

## Conflicts and Coordination between Directors and Officers Liability Insurance System and Civil and Commercial Law

Yunke Jia<sup>1, a</sup>, Shuzhan Wang<sup>1, b</sup>, Keying Sun<sup>2, c</sup>

<sup>1</sup>Shandong University of Political Science and Law

<sup>2</sup>American University

<sup>a</sup>Jiayunke0405@126.com, <sup>b</sup>1125806569@qq.com, <sup>c</sup>1784938010@qq.com

**Keywords:** Directors and Officers liability insurance, Civil and Commercial Law, Conflict; Coordination

**Abstract:** The Directors and Officers liability insurance system is one of the business models in modern enterprises, which can effectively avoid operational risks and realize the full manifestation of managers' functions. At present, there are some inevitable conflicts between the Directors and Officers liability insurance system and the Civil and Commercial Law. Therefore, it is necessary to rely on relevant laws and regulations to further improve the standardization of insurance contracts and coordinate their relationship. This article mainly analyzes the conflicts and coordination between the Directors and Officers liability insurance system and the Civil and Commercial Law, and the analysis are stated as follows.

### 1. Introduction

At present, the Directors and Officers liability insurance system has been adopted by more and more modern enterprises. This system can effectively reduce the operational risks of modern enterprises and can minimize the corporate civil compensation. At present, there are some conflicts between the Directors and Officers liability insurance system and the Civil and Commercial Law, so the scholars are particularly concerned about coordinating the relationship between the two systems. This article mainly analyzes the conflicts between the Directors and Officers liability insurance system and the Civil and Commercial Law, and provides corresponding advice, hoping to offer some guidance and help in the research of this field.

### 2. Content Analysis of the Directors and Officers Liability Insurance System

The Directors and Officers liability insurance system is a special form of insurance. Its senior officers or directors are the main insurance objects in this insurance system. The Directors and Officers liability insurance system can significantly reduce civil liability compensation and protect the interests of the insured to the greatest extent. The Directors and Officers liability insurance system is quite different from the director's liability exemption system in the Civil and Commercial Law system. Further improvement of the Directors and Officers liability insurance system can help the senior officers and directors better perform their own functions and values. There are significant conflicts between the Directors and Officers liability insurance system and the director liability exemption system in the Civil and Commercial Law. From the directors' perspective, the two systems bear some similarities and differences. The Directors and Officers liability insurance system originated in the UK, and was not introduced to the US until the 1940s. Modern enterprises have certain risks in their operation when implementing the Directors and Officers liability insurance system. Once risks occur, the directors and senior officers can barely take the consequences by themselves. Therefore, it is necessary to buy such insurance for each director of the enterprise, which is now becoming one of the indispensable systems for the development of modern enterprises.

### **3. Analysis of the Conflicts between the Directors and Officers Liability Insurance System and the Civil and Commercial Law**

#### **3.1 Conflicts between Directors and Officers Liability Insurance and Civil Liability System**

Risks are inevitable in the operation and production of modern enterprises. As the person in charge of the production and operation, the directors' wrong judgments will have severe impacts on enterprises, thus causing very large economic losses. Therefore, directors of modern enterprises need to perform their duties carefully, and minimize the risks of business operation and production as much as possible. While the directors taking responsibility, once the enterprise suffers great losses due to the director's personal reasons, there will be few odds for the directors to win a lawsuit. Under this circumstance, many directors of modern enterprises have the risk that they may be held accountable for operational negligence at any time and face huge liability for compensation. Many directors choose to be prudent so that they miss the best time for a decision. To solve the above problems, some directors insurance systems can be applied to solve the problem, they can spare directors' concerns and allow them to boldly play their roles in corporate operation and governance. The directors insurance system is very beneficial to the development of modern enterprises. However, there are some conflicts between the Directors and Officers insurance liability system and the civil liability system. There are two main purposes of the damage compensation liability system in the civil law: One is to curb wrongdoings and various crimes, and the other is to implement civil compensation remedies to better protect the legitimate rights and interests of the victims. In the consideration of effective relief for victims, we can see clearly that the Directors and Officers liability insurance system and the civil liability system are established to serve different purposes. In general, the Directors and Officers liability insurance system is to transfer the compensation liability from the directors to the insurance companies. The purpose is to reduce the burden of the directors and avoid the pressure caused by the liability risks. The conflicts between the Directors and Officers liability insurance system and the civil liability system in the formulation objectives violate the social concept and public policies. Many scholars may wonder whether the establishment of the Directors and Officers liability insurance system can prompt the directors of modern enterprises to fulfill their obligations in corporate business. Is the Directors and Officers liability insurance system only established to make up for the operating losses of modern enterprises? The two questions are the focus of discussion by scholars at home and abroad.

#### **3.2 The Conflicts between the Liability of Directors and Insurance Premiums**

Listed companies are not necessarily to buy Directors and Officers liability insurance, which is clearly stated in the "Guidelines for the Governance of Listed Companies". The initial purpose of the Directors and Officers liability insurance system was to avoid business losses, but in the end the directors became the beneficiaries of business losses. It is obviously unreasonable. Therefore, scholars at home and abroad now focus on whether part of the cost should be borne by the company. Different scholars hold different views. One point is that when the company compensation system is combined with the corporate liability insurance system, the system is beneficial to both the directors and companies. In this case, it is also reasonable for the company to bear part of the cost. But actually, directors' personal responsibilities cannot be taken by companies, if the company is still required to bear part of the loss, then the company will not only lose operational benefits, but will suffer outflow of capital. This shows that the premise for the company to pay insurance costs is that the Directors and Officers liability insurance system is closely related to the company's liability insurance system. In this situation, companies can bear part of the cost, but the rest of the cost needs to be borne by the directors themselves. This type of cost-bearing model is most favorable to companies. From the directors' standpoint, if companies won't bear the insurance costs for them, once the directors have problems in operation, it is difficult for them to solve problems by themselves, which will aggravate the losses. So it is very necessary for the companies to buy liability insurance for the directors whether from the perspective of enterprises or directors. However, the Civil and Commercial Law clearly stipulates that accidental signing and trading of contracts are not encouraged in Articles of Association. Therefore, relevant researches on insurance

premiums have not finished [1].

#### **4. Coordination between the Directors and Officers Liability Insurance System and the Civil and Commercial Law**

##### **4.1 Coordination between Directors and Officers Liability Insurance and Civil Liability System**

Proper adjustment of insurance law and company law can further embody the function of civil compensation caused by violation of law. It should be noted that when adjusting the insurance law and company law, the requirements of the Directors and Officers liability insurance system should be strictly followed. The standard of the exemption clauses in the contract must be unified, and it should be clearly stipulated that lawsuit initiated by companies against the directors should not be covered in the insurance. In this way, the directors can feel the pressure that they are not totally free from the liabilities. Therefore, their sense of responsibility can be strengthened. For the part of the compensation that is neither paid by companies or directors, a deductible amount can be set to make sure that part of the insurance costs that the company won't pay can be transferred to directors or senior officers. The amount can be negotiated by both parties. It not only effectively avoids the frequent request of micro-insurance, which ultimately leads to a significant increase in insurance costs, but also ensures that the insured cannot completely transfer their liabilities to the insurance company, so that they can recognize their own responsibilities, and actively shoulder part of the responsibilities [2].

##### **4.2 Coordinate the Payment of Insurance Premium in a Rational Manner**

Coordinating the payment of insurance premium rationally to solve the conflicts between the Directors and Officers liability system and the Civil and Commercial Law has been extensively studied by scholars at home and abroad. Different countries adopt different measures to coordinate the payment of insurance premiums. For example, in the United States, 90% of the premium is paid by companies and the rest 10% will be paid by directors. However, in actual practice, the company will bear the 10% of the insurance premium for directors in order to retain talents, often by means of increasing the directors' wages or making corresponding compensations. So 100% of the insurance premium will be borne by companies. China still needs to further optimize and adjust payment of insurance premium on the basis of foreign measures. We can further adjust the company law, improve the Directors and Officers liability insurance system, and strengthen the effective control on it, besides. China also needs to grant each director the right to construct insurance, and further clarify the directors' obligations and responsibilities and make detailed regulations. Such an adjustment can promote the effective implementation of the Directors and Officers liability insurance system in Chinese enterprises, so that it can be widely used nationwide [3].

#### **5. Conclusion**

In summary, the Directors and Officers liability insurance system is very important for modern enterprises. As China's society and economy grow rapidly, the Directors and Officers liability insurance system has also been improved bit by bit. The conflicts between this system and the Civil and Commercial Law can be solved through effective measures, so that the advantages of the Directors and Officers liability insurance system can be fully demonstrated.

#### **References**

- [1] Chen Chunqi. Personal Views on the Conflicts and Coordination between Directors and Officers Liability Insurance System and Civil and Commercial Law. Dossier, No.26, PP.112, 2018.
- [2] Cai Yuanqing. Conflicts and Coordination between Directors and Officers Liability Insurance System and Civil and Commercial Law. Law, No.4, PP.79-83, 2003.

[3] Zhang Fengzhan. Personal Views on the Conflicts and Coordination between Directors and Officers Liability Insurance System and Civil and Commercial Law. Legality Vision, No.29, PP.181-182, 2017