to rescission without distinguishing these situations, it is obviously not conducive to fair trading and contrary to the principle of efficiency.

2.4. The reform of the utmost good faith

First of all, IA2015 replaced the formulation of "disclosure and representation" in the second part of MIA1906 with "fair representation". Secondly, systematically, the IA2015 elaborates the fair presentation obligation and the good faith principle in two parts respectively, so as to avoid people's misreading of the utmost good faith principle which is only applicable to the contract before it is established in the MIA1906 model. Finally, Article 14 Paragraph 3 (a) of IA2015 deleted the provision of Article 17 MIA1906 that 'allows one party to claim the right of invalidation of a contract by violating the principle of utmost good faith',[28] and only retained the expression that Marine insurance contracts should be based on the principle of utmost good faith. This is considered to be the most important modification of the IA2015, which effectively alleviates the inequality of rights and obligations between the insured and the insurer. At the same time, it also means that the non-breaching party can only take the default party's failure to perform the utmost good faith obligation as an excuse, and cannot simply claim the contract is invalid.

At the same time, a provision was added to IA2015 Article 3, Paragraph (4) (b) ruled that:

"(4) The disclosure required is as follows, except as provided in subsection (5)—

(a) disclosure of every material circumstance which the insured knows or ought to know, or

(b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances."

It is not difficult to see that this is to add a necessary duty of care to the insurer. The insurer cannot only rely on the fact disclosed by the applicant for judgment, but should make correct questions based

[28] IA2015 Article 14 (3) (a): (3)Accordingly (a)in section 17 of the Marine Insurance Act 1906 (marine insurance contracts are contracts of the utmost good faith), the words from ", and" to the end are omitted, and

on the information provided by the applicant, which is also the new insurance law once again trying to alleviate the inequality of the division of rights and obligations between the applicant and the insurer.

The IA2015 eliminates MIA1906's single relief form of "once the contract is breached, the non-breaching party can claim the contract is invalid", puts forward the concept of qualifying breach, and distinguishes the liability that the insured should bear when violating obligations under different subjective conditions.[29] The insurer's remedies can be divided into the following three ways: (1) if there is no qualifying breach of contract and the insurer will not enter into any insurance terms with the insured, the insurer may terminate the contract, but the premium shall be refunded;(2) in the absence of a qualifying breach, the insurer may still enter into a contract with the insurer, provided that the contents of the insurance terms (other than the premium) are different, and such different terms are deemed to be included in the concluded contract;(3) in the event of an unqualified breach, the insurer may enter into a contract at a higher premium, and the insurer may deduct from the contract a prorated amount of the claim payable by it. On the one hand, it restricts the insurer's arbitrary right to rescind, and on the other hand, it is more conducive to the fair principle of contract law.

2.5. The enlightenment to Chinese Legislation

Compared with the IA2015 UK, China Maritime Code is too general in terms of the insurer's inquiry obligation, and it is difficult to guarantee the equal exchange of information between the insurer and the insured under special circumstances. It can also be said that the disclosure system is the most obvious problem. IA2015 added the obligation of the insurer to actively inquire further question when he is considered he should pay attention on that while maintaining the obligation of the insured’s

[29] IA2015 Article 8 Remedies for breach: (1)The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer— (a)would not have entered into the contract of insurance at all, or (b)would have done so only on different terms. (2)The remedies are set out in Schedule 1. (3)A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”. (4)A qualifying breach is either— (a)deliberate or reckless, or (b)neither deliberate nor reckless. (5)A qualifying breach is deliberate or reckless if the insured — (a)knew that it was in breach of the duty of fair presentation, or (b)did not care whether or not it was in breach of that duty. (6)It is for the insurer to show that a qualifying breach was deliberate or reckless.

active disclosure. Although the insured's breach of contract can be exempted on the basis of the insurer's failure to fulfill the obligation of inquiry, such exemption still needs to be based on the premise that the insured provides sufficient information to enable the insurer to pay attention to it. That is to say, when the insured claims that the insurer has not fulfilled the obligation to inquire, the insurant must prove that he has provided noteworthy information to the insurer. On the other hand, it sets two-way obligations for both sides. Through the cooperation of both parties, it is beneficial to avoid the problem of information asymmetry caused by the single inquiry mode and to realize the purpose of information exchange to the greatest extent. When perfecting the maritime law in China, Chinese law can learn from the British model to further define the insurer's inquiry obligation and balance the equality of information exchange between the insurer and the insured.

Conclusion

In general, as the UK is the leader in Marine insurance, China needs to learn a lot from the UK. According to the analysis above, it is very interesting to see that both the warranty system and the principle of utmost good faith must be updated with the progress of the generation. Law is a kind of human science. If the law is divorced from the background of The Times and society, then the law will lose its significance. But it is also because of this that laws can be gradually improved to help human beings manage an orderly society. As far as the mechanisms of both insurance laws are concerned, they have been excessively protective of insurers because of the inconvenient exchange of information in the past. Insurers are only in the insurance business, but they actually do business with people in all different fields. The law cannot require that one man possess all knowledge. So the law chooses groups that protect the weaker insurers. Nowadays, with the rapid development of The Times, the communication of information becomes very convenient. The old "insurer doesn't even know what to ask" situation has long gone. The excessive protection of the insurer makes the law unfair to the insured. In this context, legal reform is also an inevitable step. English insurance law limits the circumstances under which insurers can apply remedies, adds some more equitable concepts and takes into account more factors .In particular, the reform of the warranty system is a very important inspiration for China, where the warranty system is still unclear.

Legislation

Chinese Insurance Law

Chinese Maritime Code

Chinese Legal Interpretation of Marine Insurance

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Insurance Act 2015

Marine Insurance Act 1906

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