THE LAW OF INSURANCE CONTRACTS IN THE PEOPLE'S REPUBLIC OF CHINA. A COMPARATIVE ANALYSIS OF POLICYHOLDERS' RIGHTS.

by

Alberto Monti

University of Milano Law School

and

ICER

International Centre for Economic Research

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ABSTRACT

The implementation of China's economic reforms, beginning in the early 80's, and the formal establishment of a "Socialist Market Economy" in the following decade, stimulated substantial changes and improvements in the Insurance Laws and Regulations of the People's Republic of China (hereafter: PRC). The need for a modern and sophisticated legal framework aimed at regulating rights and remedies arising out of insurance contracts, as well as the insurance business in general, became clear and compelling as soon as the Communist State began its slow but inexorable retreat and it ceased to take care of every aspect of the life of the Chinese People.

In the new socialist market context, the insurance contract is predestined to become the most important legal and economic tool available to those individuals who are not willing and/or able to bear the entirety of the risks associated with the implementation of the modern economic reforms.

Against such backdrop, this paper is aimed at exploring the history of insurance in China as well as the framework of insurance laws and regulation enacted in the PRC during the recent years. In particular, the focus of this essay will be upon the legal principles and rules that currently govern insurance contracts and the relationship thereby established between the insurance company and the insured. Hence, the analysis of the legal protection of policyholders' rights and interests in China will center around the rules of insurance contracts interpretation, integration and performance at present in force. In light of the international nature of the contract of insurance, this paper will also offer a comparison of different approaches to policyholders' protection adopted in various legal systems belonging to both the common law and the civil law tradition.

I. Introduction.

The implementation of China's economic reforms, beginning in the early 80's, and the formal establishment of a "Socialist Market Economy" in the following decade, stimulated substantial changes and improvements in the Insurance Laws and Regulations of the People's Republic of China (hereafter: PRC). The need for a modern and sophisticated legal framework aimed at regulating rights and remedies arising out of insurance contracts, as well as the insurance business in general, became clear and compelling as soon as the Communist State began its slow but inexorable retreat and it ceased to take care of every aspect of the life of the Chinese People.

In a market-oriented economy, individuals are entitled to property rights, they enjoy some degree of freedom to choose what transactions to enter into and they are able to extract private profits and benefits from their own work and activity. Thus, the ideal of a socialist market economy can be perceived as the embodiment of freedom, autonomy and equality, but also as an improvement of the quality of life of individuals and of the overall economic prosperity of the nation.[1] On the other hand, however, the retreat of the State has increased the risks that private individuals are required to bear. As a consequence of the dismissal of Work Units, for example, many Chinese workers are currently facing new types of risks, such as the risk of loosing their job, the risk of becoming sick or invalid and, consequently, of loosing their ability to work and earn a salary, the risk of suffering a severe financial loss due to property damage and so on and so forth. Such risks, of course, were once taken care of by the State, through the social structures of the Communist Party. From a theoretical viewpoint, indeed, the State's duty extended to providing social security and economic support to everyone.

In the new socialist market context, however, the insurance contract is predestined to become the most important legal and economic tool available to those individuals who are not willing and/or able to bear the entirety of the risks associated with the implementation of the modern economic reforms.

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[1] *See* CHEN, ALBERT H. Y., *The Developing Theory of Law and Market Economy in Contemporary China*, in GUIGUO and ZHENYING (EDS.), *Legal Developments in China: Market Economy and the Law*, China Law Series, Sweet & Maxwell: Hong Kong and London (1996)

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In light of the international nature of the contract of insurance - a feature that characterized such private arrangement since its early developments in Europe, during the Middle Ages - and with a view to better understanding the legal rules recently promulgated in the PRC and the role that they will be called to play in the near future (especially with respect to the business pursued by foreign invested insurance companies), this paper will also offer a comparison of different approaches to policyholders' protection adopted in various legal systems belonging to both the common law and the civil law tradition[2].

To this purpose, an overview of the legal solutions accepted in the United States of America appears to be the most appropriate start. In a country where the insurance business has been playing a prominent and sometimes overwhelming role in the quotidian life of the people, courts have designed peculiar rules of contract interpretation and have developed a new body of law, namely the law of Bad Faith, in order to protect the interests of policyholders. A different social and legal context has determined the adoption of divergent solutions in English law, and this further approach will be therefore briefly considered. After having reviewed the position of the two most important common law countries with respect to policyholders' protection, this paper will analyze the recent developments in Italian law, as an example of a civilian legal system, as well as in the law of the Republic of India, an Asian developing country in which the culture of rights and remedies of the People is profoundly rooted and constitutionally protected.

[2] The legal system of PRC, at least with respect to the area of private law and to the hierarchy of legal sources, can be considered as part of the civil law tradition.

II. A Brief History of the Insurance Business in China

The modern practice of insurance in China traces its roots back to the late Qing Dynasty, when it was introduced by foreign businessmen that imported policies commonly used in their own countries of origin. In 1805, the Canton Insurance Company was established in Guangzhou by foreign merchants and in 1885 the Bureau of Ships and Commerce founded the earliest Chinese insurance companies, the Renhe Ins. Co. and the Jihe Ins. Co., in Shanghai.

In 1929 the Nationalist government enacted the Insurance Law of the Republic of China and in 1935 the Insurance Enterprise Act, both amended in 1937 but never implemented in mainland China. At the beginning of the XIX century, in any event, China had a very advanced insurance industry and the market was largely dominated by foreign insurance companies, based in different parts of the country.

With the establishment of the PRC in 1949, however, the situation evolved in a peculiar way. In October 1949 the Chinese government set up the People's Insurance Company of China (PICC), a state-owned enterprise, in Beijing. During the first decade of its operations, the PICC made rapid and steady progress, establishing regional branches and offices in all the provinces, autonomous regions and municipalities (except Tibet and Taiwan), and using branches and sub-branches of banks as its agents. By 1956, all other insurance companies in the PRC ceased to operate and the foreigners had to move out of China.

The nationalization of the industry was eventually achieved and the PICC became a monopoly dominating the market. In this way, the State ultimately bore the risks of most hazards against which insurance would normally be sought in other countries: basic social welfare schemes covered the needs of individuals. Thus, prior to the introduction of economic reforms in the late 1970s, the PICC was the sole insurance company in China and was the market and the regulator all in one. However, political upheaval and State planning both hindered the development of the domestic industry: after 1958, the insurance business was openly denounced by left ideologues. As a consequence, domestic insurance was virtually suspended and the PICC limited its operations to foreign trade, international cargo and aviation insurance, under the supervision of the People's Bank of China.

During the last two decades, the picture has changed dramatically. After the Cultural Revolution, and with the advent of economic reform in 1979, the domestic insurance business resuscitated and the PICC, being the sole insurance carrier in the whole China, enjoyed the strong and increasing demand for insurance products and services and consequently reported significant growth and profitability. In 1983 the PICC became an economic entity under the direct control of the State Council. On July 23, 1996, in accordance with the 1995 Insurance Law[3], it was restructured and renamed as the China Insurance Group (PICC); the group comprised three subsidiaries: PICC Property, PICC Life, PICC Reinsurance.

The most recent reform of China's insurance industry, culminated with the promulgation of the Insurance Law of 1995, has transformed the role of the State in risk bearing and has ended the PICC's monopoly of more than 40 years. As at the end of 1998, China had a more than 25 insurance companies constituted in different legal form (state-owned enterprises, regional joint ventures between PICC Group and local investors and companies involving foreign insurers such as AIA, Tokio Marine and Fire, Manulife and Winterthur), offering a wide variety of coverage. Since China resumed the insurance business in 1980, the market has grown steadily, at an average rate of 37.6% per annum. Insurance premiums hit 124.73 billion yuan in 1998 and raised to 139.3 billion yuan in 1999.[4] Among these premiums, 52.1 billion yuan was from property insurance, up nearly three percent from 1998, and 87.2 billion yuan from life and health insurance, up 15 percent.

As the China's insurance sector developed rapidly and healthily in the last two decades, more than 150,000 people are currently employed by the industry. The growth rate is much higher than the growth rate of the national economy in the same period.[5] During the period 1989-1998, the insurance companies operating in the

[3] Insurance Law of the People's Republic of China, adopted at the Fourteen Session of the Standing Committee of the Eight National People's Congress on 30 June 1995, effective from 1 October 1995.

[4] See the report published in *China Daily_Xinhua*, Shanghai, March 31, 2000 and *China's Insurance Industry Grows Rapidly*, Briefing - Asia Insurance, Asia Pulse, January 12, 2000

[5] " The president of China Insurance Supervision Commission Ma Yongwei recently talked of the development blueprint of China's insurance industry in the future five years.
He introduced that the annual growth rate of China's insurance industry would be about 12%, the growth rate of the life insurance would reach 14%, and property insurance 9%. At the end of 2005, the total insurance premium will reach 280 billion RMB yuan, with 90 billion of property insurance and

country paid a total of 262.2 billion yuan of compensation and payment to their customers. In 1998 alone, 55.6 billion yuan were paid, including 3.3 billions yuan paid as compensation for the loss caused by floods.

Since 1992 when an experiment was carried out to open the Chinese insurance market to the outside world, nine insurance companies from eight countries including the United States, Canada, Japan and Britain have set up agencies in Shanghai and Guangzhou and a large number of insurance institutions from 17 countries have set up representative offices in China. Preparations for establishing four branches of foreign-funded insurance companies and Sino-foreign joint insurance ventures are now underway.

In November 1998, the China Insurance Regulatory Commission was set up. Most recently, the China Insurance Group Corporation (PICC) was disbanded and four insurance companies including the China People's Insurance Company (the new PICC), the China Life Insurance Company (CLIC), the China Reinsurance Company (CRC) and the China Insurance Co., Ltd. were re-established. August 1999 marked the end of restructuring of China's insurance industry. [6]

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190 billion of life insurance. The insurance premium should occupy 2.3% of gross domestic products (GDP). The insurance premium per person is 230 yuan.
It is learned that after five years of development, an insurance market with Chinese characteristics will emerge with six features:
I) Diversified operation bodies. State owned and state hold insurance firms take the lead in market. Nongovernmental capital is allowed in insurance firms. Agency companies and broker companies will be developed to expand marketing channels. Special insurance companies undertaking one certain insurance will be built. As for auxiliary services, actuarials, accounting firms and insurance rating institutions will be set up.
II) Market-oriented operation mechanism. The market bodies, such as insurance firms, agencies and policyholders, act with one another through market mechanism. The operators enjoy equal competition status. The products, charges, capital and human resources are through market mechanism.
III) Intensified operation mode.
IV) Establishing legal system for governmental supervision.
VI) Professionalization of the staff.
VII) Internationalization of the industry. The operation of China's insurance industry got closer to international practice. China insurance is gradually stepping into international market. China's insurance firms actively develop overseas services."
Source from: *Shanghai Securities News*, as reported by *Business Weekly*, March 17, 2000

[6] "At the new PICC's founding ceremony, China Insurance Regulatory Commission Chairman Ma Yongwei noted the importance of reforming the regulatory and management systems of China's insurance industry to create a more healthy and orderly insurance market suited for the market-oriented economy. Moreover, the progress of WTO negotiations and advocates for opening China's insurance market made it important for the domestic insurance market to ready itself for increased competition."
Source: U. S. Department of Commerce - National Trade Data Bank, December 22, 1999

The founding of four above-mentioned insurance companies is a measure taken to prepare for the opening-up of the insurance market and to prepare the domestic insurance companies for the challenges and opportunities resulting from the market opening.

China Reinsurance Company (CRC), the only Chinese reinsurance company, was founded on March 18, 1999, on the basis of the former PICC Reinsurance. China Reinsurance Company has an independent corporate organization and is funded by the Ministry of Finance. CRC's monetary assets increased from $114 million in 1996 to $904 million in 1998. Its long-term reserves increased from $588 million in 1996 to $730 million in 1998. China Reinsurance Company's business includes all areas of national and international property and life insurance. It handles reinsurance for personal accident insurance, long-term life insurance, health insurance, motor vehicle insurance, property insurance and reinsurance for special insurance lines such as aviation, oil drilling platforms, and nuclear power plants.

On March 19, 1999, China Life Insurance Company (CLIC), the largest Chinese life insurance company, was established in Beijing. It was set up on the basis of the former PICC Life. CLIC is a national commercial life insurance company under the direct leadership of the State Council. It is a wholly state-funded commercial life insurance company specializing in life, health and accident insurance. It will assume life insurance policy liabilities of the former PICC and PICC Life. It ranks first in terms of business scale and market share of China's national life insurance companies.

China's largest property insurance company, the new People's Insurance Company of China (PICC) was established in Beijing on March 20, 1999. It was founded on the basis of the former PICC Property. PICC has $930 million in registered capital. It specializes in all insurance services except personal insurance. PICC is a wholly state-owned commercial insurance company. In 1998, its premium income was $4.86 billion, accounting for 80% of the domestic property insurance market.

The China Insurance Company Limited announced its new leadership team on August 19, 1999, marking the end of the restructuring of the People's Insurance (Group) Company of China. China Insurance Company Limited is the state-owned

holding company overseeing the China Insurance (Group) Company Limited of Hong Kong (which manages the overseas assets and operations of the former PICC Group). The restructured China Insurance Company Limited has approximately 30 entities operating worldwide, with operations in life and property insurance, international reinsurance and securities and fund management. The company has total assets of $2.17 billion.

As shown by this synthetic overview, China's insurance industry had already fulfilled an important and historical mission of transition to comply with the law of the market economy.

Nevertheless, China still has one of the world's lowest pro capita spending rates per annum on insurance: in 1995 it was a mere US$ 6.1, compared to US$ 39.1 in Mexico, US$ 90.1 in Brazil, US$ 141.5 in Argentina and US$ 146.5 in Chile. Moreover, insurance penetration in China was just 1.17% of GNP in 1995, far lower than most other countries, even developing countries. Untapped demand, particularly for life insurance, is enormous. Currently, two-thirds of insurance is devoted to property insurance, and over half of this is directed to vehicle insurance. There is no legal obligation for Chinese companies to take out insurance, except for employee-related social security and third party motor purposes. This may indicate that even a small increase in individual spending on insurance will greatly expand the domestic market.

A substantial portion of the urban population began to purchase some life insurance, but most of the rural residents - about 80% of the entire population - are still basically unaware of its availability. Nonetheless, the situation is gradually changing, as a result of several factors, among which: increasing education, birth control, the enactment social reforms, the diminishing of traditional superstitious fears of insuring against death, the breakdown of extended families with the consequent growing need for alternative sources of support during the retirement period and the reduced State's 'cradle to grave' provision.

In conclusion, Chinese attitudes to insurance are changing and an augmenting appreciation of risk, along with greater profitability, can quickly create a local market for property, personal as well as commercial insurance, thereby drastically increasing

the relevance of the legal rules aimed at regulating rights and obligations arising out of insurance contracts.

III. Chinese Legislation: The 1995 Insurance Law, the Regulations enacted in the 1980s and the Uniform Contract Law of 1999

Before the implementation of the economic reforms twenty years ago, there were substantial gaps and incompleteness in China's insurance laws and regulations. With a view to fostering the reformation process, the State Council promulgated regulations on September 1 1983 on contracts of property insurance, setting the standards for contractual drafting, rights, liability and procedures for insurance companies and the obligations of the policyholder[7].

Few years later, in 1985, regulations on the standards for establishing and operating an insurance business were issued by the same authority. After a period of approximately five years of work by various committees, which involved liaison and in depth observations and visits to some thirteen countries to study various approaches to insurance legislation in both Western and Asian environments, the National People's Congress finally enacted the Insurance Law of 1995, which is the PRC's first comprehensive piece of legislation governing insurance contracts, insurance business operating rules, supervision of the insurance industry, standards for agents and brokers and liability matters. The Insurance Law applies to the establishment of an insurance company with foreign shareholders and branches of foreign insurance companies inside the territory of the PRC, pursuant to Article 148, and both domestic and foreign-funded insurance companies are subject to its rules (Article 3). It is a worth noting, however, that the China Insurance Group (PICC), until its recent reorganization in 1999, remained the principal player in the Chinese insurance market, with a national network of over 4,000 branches and offices and the control of almost 90% of the PRC market.

[7] *See* Regulations of the People's Republic of China on Contracts of Property Insurance (promulgated on September 1, 1983, by the State Council), *available on* LEXIS, Chinalaw N°164, provided by Chinalaw Computer-Assisted Legal Research Center, Peking University.

a) The 1995 Insurance Law - Chapter II: Insurance Contracts

The new Insurance Law of the PRC was ratified at the14th Session of the Standing Committee of the Eighth National People's Congress on June 30, 1995 and promulgated by Presidential Decree n°51 for implementation commencing on October 1, 1995. The Insurance Law, with respect to the discipline of the contractual aspects of the business, is widely considered[8] as a codification of internationally recognized insurance principles such as: *uberrima fides* (utmost good faith), insurable interest, subrogation[9], double insurance benefits, *interpretatio contra proferentem* (interpretation against the drafter) and the killer beneficiary exclusion.

As a general principle, "those who engage in insurance activities must observe the laws and administrative regulations and abide by the principles of voluntariness, honesty and good faith." (Article 4). The signing of an insurance contract between the Applicant and the Insurer, moreover, "shall be based upon the principles of equality, mutual benefit, voluntariness and friendly consultation, and shall not harm public interest." (Article 10).

Chapter II of the Insurance Law deals with the set of rights and obligations arising out of the insurance agreement. Article 11 states that the insured must have an insurable interest in the subject matter covered by the policy. In the absence of such insurable interest - defined as a legally acknowledged interest toward the subject matter insured - the insurance contract is considered null and void and is not effective. Once the contractual relationship is established, the policyholder enjoys a general right to terminate the insurance contract, while the insurer does not. However, if the insurer finds out that, at the time the contract was concluded, the insured intentionally withheld the truth or failed to perform the obligation of informing truthfully due to

[8] *See* EPSTEIN, EDWARD and HALLWORTH, ANDREW, *The New Insurance Law of the People's Republic of China*, [1996] 2 Int. Insurance Law Review 61

[9] *See* Article 44: "Where the occurrence of an insured event is caused by damages by a third party to the subject matter insured, the Insurer shall obtain from the Insured the right of subrogation to demand compensation from the third party within the extent of the Insurer's compensation amount, from the day such compensation is made to the Insured.
Where the Insured has already obtained compensation from the third party after the occurrence of an event described in the preceding paragraph, the Insurer may reduce the compensation in an amount equal to the amount of compensation received by the Insured from the third party.
The right of subrogation of the Insurer to request compensation from the third party shall not affect the right of the Insured to seek compensation from the third party for the uncompensated portion."

negligence and such was sufficient to have a bearing on the Insurer decision to underwrite insurance or to increase the premium, the insurer may terminate the insurance contract. Moreover, where the applicant intentionally fails to perform the obligation of informing truthfully, the insurer is not liable for any loss or payment arising from the perils insured against before the contract is terminated and does not bear any obligation to refund the premiums already paid by the policyholder (Article 16). In the event the insured or the beneficiary, where no insured event has occurred, falsely claims that an insured event has occurred and demands compensation or payment of insurance money from the insurer, the insurer enjoys the right to terminate the insurance contract without refunding the insurance premium (Article 27).

Insurance contracts and all amendment thereof must be made in writing and the insurance policies are required to contain at least the following information: (a) Name and address of the insurer; (b) Names and addresses of the policyholder and the insured party, and the name and address of the Beneficiary if any; (c) Insurance subject matter; (d) Insured liabilities and liabilities exempted or excluded; (e) Duration of insurance coverage and the commencement time of insurance liabilities; (f) Insured value; (g) Total sum insured (limits of coverage); (h) Insurance premium and method of payment; (i) Methods of paying compensation or claims; (l) Liabilities for breach of contract and settlement of dispute; (m) Date the contract is executed. All terms in the insurance contract related to the exemption or exclusion of the insurer's liabilities must be brought to the attention of the prospective insured at the time of entering into the insurance contract. If the insurance company fails to make exclusions and exemptions clear and intelligible to the insured, such terms shall be considered null and void (Article 17). Article 30 embodies the widely accepted principle of interpretation known as *interpretatio contra stipulatorem* (or *contra proferentem*): in the event of a dispute between the insurer and the policyholder with respect to the terms of the insurance contract, the People's Court or the arbitrators are in fact required to offer interpretations favorable to the insured.

Upon learning the occurrence of an insured event, the insured is required to promptly notify the insurer and to provide the insurance company with as much evidence and information as possible relevant to the ascertainment of the nature and

causes of such event and to the extent of the loss thereby incurred (Article 22). The Insurer is required to bear all necessary and reasonable expenses incurred by the both parties in investigating and ascertaining the nature and causes of the event and the extent of losses to the subject matter insured (Article 48).

Upon receipt of a claim from the insured for compensation or payment of insurance money, the insurer is expected and required to make prompt verification (Article 23). If such claim is not covered by its insurance liability, the Insurer must issue a letter of advice to the policyholder of the beneficiary declaring its refusal to make compensation or payment (Article 24). Where the claim is an insured liability, instead, the insurer must perform its obligation to make compensation or payment within ten days after reaching agreement with the insured or the beneficiary concerning insurance compensation or payment amount (Article 23). If the insurer fails to perform his obligations to settle promptly and fairly, he shall indemnify the losses arising therefrom to the insured, in addition to making insurance payment. The insurer is also required to reimburse all the mitigating expenses incurred by the insured to prevent or reduce losses suffered because of the occurrence of the insured event.

The last paragraph of Article 23 declares that no unit or individual is entitled to interfere with the insurer in performing his obligation of indemnification or payment, nor to restrict the right of the insured or the beneficiary to obtain insurance money: this provision becomes crucial and extremely important when analyzed in the context of the transition form a communist to a market economy.

b) The 1983 Regulations on Contracts of Property Insurance

Together with Chapter II, Section 2 of the 1995 Insurance Law, the 1983 Regulations of the PRC on Contracts of Property Insurance outline the rules and standards applicable to property insurance contracts. A substantial part of the provisions in the regulations, promulgated by the State Council on 1 September 1983, have been substantially repeated in the more recent Insurance Law. Parallel to Article 23 of the Insurance Law, Article 18 of the Regulations - for example - declares that the insurer is required to make payment within ten days of the agreement with the insured

on a legitimate claim. In case of failure to pay within the prescribed time, however, the regulations state that the insurer faces a liability for breach of contract and is subject to a penalty commencing from the eleventh day following the date in which the amount of indemnity is determined, according to the interest rate set by the People's Bank of China for short term loans to enterprises.

c) The 1999 Uniform Contract Law

The Second Session of the Ninth National People's Congress adopted and promulgated the new Contract Law of the PRC on March 15, 1999, for implementation commencing on October 1, 1999. The new Contract Law - enacted in order to protect the lawful rights and interests of contract parties, to safeguard social and economic order and to promote socialist modernization - comprises basic principles and detailed provisions on contracts in general as well as various rules pertaining to specific (or, according to the civil law terminology, "nominated") contracts, such as sales, loan, donation, leasing, construction, carriage and transfer of technology.

The conceptual structure of Chinese private law is derived from the civil law tradition and, in particular, from the Germanic model. China, however, has never promulgated a Civil Code and, prior to the enactment of the new Contract Law of 1999, the rules and principles constituting the Chinese law of contract were located in part in the General Principles of Civil Law of 1986 and in part in the Economic Contract Law, the Foreign Economic Contract Law and the Technology Contract Law. The civilian systematic approach to contracts and obligations, characterized by the constant reference to general and abstract concepts, is therefore complicated in China by the fact that a comprehensive Civil Code is still missing from the panorama of the relevant sources of law. Keeping this in mind, it becomes clear that the new Law of Contract of 1999 is called to play a very important role, because it provides: (a) some general and basic principles applicable as a background to all contractual obligations, (b) a set of default rules aimed at integrating and supplementing the express will of the parties, (c) mandatory provisions aimed at limiting party autonomy and, indirectly, at protecting the interests of weaker contractual parties, (d) specific rules aimed at

governing certain frequent transactions (i.e. the mentioned "nominated" contracts). It is important to note that this last feature of the Law of Contract does not limit the ability of the parties to freely determine the content of their agreements, because their private arrangements do not necessarily have to fit in one of the predetermined legal types.

The 1999 Contract Law is fundamental to the analysis of the rules applicable to the contract of insurance in the Chinese legal system. According the civilian hierarchy of sources, in fact, the Insurance Law of 1995 is considered a special law and the Contract Law of 1999 a general law, which is applicable also to the contract insurance as long as it does not conflict with the special provisions of the Insurance Law. In particular, several rules and principles comprised in the new Contract Law are worth mentioning for the purposes of the present analysis:

(1) The general principle of good faith in contract performance, announced in very broad terms by Article 6 and reinstated by the provision of Article 60, according to which:

> "The parties shall fully perform their respective obligations in accordance with the contract.
>
> The parties shall abide by the principle of good faith, and perform obligations such as notification, assistance, and confidentiality, etc. in light of the nature and purpose of the contract and in accordance with the relevant usage."

(2) The principle of fairness, that parties to a contract are required to follow in prescribing their respective rights and obligations (Article 5). An important corollary to this general principle is stated in Article 39, concerning standard contracts (such as insurance policies):

> " Article 39 Standard Terms; Duty to Call Attention
>
> Where a contract is concluded by way of standard terms, the party supplying the standard terms shall abide by the principle of fairness in prescribing the rights and

obligations of the parties and shall, in a reasonable manner, call the other party's attention to the provision(s) whereby such party's liabilities are excluded or limited, and shall explain such provision(s) upon request by the other party.

Standard terms are contract provisions which were prepared in advance by a party for repeated use, and which are not negotiated with the other party in the course of concluding the contract.."

(3) The general rules on contractual language interpretation and construction. Article 125 states that in case of dispute between the parties concerning the construction of a contract term, the true meaning thereof shall be determined according to the words and sentences used in the contract, the relevant provisions and the purpose of the contract, and in accordance with the relevant usage and the principle of good faith. Articles 41, moreover, dealing with contracts of adhesion, acknowledges the rule of interpretation *contra stipulatorem* (against the drafter):

" Article 41 Dispute Concerning Construction of Standard Term

In case of any dispute concerning the construction of a standard term, such term shall be interpreted in accordance with common sense. If the standard term is subject to two or more interpretations, it shall be interpreted against the party supplying it. If a discrepancy exists between the standard term and a non-standard term, the non-standard term prevails."

These general rules and principles stated in the new Contract Law of 1999, as mentioned, are applicable also to the contract of insurance. Chinese courts will therefore be able to use them as powerful tools to enforce and protect the contractual rights and interests of the policyholders against insurance companies doing business in the PRC.

IV. On Good Faith and Policyholders' Protection: A Comparison of Different Approaches

a) United States Bad Faith Insurance Law

In the United States, insurance plays a very important social role. A substantial part of the basic human needs for security, protection and peace of mind are satisfied by American people through the purchase of private insurance coverage. This result springs from a social and political context that appears to be theoretically very distant from the welfare state ideal.

Insurance companies, however, are often private, for-profit, commercial enterprises and sometimes this may cause problems in the relationship with their customers, especially if policyholders are individual consumers. In addition, the terms of the policies are unilaterally predetermined by the insurance company for several reasons and the insured is merely offered a standard form, very frequently on a take-it-or-leave-it basis.[10]

In this context, the legal rules governing insurance contract interpretation and performance are therefore extremely important. With respect to the construction of insurance policies, American courts have developed two special doctrines applicable to the contract of insurance, namely the doctrine of ambiguities and the doctrine of reasonable expectations. According to the former, whenever a term of the policy is unclear it has to be interpreted against the drafter (*contra proferentem*). The latter doctrine, instead, states that a standard clause in an insurance policy (often an exclusion of coverage aimed at limiting the contractual liability of the insurance company), even if not ambiguously drafted, is not enforceable when it contravenes the reasonable expectations of the insured, according to an objective test.[11]

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[10] This of course is less true when large commercial risks are involved. In the case of environmental liability insurance, for example, coverage is often tailor-made according to the particular need of every enterprise or plant that seeks coverage for business purposes.

[11] See STEMPEL, JEFFREY W., *Law of Insurance Contract Disputes*, Second Edition, Aspen Law & Business (1999 - 2000 Supplement); JERRY, ROBERT H. II, *Understanding Insurance Law*, II ed., Matthew Bender (1996)

As for the rules on performance, it has to be noted that an implied duty of good faith and fair dealing in contract performance has been recognized by American case law in almost every jurisdiction,[12] by the Restatement (Second) of Contracts at § 205 [13] and by the U.C.C. at § 1- 203.[14] In the field of Insurance Law, in particular, it has assumed a great relevance. American courts, in fact, have employed the contractual duty of good faith and fair dealing as the legal basis for the implementation of a policy aimed at monitoring and discouraging the opportunistic behavior of those insurance companies that too often disregarded the legitimate rights and interests of their policyholders.

The most frequent cases involve artificially delayed payments or unreasonable denials of claims in the field of first party insurance (e.g. fire insurance policies etc.). The insurance companies often misbehave in this way, because they try to exploit the transitional financial need of the policyholder (at the time the insured event occurred) in order to negotiate a settlement for a lesser amount. In case of liability insurance (i.e. third party insurance), instead, the typical circumstances involve the insurer's refusal of a reasonable settlement offer advanced by the third party claimant, with a subsequent judgment in excess of policy limits and the consequential personal financial exposure of the insured. If the insurance company merely face a liability limited to the amount insured, it will never agree to settle with the third party claimant for an amount equal to the policy limits, unless the chances of a favorable judgment *ex ante* equal zero and the insurer has sufficient information.

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[12] The first recognition of an implied duty of good faith and fair dealing in every contract can be traced back to few scattered New York cases: see e.g. *Brassil v. Maryland Casualty Co*., 210 N.Y. 235, 104 N. E. 622 (1914); *Kirke La Shelle Co. v. Paul Armstrong Co*., 263 N.Y. 79, 188 N.E. 163 (1933); the existence of an implied covenant to act in good faith in the course of performance is now affirmed, among others, by: *Rowe v. Great Atl. & Pac. Tea Co*., 46 N.Y. 2d 62, 68, 412 N.Y.S. 2d 827, 385 N.E. 2d 566 (1978); *Van Valkenburg, Noger & Neville v. Hayden Publ. Co.*, 30 N.Y. 2d 34, 45, 330 N.Y.S. 2d 329, 281 N.E. 2d 142, cert. denied, 409 U.S. 875, 93 S. Ct. 125, 34 L. Ed. 2d 128; *Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.* 826 P.2d 710, 726 (Cal. 1992); *Keffer v. Keffer*, 852 P.2d 394, 398 (Alaska 1993); *Ervin v. Amoco Oil Co*., 885 P.2d 246, 250 (Colo. Ct. App., 1994); *Perry v. Jordan*, 900 P.2d 35, 338 (Nev. 1995); *Dalton v. Educational Testing Service*, 87 N.Y. 2d 384, 663 N.E. 2d 289, 639 N.Y.S. 2d 977 (New York Dec. 7, 1995) - the time being, only Texas seems to go against the mainstream, see i.e.: *Natividad v. Alexsis, Inc.*, 875 S.W.2d 695, 697 (Tex. 1994).

[13] RESTATEMENT (SECOND) OF CONTRACTS (1979) § 205 *DUTY OF GOOD FAITH AND FAIR DEALING*: *Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.*

[14] UNIFORM COMMERCIAL CODE § 1-203: *Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.*

In sum, the perverse economic incentives for the insurer to misbehave in the above situations are numerous and manifold. Courts in the United States have intervened and, with a view to solving such problems, they have held insurance companies liable for bad faith breach of contract, a cause of action that sounds both in tort and contract. As a consequence, policyholders in first party cases have been able to recover consequential damages, compensation for emotional distress and, in some instances, also punitive damages, in addition to the insurance payment due. In third party cases, moreover, insurance companies found liable for bad faith have been required to bear the entire amount of the judgment entered against the policyholder because of their misconduct, also for the portion in excess of the policy limits, and insured parties have been awarded damages for emotional distress and, sometimes, even exemplary damages.[15]

b) The English Common Law Perspective

The perspective of the English common law on the factual and legal circumstances outlined in the preceding section is quite different from the American one. In the English legal system there is no general duty to perform a contract in good faith and the law of insurance contract interpretation and construction is much less favorable to policyholders. This may depend on several factors, among which the different social role and responsibilities of insurance companies and the longstanding reputation of English insurers (especially the Lloyds of London) with respect of their claims handling practices.

In the recent years, however, English courts have been called to resolve insurance disputes based on the same factual circumstances that led to the development of the law of first party insurance bad faith in the United States. The results, again are very different: in a recent case, for example, the Civil Division of the Court of Appeal has refused to award consequential damages to the insured (a small

[15] See ASHLEY, STEPHEN S., *Bad Faith Actions: Liability and Damages*, Second Edition - West Group (1997); STEMPEL, JEFFREY W., *Law of Insurance Contract Disputes*, Second Edition, Aspen Law & Business (1999 - 2000 Supplement)

family business owner and operator) who was forced out of business by an unreasonable delay in the payment of the insurance proceeds.[16]

c) The Italian Approach: Mala Gestio and the Codified Duty to Perform in Good Faith

In the Italian legal system, the rules on insurance contract interpretation and enforcement are comprised in the Civil Code and, in particular, in the XX Section on Insurance of III Title of the IV Book on Obligations, Articles 1882 to 1932. In addition to the detailed discipline of specific or "nominated" contracts covered by the III Title, the IV Book of the Italian Civil Code (hereafter: c.c.) includes also a Title on contracts in general,[17] where rules on requisites, interpretation, effects, discharge, rescission, assignment and validity of a contract are enumerated. As mentioned *supra* with respect to the analysis of the Chinese legislation, in a civil law system the hierarchy of sources renders the general part applicable to nominate contracts as long as it does not conflict with the specific rules set forth for the individual contract at issue.[18]

For the purposes of the present analysis, it is interesting to note that Article 1375 c.c. (in the general part on contracts) states that a contract must be performed according to good faith and Article 1175 c.c. (on obligations in general) declares that debtor and creditor are required to abide by the principle of fair dealing. The general rule of interpretation against the drafter (*contra proferentem*), moreover, is fully recognized in Italy and codified in Article 1370 c.c..

In several recent cases, Italian courts have applied the good faith and fair dealing test to the behavior of insurance companies that assumed the defense of their policyholders in court[19]. The violation of the good faith standard by the insurance company (often due to a reckless disregard of the legitimate interests of the insured) is

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[16] See *Sprung v. Royal Insurance (UK) Ltd*, Court of Appeal (Civil Division) [1999] Lloyd's Rep IR 111; EGAN, MARION, *Insurer's Duty to Pay*, Case Comment: [1998] Int. Insurance Law Review 166. See also CLARKE, *Policies and Perceptions of Insurance*, Claredon Press - Oxford (1997); CLARKE., *The Law of Insurance Contracts*, III ed., LLP - London (1997)

[17] Title II of Book IV on Obligations, artt. 1321 to 1469*sexies*.

[18] See MONTI, ALBERTO, *Shipbuilding contracts: non-performance, discharge and remedies. Italian contract law in a comparative perspective*, 1999 European Review of Private Law 373

[19] See most recently: *Lca Sanremo c. Velotto*, Supreme Court of Cassation, III, April 18 1997, n°3353

identified by the Latin terminology "*mala gestio*" and it allowed courts to award consequential economic damages in excess of the policy limits to the insured party. No damages for emotional distress or punitive damages, however, can be granted in these cases according to the Italian contract law rules at present in force. [20]

d) Consumerism, Constitutional Rights and Policyholders' Protection in India

A new legislation, the *Insurance Regulatory and Development Authority* (IRDA) *bill*, recently came into force in the Republic of India.[21] One of the most important features of such legislation is that it opened up the insurance sector to foreign and private investors.

Before January 2000, in fact, the insurance business in India was a government monopoly. After independence, the life insurance business was nationalized in 1956 and the general insurance sector followed the same path in 1972. Since then, the market is dominated by two state-owned entities, the Life Insurance Corporation (LIC) and the General Insurance Corporation (GIC), with its four subsidiaries based in Bombay (National Insurance), New Delhi (New India Assurance), Calcutta (Oriental Insurance) and Madras (United India Insurance).

In the absence of national schemes of social safety nets and due to the increasing level of risks associated with modern society in urban areas and the ongoing process of industrialization of the economy, the LIC and the GIC have come under growing pressure to satisfy various demands for insurance. The availability of adequate insurance coverage is also crucial for the 72% of the Indian population who lives and works in the rural areas, where months of hard work and the security of an entire family are often jeopardized by the occurrence of natural events such as a fire or a cyclonic typhoon. Despite a fairly good reputation enjoyed by the nationalized insurance companies, they have been recently challenged on the basis of indiscipline and lack of sincerity in the services provided. LIC and GIC, in fact, have both come

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[20] See MONTI, ALBERTO, *Italian Contract Law* (co-authored), in MATTEI and LENA (eds.), INTRODUCTION TO ITALIAN LAW, Kluwer Law International (forthcoming)

[21] The legislation was finally approved by both Houses of the Indian Parliament during the winter 1999 session and the President gave his formal assent on December 29, 1999. See *India: Going beyond mere regulation*, FT Asia Intelligence Wire, March 15, 2000

under fire during the past few years for delays in payments, rigid and legalistic approaches adopted to defeat the claims of policy holders and to deny benefits.

There have also been complaints that policies are issued on unfair terms and conditions and beneficiaries are harassed whenever claims are made for indemnities under insurance policies.

In view of the social responsibilities of the business of insurance to provide reasonable security to policyholders , the courts have passed strictures against the insurers for rejecting claims on frivolous and technical grounds[22]. Their standards of behavior in dealing with the policy holders are currently subject to strict checks by the judiciary and a new insurance jurisprudence has developed in the recent years[23].

The fundamental concerns for the welfare and benefit of the Indian society have been used by the judiciary as powerful dialectical tools to keep under rigorous control the behavior of the two state-owned insurance companies and of their subsidiaries. In a welfare state, law has a prominent role as a means of social engineering in constructing a mutually beneficial framework of relations between the insurer and the insured. Thus, courts in India have held the two corporations to be instrumentalities of state for the purposes of art. 12 of the Constitution, and imposed on them duties to act fairly and in consonance with the principles laid down in the Directive Principles of State Policy .[24] Judicial decisions in this field have been very often guided by the implementation of the goal of social and economic justice, clearly stated in the Preamble to the constitutional charter.

It is worth noting that such line of arguments shall not necessarily be limited to the misbehavior of LIC and GIC, in their peculiar capacity as instrumentalities of state for the purposes of art. 12 of the Constitution. The protection of the insured-consumer from the manipulative economics indulged in by large business corporations, in fact, is one of the fundamental constitutional duties imposed on the State and the Indian

[22] See e.g. High Court of Calcutta: *Umesh Cold Storage v. Oriental Fire and General Ins. Co*., (1985) 3 Comp LJ 362 (Cal) .

[23] Among the earliest cases, see e.g. *Asha Goel v. L.I.C*., A.I.R. 1986 Bomb. 412; *Reserve Bank of India v. Peerless and others*, (1987) 1 SCC 424, at 431-2 and 454.

[24] The Constitution of India (1950), Part IV, artt. 36 - 51. In particular, reference is often made to artt. 38 and 39 Ind. Const.. Other relevant provisions in the Constitution are articles 21 (fundamental right to a "dignified" life) 41and 43.

courts firmly consider it necessary to promote the welfare of the people and the common good[25].

In *L.I.C. of India v. Consumer Education and research Center*[26], the Supreme Court of India - affirming that insurance is a social security measure and therefore it should be consistent with the constitutional animation and conscience of socio-economic justice - stated that an unfair and untenable clause in an insurance policy is unjust and is amenable to judicial review.

The idea of multidimensional welfare of all the people was certainly among the important features of the new society established by the Constitution of 1950 [27] and it is expressed in the Preamble as well as in articles 38 and 39.

In India, therefore, consumer (and insured) justice is clearly part of a broader constitutional policy of social and economic justice. Consumer protection, of course, plays a key role in the implementation of the principle of socio-economic justice. Keeping this in view, under the auspices of the 1985 UN Resolution on Consumer Protection[28], the Indian Parliament promulgated the Consumer Protection Act in 1986. This legislation is very peculiar for several reasons[29]. It is important to note that the notion of consumer is quite broad in India. The 1986 Act recognizes the role of consumer organizations in assisting private individuals in seeking justice. The

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[25] See e.g. K.P. KRISHNA SHETTY, *Consumer Protection, Fundamental Rights and Directive Principles*, in LEELAKRISHNAN, P. (ed.), Consumer Protection and Legal Control, Eastern Book Co. (1984), 59 ff.; See also KOTESWAR RAO, *Constitution, State and Consumer Welfare*, in LEELAKRISHNAN, P. (ed.), Consumer Protection…, 81 ff.

[26] (1995) 3 Comp LJ 28 (SC) "It would thus be well settled law that the Preamble, Chapters on Fundamental Rights and Directive Principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people in particular to the middle class and lower middle class and all offendable (*sic*) people. The appropriate life insurance policy within the paying capacity and means of the insured to pay premia is one of the social security measures envisaged under the Constitution to make right to life meaningful, worth living and right to livelihood a means for sustenance."

[27] This idea is at the very basis of the arguments developed by AMARTYA SEN, *Development as Freedom*, Alfred A. Knopf - New York (1999)

[28] United Nations, General Assembly - *Consumer Protection* - Resolution No. 39/248 dated April 9, 1985. The resolution approved Guidelines for consumer protection that provide a framework for governments, particularly those of LDCs, to elaborate and enact consumer protection policies and legislation.

[29] See AGARWAL, V. K., *Bharat's Consumer Protection (Law & Practice)*, B.L.H. - New Delhi (1992), 8 ff.; SARAF, D. N., *Law of Consumer Protection in India*, Tripathi - Bombay (1990), 131 ff.; BHANSALI, S. R., *Consumer Protection and Law*, Faculty of Law, University of Jodhpur (1991); LEELAKRISHNAN, P. (ed.), *Consumer Protection and Legal Control*, Eastern Book Co. (1984); NAYAK, RAJENDRA K., *Consumer Protection Law in India - An Eco-Legal Treaties on Consumer Justice*, Tripathi - Bombay (1991).

consumer legislation applies to all goods and services in private, public or the co-operative sector. Thus, the consumer can initiate an action under the Consumer Protection Act against the defective goods or deficient services rendered even by the public sector or government undertakings such as railways, telephones, airlines, banks and, of course, insurance companies.

One of the most important aspects is that it provides a three-tier quasi-judicial machinery at the National, State and District levels for redressing in a simple, speedy and inexpensive way consumer grievances. Consumer Protection Councils at the State and Central levels have also been established, to promote and protect the rights of consumers.

Consumer claims can be brought before the Consumer Disputes Redressal Agencies (CDRA), set up by Section 9 of the Consumer Protection Act. There are three levels of agencies: a Consumer Disputes Redressal Forum (District Forum), a Consumer Disputes Redressal Commission (State Commission) and a National Consumer Disputes Redressal Commission (National Commission). Clauses (4) and (5) and Section 22 of the Act invest the CDRA with the powers of a civil court in respect of several procedural and substantial matters, thereby setting up an effective method of alternative dispute resolution.

In the very recent decision of the case *Spring Meadows Hospital v. Harjot Ahluwalia*[30], the Supreme Court of India held that the Consumer Protection Act confers jurisdiction on the National Commission in respect of matters where either there is a defect in goods, a deficiency in service, an unfair and restrictive trade practice or the charging of excessive price. Moreover, the court stated that the Act being a beneficial legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders, the provisions thereof should receive a liberal construction.

Several policyholders' claims, being actions for deficiency in services rendered by the insurance companies, are therefore brought before the CDRA. The CDRA and, particularly, the National Consumer Dispute Redressal Commission (NCDRC)

[30] (1998) 2 Comp LJ 228 (SC)

consequently has developed an interesting jurisprudence[31] in dealing with the same factual problems that American courts few decades ago addressed by creating the law of first party bad faith insurance[32]. Instead of referring to the covenant of good faith and fair dealing that U.S. courts found implied in every insurance contract, however, the NCDRC reached analogous operational solutions[33] basing its decisions, in accordance with the guidelines established by the Supreme Court of India, on the well recognized constitutional principle of socio-economic justice. In particular, the NCDRC has widely granted significant money awards for consequential economic loss and mental damages suffered by the insured in connection with unfair and unreasonable insurance claim practices.

e) The Relevant Provisions in the Chinese Insurance Law and Regulations

As shown by the brief comparative inquiry outlined in the preceding sections, several problems arise out of the interpretation and performance of the contract of insurance and it seems that the Chinese legislator was well aware of most of them. The protection of policyholder, at least in theory, is clearly a central concern of the modern Chinese insurance legislation.

As for the issues related to the policy language, it is interesting to note that, according to Article 16 of the Insurance Law of 1995, an insurer is required to explain the contents of the contract to the prospective insured at the time of entering into the agreement. In case of an exclusion of exemption of liability, moreover, the insurer has the duty to bring it to the attention of the applicant and failure to do so renders the clause ineffective and unenforceable (Article 17 of the IL). There is no requirement to write the contractual clauses in plain language, but the rule of interpretation against the

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[31] See *The New India Assurance Co. v. B.K. Vashist*, 29 May 1997, (1998) 3 Comp LJ 377 (NDRC); *Sirpur Paper Mills Limited v. National Insurance Co.*, 19 May 1997, (1998) 3 Comp LJ 380 (NDRC); *Jagdish Singh v. National Insurance Co.*, 9 February 1994, (1994) 2 Comp LJ 181 (NDRC); *Shadi Ram Raghubir Saran v. National Insurance Co.*, 13 April 1993, (1993) 2 Comp LJ 373 (NDRC); *Shri Ramaseshasya Raw and Boiled Rice Mill v. The United India Insurance Co.*, 10 December 1992, (1993) 1 Comp LJ 336 (NDRC); *Raj Kamal and Co. v. United India Insurance Co.*, 6 January 1992, (1993) 1 Comp LJ 329 (NDRC); *Hindustan Ferro-Halloys Ltd. v. Oriental Insurance Co.*, 21 July 1992, (1992) 3 Comp LJ 292 (NDRC); *Divisional Manager, L.I.C. of India v. Bhavanam Srinivas Reddy*, 5 June 1991, (1991) 2 Comp LJ 460 (NDRC).

[32] See e.g. California Supreme Court in the case *Gruenberg v. Aetna Insurance Co.*, 510 P.2d 1032 and Supreme Court of Wisconsin in *Anderson v. Continental Ins. Co.*, 271 N.W. 2d 368.

[33] Except for the punitive damages awards, that the CDRA are not allowed to grant.

drafter (*contra proferentem*) is clearly stated in Article 41 of the Contract Law of 1999 and reinforced by Article 30 of the Insurance Law of 1995.

The principles of good faith and fairness govern contractual relationships in general (Articles 5, 6 and 60 of the CL) and the contract of insurance in particular (Article 4 of the IL). The fair and prompt settlement of claims is a major cornerstone of sophisticated markets worldwide and China seems to have at least partially recognized the potential problems arising out of defective claim handling practices. Pursuant to the provision of the Chinese Insurance Law of 1995, an insurance company must promptly and fairly adjust a claim for compensation. If the claim is legitimate, the insurance company is required to make the payment within 10 days of reaching an agreement on the matter with the person entitled to obtain the policy benefits. The insurance company is required to make an advance payment within sixty days of receipt of the relevant information and evidence related to the claim, if the amount of compensation is not still fully determined.[34] According to Article 23 of the IL, if the insurance company fails to perform its obligations and delays or denies valid claims, it is liable for the economic loss caused to the insured party. In addition, according to Article 18 of the Regulation on Contracts of Property Insurance of 1983, it seems that the insurance company would also be liable for a penalty (in the form of interests on the amount due) in case of late payment of the proceeds.

Some problems, however, still remain unresolved. The insurer, for example, is required by the statute to verify the claim promptly and to pay within ten days of reaching an agreement with the policyholder, but there is no express duty to reach a fair agreement within a reasonable time of the verification. Of course, the civilian juridical logic would suggest that such additional duty on the part of the insurer is mandated by the general principle of good faith and fair dealing in contract performance. If and when the Chinese courts will decide that time has come to abide

[34] *See* 1995 Insurance Law, Article 25: "If the Insurer is not able to determine the amount of compensation or payment within sixty (60) days after receipt of relevant evidence and information stipulated in Article 25 and Article 27 hereof, he shall first make payment in accordance with a minimum amount determinable based on the available evidence and information; upon eventual determination of the amount of compensation or payment by the Insurer, the insurer shall pay the corresponding outstanding amounts."

by the principle of transparency and will publish more extensively their opinions, we will finally apprehend the solution.

V. Conclusions

The law of insurance contracts will be of increasing importance in the Chinese legal system during the process of transition from a state-centric planned economy to a new socialist market economy. This essay has explored the current situation of the insurance market in the PRC as well as the new legislation enacted following the implementation of the open-door policy and the modern economic reforms started in the early 1980s. The focus of the analysis has centered around the legal protection of the policyholders, both in the context of third party liability insurance and in the context of first party property insurance.

In order to better understand the Chinese rules on contract interpretation, integration and performance and with a view to comparing the different solutions adopted in various legal systems, a brief overview of the legal experience of the United States, England, Italy and the Republic of India has been offered. The results of this comparative analysis point out that the strongest protection of the interests of the insured is granted by the United States federal and state courts, followed by the courts and the quasi-judiciary consumer dispute resolution bodies in India, the Italian Court of Cassation and, lastly, by the English courts. The principle of good faith in contract performance and its applicability to the insurance contracts are recognized by all systems but for the English and the Indian ones. The Indian common law in theory still follows the English precedents; as it has been show, however, Indian courts have found their way around the theoretical lack of a general principle of good faith, and have reached the desired operational results by referring to the constitutional goal of socio-economic justice.

The modern Chinese insurance legislation deals extensively with the problems arisen elsewhere in the world during the last few decades and it appears to be deeply concerned with the protection of the legitimate interests of the insured party. In theory, this position is fully coherent with the role assigned to insurance companies in the new socialist market economy. In practice, the material implementation of such statutory

rules and principles requires that Chinese courts take an active part in the transitional process. It is still unclear whether today Chinese judges and lawyers, together with the legal system of China as a whole, are ready to make such a crucial institutional step.

Bibliographical References

ABRAHAM, KENNETH S., *Distributing Risk : Insurance, Legal Theory, and Public Policy* , New Haven: Yale University Press (c1986)

ABRAHAM, KENNETH S., *Insurance Law and Regulation: cases and materials,* Second Edition, Westbury, NY: Foundation Press (1995)

AGARWAL, V. K., *Bharat's Consumer Protection (Law & Practice),* B.L.H. - New Delhi (1992)

ASHLEY, STEPHEN S., *Bad Faith Actions: Liability and Damages*, Second Edition - West Group (1997)

BATH, SAHI D., *The Insurance Industry in India,* 1997 Int. ILR 180 (1997)

BAUM, RICHARD, *Burying Mao: Chinese Politics in the Age of Deng Xiaoping*, Princeton: Princeton University Press (1994)

BHANSALI, S. R., *Consumer Protection and Law*, Faculty of Law, University of Jodhpur (1991)

BHATTACHARJEE, A.K., *General Principles of Insurance Law*, Eastern Law House - Calcutta (1969)

BROWN, MICHAEL A., *The Insurer' Duty of Good Faith and Fair Dealing with His Insured Under English Law*, 1998 Int. J. Ins. L. 250 (1998)

BROWNSWORD, R., HIRD, N. J. and HOWELLS, G. (eds.), *Good Faith in Contract: Concept and Context*, Ashgate - Dartmouth (1999)

CAMPBELL, D. and VINCENT-JONES, P. (eds.), *Contract and Economic Organisation: Socio-Legal Initiatives*, Ashgate - Dartmouth (1996)

CHAPUT, NICOLE, *An Introduction to Insurance Law and Coverage in the People's Republic of China*, vol. XXX Tort & Insurance L. J. 871 (Summer 1995)

CHEN, ALBERT H. Y., *The Developing Theory of Law and Market Economy in Contemporary China*, in GUIGUO and ZHENYING (EDS.), *Legal Developments in China: Market Economy and the Law*, China Law Series, Sweet & Maxwell: Hong Kong and London (1996)

CHEN, JIANFU and KE, SUIWA, *Insurance*, in China Business Law Guide, CCH Asia Pacific (1999)

CLARKE, MALCOM A., *Policies and Perceptions of Insurance*, Claredon Press - Oxford (1997)

CLARKE, MALCOM A., *The Law of Insurance Contracts*, III ed., LLP - London (1997)

COHEN, JEROME A. and LANGE, JOHN E., *The Chinese Legal System: A Primer for Investors*, in FOCUS ON CHINA, 1998, Morgan Stanley & Co. Incorporated (1998)

DASGUPTA, S., *Calling for Urgent Change*, 19 (6) Reactions 22, London (June 1999)

DAVE, SADEEP, *Current Developments in the Insurance Sector in India*, 1997 Int. J. Ins. L. 181 (1997)

DEAKIN, S. and MICHIE, J., *Contracts, Co-operation and Competition - Studies in Economics, Management and Law* , Oxford Univ. Press (1997)

EGAN, MARION, *Insurer's Duty to Pay*, Case Comment: [1998] Int. Insurance Law Review 166

EPSTEIN, EDWARD and HALLWORTH, ANDREW, *The New Insurance Law of the People's Republic of China*, [1996] 2 Int. Insurance Law Review 61

FRIEDMANN, DANIEL, *The Transformation of 'Good Faith' in Insurance Law*, Chapter 13, pp. 311-325 of: BROWNSWORD, R., HIRD, N. J. and HOWELLS, G. (eds.), *Good Faith in Contract: Concept and Context*, Ashgate - Dartmouth (1999)

GORDON, CHARLES A., *United States Bad Faith Claims: the English Perspective*, 1998 Int. Insurance Law Review 143 (1998)

HOLTON, ROBERT J., *Globalization and the Nation-State*, St. Martin's Press - New York (1998)

JERRY, ROBERT H. II, *Understanding Insurance Law*, II ed., Matthew Bender (1996)

KACHWAHA, MAMTA, *The Judiciary in India : Determinants of Its Independence and Impartiality*, Leiden, The Netherlands: PIOOM ; Geneva: Centre for the Independence of Judges and Lawyers (1998)

KEETON, ROBERT E. and WIDISS, ALAN I., *Insurance Law - A Guide to Fundamental Principles, Legal Doctrines and Commercial Practices*, West Publishing Co.: St. Paul, Minnesota (1988)

KUMAR, ASHWANI, *Insurance: Joint Venture Opportunities in India*, 26 Int. Bus. Law. 6 (1998)

LEELAKRISHNAN, P. (ed.), *Consumer Protection and Legal Control*, Eastern Book Co. (1984)

MATTEI, UGO, *Comparative Law and Economics*, University of Michigan Press (1997)

MURTIIY, K. and SARMA, K., *Modern Law of Insurance in India*, Tripathi - Bombay (1991)

NAYAK, RAJENDRA K., *Consumer Protection Law in India - An Eco-Legal Treaties on Consumer Justice*, Tripathi - Bombay (1991)

PENTONY, BRENDAN, *Protection of Legal Interests of the Insured in Australia and China: A Task Not Yet Complete? The Australian Perspective*, Vol. 4 n° 1&2 Canberra Law Review 201 (1997/1998)

QINHUO, YANG, *The Legal Protection of the Insured's Rights and Interests Under the Insurance Law of China*, Vol. 4 n° 1&2 Canberra Law Review 189 (1997/1998)

SARAF, D. N., *Law of Consumer Protection in India*, Tripathi - Bombay (1990)

SCOGIN, HUGH T., JR. and BRAUDE, BRETT D., *New Contract Basics*, The China Business Review 36 (January-February 1999)

SEN, AMARTYA, *Development as Freedom*, Alfred A. Knopf - New York (1999)

SHUM, CLEMENT, *Insurance Companies in China*, 8 Insurance Law Journal 37 (1996)

SHUM, CLEMENT, *Insurance Contracts in China*, 1997 Int.'l Journal of Insurance Law 120

SINGH, BRIJ N., *Insurance Law*, The University Book Agency - Allahabad (1993)

SRINIVASAN, M.N., *Law and the Insurance Contract*, Eastern Law House - Calcutta (1965)

SRIVASTAVA, D. K., *Modernization of Insurance Concepts in China: How Close and How Far from International Concepts*, Vol. 4 nº 1&2 Canberra Law Review 231 (1997/1998)

STEMPEL, JEFFREY W., *Law of Insurance Contract Disputes*, Second Edition, Aspen Law & Business (1999 - 2000 Supplement)

STRANGE, SUSAN, *The Retreat of the State: the Diffusion of Power in the World Economy*, Cambridge Univ. Press (1996)

TEUBNER, GUNTHER (ed.), *Global Law Without a State*, Ashgate - Dartmouth (1997)

WU, XIAOHONG and STRANGE, ROGER, *The Insurance Industry in China: the Experience of European, US and Japanes Firms*, in STRANGE, SLATER and WANG (EDS.), *Trade and Investment in China: the European Experience*, Routledge Studies in the Growth Economies of Asia, Routledge: London and New York (1998)

ZIMMERMAN, JAMES M., *China Law Deskbook: a Legal Guide for Foreign-Invested Enterprises*, American Bar Association - Section on International Law and Practice (1999)