

均衡

韩笑 著

之路

——中国商业保险监管制度研究

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均衡之路——中国商业保险监管制度研究

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内容摘要

保险存在的本质意义在于分散风险。在经济研究中，人常常被定义为风险的厌恶者，人们总是希望规避风险，寻求安全与稳定。从这个意义上说，保险提高了社会福利水平。与保险业的发展史相比，保险监管产生的时间并不算长，以至于学术界对保险监管产生的原因尚未达成一致。但无论如何，保险监管总是客观存在的。笔者将保险监管定义为包括政府在内的保险监管主体，制定并依据法律及相关规定，对保险合约双方（主要是保险公司及相关当事人）的状态和行为进行监督和管理。

本文将管制经济学和制度经济学的相关方法和理论引入对保险监管制度的研究中。首先，用管制经济学中的公共利益理论解释保险监管需求产生的根本原因；其次，用管制经济学中的部门利益理论解释保险监管供给产生的原因与供给偏向性的特征。在此基础上，笔者从制度经济学的角度，对保险监管制度供求之间的关系，监管制度的均衡与非均衡状态以及两种状态之间的转化过程进行了分析和探讨。在理论分析的基础上，笔者提出了进一步改革中国保险监管制度的建议。

循着这个思路，本文共分为六章。

第一章是绪论。

第二章主要对研究所涉及的管制经济学和制度经济学的相关理论进行介绍。管制经济学是一门相对新兴的经济学科。早期管制经

经济学的研究内容主要集中在对管制产生根源的探讨上，公共利益理论和部门利益理论对此给出了不同的解释。制度经济学是本文研究的重要理论基础。一般认为，当制度供给满足制度需求时，相关主体的利益实现均衡，制度均衡也由此实现。但这种均衡状态是暂时和不稳定的，因为一旦利益主体的效用函数发生变化，均衡状态即被打破。制度均衡与非均衡之间的转换过程被称之为制度变迁。制度经济学把制度变迁划分为强制性变迁与诱致性变迁。制度经济学关于制度供求双方及制度均衡的基本观点，为文章第三、第四和第五章对保险监管制度供求和均衡的分析提供了理论基础。

文章的第三、第四和第五章是本文的核心部分。在这三章中，笔者使用制度供求的基本分析方法，对保险监管制度的供给、需求、均衡、非均衡以及再度均衡的方式进行了较深入的分析。

第三章首先对保险监管制度的需求进行分析。结合公共利益论的基本观点，笔者认为，保险市场存在的信息不对称等市场失灵现象构成了保险监管的成因。除此之外，保险行业本身的特殊性，如保险合同制定过程中的不公平性、保险风险在金融体系内部的传递性都强化了保险监管制度产生的必要性。而中国保险市场在入世之后面临的激烈竞争态势更使得加强我国保险监管制度建设成为必须。通过分析，笔者认为，保险监管制度需求是原生性的，保险监管制度供给是诱致性的。保险监管制度需要满足的两个目标是：实现保险行业的健康发展和维护保单持有者的合法权益（当然这两个目标是有主有次的），而联系这两个目标的桥梁是保险公司的偿付能力。笔者认为，在谨慎性原则的指导下，通过对保险公司偿付能力的动态监管，既可以实现保险公司的顺利经营，从而实现保险行业的健康和稳定发展，又使得保单持有人可以按时足额的获得保险金或赔偿金，最终维护保单持有人的合法权益。

第四章的研究对象是我国保险监管制度供给。我国保险监管制度供给的两个明显特征是：监管主体的垄断地位，以及监管偏好与

监管目标之间的非一致性。政府监管当局是保险监管制度最主要的供给者，由于主体上的这种特征，我国的保险监管主要采用的是行政监管的方式。行政监管当局之所以处于保险监管制度供给的垄断地位，是因为我国的保险监管制度是在缺乏立法监管的条件下提供的。保险行业机构、社会中立机构所提供的监管供给也严重不足。主体上的缺失和地位的非均衡，使得保险监管制度供给在追求制度均衡的过程中，选择了一条强制性变迁的道路，以政府为主体的制度变迁方式，必然使得保险监管制度朝着有利于政府利益的方向发展。这就是本章第2节所讨论的政府保险监管供给偏好问题。按照公共利益论的观点，监管制度的供给应当以保护保单持有人的利益为最终目标，但由于历史和现实的各种因素，保险监管制度的变迁在制度惯性的作用下，通过以政府为主体的强制性变迁方式，偏向于维护保险业整体的发展目标。从价值判断的角度看，笔者认为这偏离了保险监管制度的根本目标，提出并论证了应以保护投保人利益应成为保险监管制度的根本目标。

第五章在前两章分析的基础上，对保险监管制度的均衡、非均衡，及如何实现再度均衡进行了分析。笔者认为，与其他制度的均衡条件相同，当保险监管制度供给满足了保险监管需求时，监管制度就实现了均衡，其标志是保险功能的全面实现：保险保障功能的实现既是被保险人购买保险产品的基本动因，也是保险公司赖以生存的基本法则；保险资金融通功能的实现不仅弥补了被保险人因投保而带来的资金时间价值的损失，也使得保险公司作为经济主体能够实现利润最大化的基本目标；保险的社会管理功能使得保险公司的经济利益与社会大众的社会利益达成一致，有利于保险行业进入良性循环的轨道。但在实践中，保险监管制度均衡状态的实现却几乎是一种理想的状态，无论是因为供给过多或供给不足带来的制度失衡，还是由于需求不足或需求过剩带来的制度失衡都在时时发生。不仅如此，无论是保险监管制度需求方面，还是供给方面的变

化都会引致另一方面的变化，使得保险监管制度非均衡成为一种常态。从历史发展趋势来看，保险监管和其他金融监管一样走过了一个放松——加强——再放松的过程。从发达国家的经验来看，保险监管一直在寻找着合适的边界。笔者认为，保险监管应当根据不同国家、不同经济发展阶段保险市场的不同情况，在一定的领域适度加强监管，在一定的领域适度放松监管。保险监管主体的相对缺失和金融行业融合经营趋势带来的风险增强是加强保险监管的缘由；部门利益论所支持的关于监管制度保护了垄断者利益，妨碍了市场资源配置效率的观点构成了放松监管的主要缘由。笔者认为，这两种趋势是并存的。微观层面上保险监管的发展历程与宏观层面上市场配置与政府管制之间的互补关系非常吻合，这不是一个偶然，而是由经济发展的客观规律决定的。

最后一章根据前文的研究结论，对处于变革环境中的中国保险监管制度建设提出了相关建议。从宏观层面上，应当构建以法律为依据的，多方主体参与的保险监管体系，通过实现监管手段的信息化，应对保险集团化和金融产业融合经营的趋势。在微观层面上，我们认为，从主体上看，应当加强立法监管和其他非行政性监管，适度放松行政性监管；从监管内容上看，应当适度放松行业进入监管和费率制定监管，适度加强对保险企业偿付能力、保险中介机构、新型保险产品（如投资连结产品等）的监管。通过不懈的努力去真正实现一个有效保险监管制度体系的一般要求，即有完善的法制建设基础、明确的监管边界和保障监管的有力执行。

本文的主要观点和结论包括：

第一，保险监管制度的需求源于市场失灵现象和保险业的特殊性，因此是原生性的；而保险监管制度供给则是为了将由于保险市场失灵造成的社会福利水平下降程度降低到最小，因此，保险监管制度供给是引致性的。

第二，管制经济学中的公共利益论是保险监管制度需求产生的

理论基础；而部门利益论则解释了保险监管制度供给的形成模式。从实证的角度看，我国保险监管制度供给呈现出促进保险业整体发展的偏好；从规范的角度看，保险监管制度供给应当以维护被保险人利益为根本目标。

第三，保险监管制度的供求双方是互相影响的。保险监管制度需求的过剩和不足都会导致保险监管供给的相应变化；保险监管制度供给的过剩与不足也会导致保险监管需求的相应变化。保险监管制度供求之间的相互作用形成了保险监管制度的均衡。保险功能的全面和顺利实现是保险监管制度实现均衡的标志。但是，保险监管制度的均衡是相对的和短期的；保险监管制度的非均衡状态是绝对的和长期的。保险监管制度的非均衡状态既可能是制度供给因素造成的，也可能是制度需求因素造成的。

第四，为促进我国保险监管制度趋向再度均衡，需要从保险监管主体、保险监管内容和保险监管手段等方面进行努力。就保险监管主体而言，应当有进有退，具体表现为行政性监管的适当放松和非行政性监管（尤其是立法监管）的适度加强。就监管方式而言，应当充分利用现代信息手段，应对融合经营环境下复杂的市场状况；就保险监管内容而言，对不同的保险监管内容也应采取不同的监管策略。具体而言，应适度加强对保险资金运用、保险公司偿付能力以及融合经营企业和融合经营产品的监管；应适度放松对费率制定和行业进入条件的监管等等。

Abstract

The value of insurance lies in risk-spreading. People are normally identified as risk-averse in economic research, for people always try to avoid risk and seek security and stability. In this sense, insurance improves social welfare. Compared with the history of insurance, insurance regulation came into being not long ago, so that the academic circle has not reached an agreement on the cause of insurance regulation yet. Whatsoever, insurance regulation exists objectively. In this dissertation, insurance regulation is defined as the procedure of insurance regulatory institutions including the Government in light of laws and relevant rules to supervise and regulate activities of both parties (mainly insurance companies) in insurance contract.

In this dissertation, Economics of Regulation and Institutional Economics are two basic methods to the study of insurance regulation. From Economics-of-Regulation angle, through exploring root cause of insurance regulation, the writer studies features of China insurance regulation. From Institutional-Economics angle, on the basis of the analysis of both demander and supplier in insurance regulation, the writer discusses the features of insurance equilibrium and disequilibrium, and the changing course between equilibrium

and disequilibrium as well. The dissertation consists of six chapters.

Chapter 1 introduces theories of Economics of Regulation and Institutional Economics. Economics of Regulation is a relatively new economic subject. Early Economics of Regulation focused on the origination of regulation. Public Interest Theory explains differently with Sectional Interest Theory on this issue. Public Interest Theory, following orthodox economics “market failure” stance, deems governmental regulation as endogenous variable in economy development. As fundamental means of resource allocation, market has insuperable defects such as information asymmetry, natural monopoly, and externality and so on. To make up for the defects and prevent social welfare from deteriorating, the Government, as prolocutor of public interest, is supposed to impose appropriate surveillance to the market so that to improve social welfare and maintain public interest. Sectional Interest Theory advocates found out via empirical research that government-surveillance industries were less efficient in resource allocation, what is worse, extra monopoly profit has been produced. Hence, Sectional Interest Theory advocates consider that the reason of government regulation is not to overcome market failure, but originated from political rivalry between economic blocs or different departments. It is the outcome of interest groups’ competition. One of the key hypotheses of Sectional Interest Theory is that the Government is NOT prolocutor of public interest, and that the Government aims to maximize profit. The “profit” here includes not only economic profit but also political profit. Capture Theory of Regulation (typical part of Sectional Interest Theory) says that government regulation stems from the

demand of monopoly industries, in order to sustain their monopoly status. The rise of Sectional Interest Theory started from 1980s, based on worldwide deregulation tide. The latest research direction of Economics of Regulation is the discussion on supply mode of regulation system. Theory of Incentives in Procurement and Regulation is the combination of Information Economics and Economics of Regulation. Information Economics provided a most stimulating regulation supply mode from principal-agent-theory angle.

Institutional Economics is another elementary research method of the study. It is generally agreed that when institutional supply meets demand, subject interests attain equilibrium, institutional equilibrium is thus realized. However, the equilibrium is only temporary and instable. Once human (subject of interest) utility function changes, the equilibrium breaks. The transformation between institutional equilibrium and disequilibrium is named institutional change. Further, institutional change is categorized to compulsive change and induced change. Institutional Economics propositions on institutional demander and supplier and institutional equilibrium furnish rationale for chapter 3, 4 and 5. Similarly, basic stances on compulsive change and induced change provide rationale to chapter 5, section 3.

According to the concept in this article, suppliers of insurance regulation system are diversified. Whereas in practice, no matter planned economy countries like China, or fully market economy countries like USA, usually governments act as major regulatory body. Because government controls the resources that other regulatory entities do not have, e. g. political power, power of force. Besides, risk-spreading function of insurance enables government

to achieve certain social objectives. Therefore, the article dedicates chapter 2 section 2 to rationales and methods of government regulation.

Chapter 3, 4 and 5 constitute hard core of this dissertation. In the three chapters, the writer analyzes insurance institutional supply, demand, equilibrium, disequilibrium and means of retrieve equilibrium with methodology of institution demand and supply. Chapter 3 examines demand for insurance regulation institution. In accordance with Public Interest Theory, market failure (e. g. information asymmetry) exists in insurance market. In addition, peculiarity of insurance industry (i. e. unfairness in insurance contracts drafting, insurance risk-spreading within financial system) justifies the necessity of insurance regulation. China's entrance to WTO brings about fiercer competition in insurance market, and this makes insurance regulation a must. From this research, it can be identified that demand for insurance regulation is original while insurance regulation supply is derivative. Insurance regulation need to fulfill two goals, to attain healthily development of insurance industry and defend legitimate interest of policy holder. Solvency of insurance company is like a bridge between the two goals. The dissertation argues that according to Principle of Reticence, dynamic supervision upon solvency can help insurance companies operate smoothly, hence leads to healthy and steady growth of insurance industry. Thus policy holders' legitimate interest is successfully defended and they can obtain timely and sufficient insurance benefits or compensation.

Research object of chapter 4 is the supply of China insurance regulation, which has two evident features as follows: monopoly

status of regulation entity; and, non-coherence between regulation preference and regulation targets. Governmental regulation authority is principal supplier of insurance regulation. Because of this characteristic, insurance regulation in our country adopted the form of administrative regulation. The reason the authority being monopoly supplier lies in that the supply is lack of legislative supervision. The supply to insurance institutions and social neutral institutions is far from enough. Absence and disequilibrium of regulation entity made a compulsive changing way in chasing equilibrium. Being entity of institutional change, government is bound to direct insurance regulation to its own benefit. That government preference of insurance regulation becomes the topic of section 2 of this chapter. As stated by Public Interest Theory, utmost goal of insurance regulation supply should be policy holder's interests. However, due to historical and realistic factors and institutional inertia, institutional change of insurance regulation tends to defend the whole industry's developing targets by means of compulsive change. Regarded from value judgment respect, the dissertation claims that this deviated from ultimate goal of insurance regulation.

Chapter 5, based on previous two chapters' conclusions, investigates on institutional equilibrium and disequilibrium of insurance regulation, and how to regain equilibrium. The dissertation insists that same as other institution's equilibrium condition, insurance regulation reach equilibrium when institutional supply meets demand, which is symbolized by general fulfillment of insurance functions. Fulfillment of insurance guarantee function is insurants motivation of purchase and ground rules of insurance companies as well; Fulfillment of financing function not only makes up for

insurants' time value, but also enables insurance companies to accomplish their utmost goal of profit maximization; Social management function brings insurance industry into a virtuous circle by conforming economic interest of insurance companies with social interest. Nevertheless insurance regulation equilibrium is actually too ideal to retain, for supply can hardly meet demand exactly. What is more, any factor of demand or supply of insurance regulation changes will trigger change of the other. In other words, insurance regulation disequilibrium is the normality.

Seen from historical trends, insurance regulation follows a slacken-strengthen-slacken route, which is similar to other financial regulation, and it is strengthening again. Seen from experience of developed countries, insurance regulation has been seeking a proper boundary. The dissertation claims that insurance market circumstance in specific economies or countries determines the area to slacken or strengthen regulation. Amplified risks from the absence of regulation entity and the mixed operation of financial industry animate strengthening insurance regulation. The standpoint advocated by Sectional Interest Theory that regulation protects monopoly interest and hinders resource allocation in the market comprises the reason for slacken regulation. That insurance regulation developing process in micro-level complies with the complementation between market allocation and governmental regulation in macro-level is not simply by accident, instead it is decided by economic rules.

In according to research results of previous chapters, the last chapter brings forward suggestions on China insurance regulation institution under fast changing condition: On macro level, insurance regulation institution should be constructed under the instruc-

tion of law with diversified entities. Meanwhile, respond mixed operation of financial industry with informationized regulatory measures; on micro level, legislative regulation and other non-administrative regulation should be reinforced when administrative regulation loosened; on regulation contents, better to loosen the regulation for entering the industry and fee level as well as reinforce the regulation for insurance agencies, insurance investment related products and insurance brokers.

Major standpoints and conclusions of the dissertation are as follows:

First, demand for insurance regulation institution originated from market failure and specialty of insurance industry; while supply of insurance regulation institution is to reduce the social welfare decrease caused by market failure to minimum. Therefore, the supply of insurance regulation institution is derivative.

Second, Public Interest Theory in Economics of Regulation is rationale of the demand for insurance regulation institution; meanwhile, Sectional Interest Theory provides mode of its supply. Seen from practical angle, the supply of China's insurance regulation institution tend to accelerate growth of insurance industry; and, seen from normative perception, supply of insurance regulation institution should target at protecting insurant's interest.

Third, both parties (demander and the supplier) in insurance regulation institution affect each other. Superfluous or insufficient supply brings corresponding changes on the demand. Interaction between demand and supply of insurance regulation institution leads to its equilibrium. However, equilibrium is comparative and temporary; disequilibrium is absolute and long-lasting. Institutional

disequilibrium is probably caused by supply factor as well as demand factor.

Fourth, in regaining institutional equilibrium, efforts are needed in insurance regulation body, content and tactic. As to regulation body, administrative regulation should be slackened and take non-administrative means instead, especially legislative regulation. Employ different regulatory strategy to different regulation content. For example, strengthen appropriately the regulation on insurance fund utilization, company solvency and mixed-operation company or products; meanwhile slacken regulation on fee level and industry entry condition properly. When come to regulation tactic, modern information technology should be applied in insurance regulation to cope with current sophisticated market circumstance.