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### Insurable interest in life insurance: a Chinese perspective

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#### \**J.B.L.* 337 Introduction

It has long been established that insurable interest is a basic requirement of a contract of insurance. The nature and extent of insurable interest varies from one jurisdiction to the next<sup>1</sup> but the fundamental justifications for the requirement of the interest are the same, which are to discourage gaming and wagering in the guise of insurance and to minimise the risk of destruction by the proposer of the subject-matter of the insurance.<sup>2</sup>

In recent years, the requirement of insurable interest in some jurisdictions has become less strict than it used to be. For instance, in England and Wales, the requirement of insurable interest in non-marine indemnity insurance appears to have been removed by the [Gambling Act 2005](#),<sup>3</sup> but in life insurance the insurable interest is still required by [Life Assurance Act 1774](#) (LAA). The English and Scottish Law Commissions are scrutinising the doctrine of insurable interest and setting up proposals for reforming the law of insurable interest.<sup>4</sup> In Australia, insurable interest in life insurance was abandoned entirely by the Life Insurance (Consequential Amendments and Repeals) Act 1995. By contrast, the Chinese Insurance Law maintains the requirement of insurable interest in all types of insurance such as life insurance, property insurance and marine insurance.<sup>5</sup> The major issues in life insurance which have been argued for many years are: (1) who has an insurable interest in whose life, and (2) who is the beneficiary and has the right to claim for the insurance money? The first issue is to be discussed in detail in this article and the second issue has been considered in a separate article.<sup>6</sup> The differences in the approach to the issues in different jurisdictions, it is submitted, \**J.B.L.* 338 largely result from different traditions, cultures, other relevant laws and the moral condition, etc. Whether or not a person has an insurable interest in another's life largely depends on whether the life insured owes an aliment obligation to that person in a family relationship or whether a pecuniary loss flowing from a legal obligation will or might be suffered by that person on the death of the life insured in other relationships. So the issue of whether a person has an insurable interest in others' lives is determined not only by insurance law but also by other relevant laws. In China, the Marriage Law,<sup>7</sup> Adoption Law<sup>8</sup> and Civil Code<sup>9</sup> are also the sources of law for determining insurable interest in life insurance.

This article will critically examine the doctrine of insurable interest in life insurance in the Chinese Insurance Law 2009.<sup>10</sup> A particular effort will be made to identify and discuss ambiguities and confusions in the relative provisions, and the problems caused thereby.

Finally, solutions to the problems in law and practice will be proposed in order to further improve Chinese law. A number of issues will be considered: (1) the question of who has an insurable interest in whose life; (2) consent of the life insured as an alternative ground for establishing insurable interest and as a condition for a valid life contract; (3) extent of insurable interest; (4) the time when an insurable interest must exist; (5) consequences for life policies without insurable interest; (6) whether insurers should have a statutory duty to check the existence of insurable interest at the time of the contract; (7) assignment of life policies and insurable interest.

### **Who has an insurable interest in whose life?**

The doctrine of insurable interest in life insurance in China is governed by arts 12, 31, 33 and 34 of the Insurance Law 2009. Article 12 provides a general definition of the concept of insurable interest (applying to both property and life insurance) which states "Insurable interest shall refer to a legally recognized interest of the proposer in the subject matter of insurance". This definition establishes a narrow and restrictive test of insurable interest—"a legally recognized interest". This is similar to the current English law position,<sup>11</sup> under which the policyholder must show that his insurable interest in the life insured is legally recognised. This strict test has caused uncertainty and unfairness. In judicial practice, courts look for a legally recognised interest. This can be seen in the case of *Mr Gao v Life Insurance Co.*<sup>12</sup> Mr Gao adopted an abandoned baby girl. He registered the adoption in the police station, but did not register it with a civil affairs department, which must be done for a lawful adoption according to the Adoption Law.<sup>13</sup> Gao took out an accident policy on his adopted daughter, who was drowned a year later. He claimed, *\*J.B.L. 339* but his claim was rejected by the insurer, who argued that Gao did not have an insurable interest in his adopted daughter because he did not register the adoption according to the Law of Adoption. Thus their relationship was not legally recognised. This is certainly unfair and harsh to the policyholder.<sup>14</sup> It is submitted that the strict test of "a legally recognised interest" needs reform.

Having discussed the general concept of insurable interest in art.12, now let us turn our attention to the provisions regarding insurable interest in life insurance. Article 31 provides the categories of insurable interest in life insurance. Article 33 deals with matters regarding insurance on a person whose civil capacity is limited. Article 34 provides that for a death policy, consent of the life insured is an additional ground for the validity of the contract and the insured amount. All these articles will be examined. At this stage, art.31 is discussed in detail, as it is the major article regarding insurable interest. It provides:

"A proposer shall have an insurable interest in the following persons:

(1)"Himself;

(2)His spouse, children and parents; and

(3)Apart from the above-mentioned, other family members and close

relatives bearing foster or support or maintenance relationship with the proposer;

(4)A worker who has working relationship with the proposer.[15](#)

In addition to the persons mentioned in the preceding paragraphs, the proposer shall be deemed to have an insurable interest in any insured person who agrees that the proposer may conclude a contract on his life."

It is clear that sub-arts (1), (2) and (3) concern family relationships and sub-art.(4) concerns an employment relationship. The second paragraph of art.31 is about insurable interest in others who are not included in the list and whose consent to the proposer to insure their lives is sufficient for creating an insurable interest. This could be deemed as an alternative ground for establishing insurable interest. Thus art.31 establishes three categories of insurable interest: (1) interest arising out of family relationships; (2) interest arising out of an employment relationship; and (3) interest arising out of the consent of the life to be insured. Now it is appropriate to discuss these categories in turn.

### ***Interest arising out of family relationships***

Insurable interest supported by natural affection is universally recognised. However, the scope of this category varies from one jurisdiction to the next. The category in Chinese law is wider than that in English law. Most family members have insurable interest in each other's life under Chinese law. *\*J.B.L. 340*

### **Insurable interest in one's own life**

The Insurance Law supports a person to insure his own life.[16](#) The modern forms of life policies are numerous, but in general can be divided into four classes, namely traditional whole life policy, endowment policy, accident policy and investment policy.[17](#) No matter which form it is in, or whether it is for his own interest or other persons' benefit, a person definitely has an insurable interest in his own life. Moreover, because the value of one's life and body cannot be measured by money, a person has an unlimited interest in his own life.[18](#)

### **Insurable interest in the life of one's spouse**

By virtue of art.31(2) of the Insurance Law, a person has an insurable interest in his/her spouse. Under the Marriage Law, a husband and a wife have a legal obligation to maintain each other. If one party fails to perform this duty, the party in need of maintenance has the right to demand maintenance payments from the other party.[19](#) So they have an insurable interest in each other. This does not extend to civil partners, cohabitants and fiancé(e)s as their relationships are not recognised by law in China. However, the law gives the right to any person to insure another if the other agrees the person to do so.[20](#) Thus an insurable

interest can be created through consent for the relationships of civil partners, cohabitants and fiancé(e)s.

### **Insurable interest in the lives of one's children**

Article 31(2) makes it clear that parents have an insurable interest in the life of their children. This is supported by the Marriage Law, which imposes a legal duty on parents to bring up and educate their children, while adult children have the duty to support and assist their parents.<sup>21</sup> If the adult child fails to perform his duty, parents who are unable to work or have difficulty in providing for themselves have the right to demand support payments from their child.<sup>22</sup> They can also take action against their child if he/she refuses to supply the maintenance.<sup>23</sup> It is obvious that the death of the adult child amounts to the cessation of the financial support. It is therefore stipulated that parents have an insurable interest in their child. *\*J.B.L. 341 24*

In China, special circumstances under the family planning policy make the provision more reasonable. In the last three decades, China has been implementing a "one couple, one child" policy to control the rapid growth of the population. One of the problems of this family planning is that the balance of the elderly population and young population has been disturbed. The traditional family composition (one couple having several children) is disappearing and a new type of family composition of "4+2+1" is becoming typical, namely a family will consist of four elderly parents,<sup>25</sup> two young persons (the couple) and one child. It is obvious that elderly parents, especially the poor ones, may face financial difficulty if their only child dies. There is no doubt that this may place financial pressure on the couple to support the whole family.<sup>26</sup> Taking out life insurance is one of the ideal solutions for elderly people. In addition to effecting an annuity policy and endowment policy they may take out insurance on the life of their adult child for their own benefit.

The law also entitles a parent to effect a death policy on his/her minor child who has no civil capacity.<sup>27</sup> The only restriction for such a policy is that the insured amount should not exceed the limit set by the financial supervision and control department.<sup>28</sup>

### **Insurable interest in the lives of one's parents**

That a child has an insurable interest in his parents is affirmed by the Insurance Law.<sup>29</sup> This is also supported by the Marriage Law, which imposes duties on a parent to bring up his child. If the parent fails to do so, the child who needs his parent's support has the right to demand the costs of upbringing from his parent.<sup>30</sup> So, it is clear and reasonable that a child who is a minor has an insurable interest in the life of his/her parent,<sup>31</sup> as the former would undoubtedly suffer financially on the demise of the parent.<sup>32</sup>

In China, a person who has completed his 18th year becomes an adult.<sup>33</sup> The legal duty of aliment ceases when the child reaches 18 years of age, so a child under 18 is deemed to have an insurable interest in his/her parents. However, as the lawful age of marriage is 22 for a man and 20 for a woman,<sup>34</sup> it might be inferred that a man who is under 22 and a woman who is under 20 has an insurable interest *\*J.B.L. 342* in his or her parents because such children usually still live with their parents before they get married. Today,

most young people of this age are studying in colleges or universities, so they still need their parents' support to finish their education. They are therefore presumed to have an insurable interest in their parents.

A question arising from this area is whether a person who is over the lawful age of marriage has an insurable interest in his parents' lives. The Insurance Law is ambiguous on this point. It is submitted that when a child has grown up and is financially independent or gets married, the insurable interest in the life of his parent should disappear.<sup>35</sup> In Scottish law, an insurable interest ceases when the child reaches 18 years of age, or 25 years of age if the child is in education or training.<sup>36</sup>

### **Insurable interest in other family members and close relatives**

Apart from the above family relationship, in the absence of financial dependency, there is no insurable interest between other family members or close relatives, such as grandparents and grandchildren, siblings, persons related by marriage, cousins, nephew, nieces, uncles or aunts.<sup>37</sup> In these relationships, an insurable interest is deemed to exist only when a person who takes out a policy on others can demonstrate that he is fostered, supported or maintained by those others.<sup>38</sup> Thus, whether an insurable interest exists between a grandparent and a grandchild depends on whether they are supported by each other. The obligation to support each other between grandparents and grandchildren arises only in some special situations. The Marriage Law stipulates:

"Grandparents who can afford it shall have the duty to bring up their grandchildren who are minors and whose parents are dead. Grandchildren who can afford it shall have the duty to support their grandparents whose children are dead." <sup>39</sup>

In accordance with this provision, grandparents are legally obliged to bring up their grandchildren who are minors and whose parents have died. The grandchildren therefore, in such a situation, have an insurable interest in their grandparents. The rule applies vice versa.

This interest can be extended to other members of the family such as siblings.<sup>40</sup> Close relatives, such as uncle/aunt and nephew/niece, father/mother-in-law and son/daughter-in-law may also fall into this category, where they are financially dependent on each other. Based on the legal alimony provided in the Marriage Law, the Insurance Law expressly stipulates that the proposer also has an insurable *\*J.B.L. 343* interest in other family members and close relatives who have a fostering, supporting or maintaining relationship with the proposer.<sup>41</sup>

### ***Insurable interest in the relationship of employer and employee***

Article 31(4) of the Insurance Law provides that "a proposer has an insurable interest in the life of a worker who has working relationship with him". This sub-article is a new provision introduced by the Insurance Law 2009. It indicates that an employer has an insurable interest in the life of his employee. This insurable interest is created based on a binding contract of employment, under which the employer is entitled to effect a policy on his employees, because it is clear that the employer would suffer a financial detriment on the

death of his employee (especially a key employee)<sup>42</sup> Article 31(4) does not mention whether the employee has an insurable interest in the life of his employer. The interest in an employment relationship is usually mutual. So the employee's insurable interest in his employer should also be covered in the law.<sup>43</sup> It is suggested that a new provision should be added to art.31(4) to declare that an employee has an insurable interest in the life of his employer.

### ***Insurable interest in lives of others—consent as an alternative ground for establishing insurable interest***

In addition to the relationships mentioned in art.31(1)–(4), the law intends to create insurable interest in other relationships through an alternative way—consent. The second paragraph of art.31 provides:

"In addition to the persons mentioned in the preceding paragraph, the proposer shall be deemed to have an insurable interest on other person's life who agrees that the proposer may conclude a contract of insurance on his/her life."

Some other jurisdictions, such as Canada<sup>44</sup> and Spain,<sup>45</sup> also take consent as an alternative way of establishing insurable interest when a pecuniary interest or an interest based on natural affection cannot be demonstrated. English law, however, does not adopt this approach. In Issues Paper 4, the Law Commissions proposed that consent of the life insured should provide an alternative ground for creating insurable interest, where the proposer and the life insured do not fit within the *\*J.B.L. 344* categories of natural affection or a reasonable expectation of loss.<sup>46</sup> It was said that the creation of such an alternative would certainly reduce the difficulties arising from the limited nature of insurable interest in current English law. However, in the Joint Consultation Paper, this suggestion was overwhelmingly rejected. Many consultees worried that consent might be obtained by duress or other objectionable behaviour, particularly where the life insured was elderly or very young.<sup>47</sup> So the Law Commissions did not make any further proposal on this issue.

In China, consent as an alternative to create insurable interest certainly widens the categories set out in art.31(1)–(4) of the Insurance Law. However, in practice, disputes often occur owing to the weakness of this alternative approach in establishing insurable interest which is supported by neither natural affection nor economic dependency but by consent only. The following two cases show the weakness of the alternative approach. In *Mrs Zheng v Beijing Life Insurance Co*,<sup>48</sup> Mrs Zheng was a university lecturer. Miss Gu was a student of the university and stayed in Zheng's house with her family. Gu was to discontinue her study because of financial problems. Zheng called for donations to support Gu's study and collected RMB 10,000 from his colleagues and students. Gu refused to accept the money. Upon an advice of an insurance agent, Zheng as the proposer effected a life policy on Gu's life, using the donated money as premium in 2004. Both Zheng and Gu signed the declaration in the proposal form as their consent to the insurance. This life insurance was supported by neither natural affection nor financial dependency. Gu's consent to the insurance was the sole requirement for an insurable interest. In the spring of 2005, Gu left home without telling Zheng, who thus lost contact with Gu. Then she wanted to claim the premium back on the ground that she had no insurable interest in Gu's

life and the policy was void. The insurer rejected her claim and argued that there was an insurable interest created by Gu's consent and the contract was valid. The court supported the insurer's argument.<sup>49</sup>

An insurable interest created by consent of the life insured can sometimes give rise to wagering on old and vulnerable people in the guise of insurance, and may also increase the risk of murder. In *Zhang v Pacific Life Insurance Co Cichuan Branch*,<sup>50</sup> Mr Hu was single, old, poor and not healthy, and Mr Zhang was a medical doctor in a village. Hu visited Dr Zhang regularly for medical treatment. Zhang persuaded Hu to give consent to him to effect life policies on Hu's life and in return promised to offer Hu free medical treatment and free medicine in Zhang's surgery. Zhang then effected 18 life policies on Hu's life (in a form that looked like policies on Hu's own life, with Hu being the "puppet" proposer) in 2003. The insured amount was RMB 10,000 for each policy and the duration of each policy was 20 years. Zhang was designated as the beneficiary for each policy and paid a premium every year. Zhang in fact had neither natural affection for nor a pecuniary relationship with Hu. Hu died of disease in 2005. On being turned down of a claim *\*J.B.L. 345* by the insurer on the ground of lack of insurable interest, Zhang sued the insurer and argued that the insurable interest was created by Hu's consent. The court held that (1) Hu was financially unable to pay premiums—Zhang paid the premiums and was the actual proposer; (2) Hu's consent to the insurance was not his real intention but induced by Zhang, so his consent could not support an insurable interest. Thus the contract was void. Hu had never been married and had no children. He had no real motive and was unable to afford buying life insurance. His consent was given under the pressure of financial difficulty and his poor health, and induced by the offer of free medical treatments and free medicine. According to art.58 of the Civil Code, civil acts performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavourable position by the other party shall be void. Hu's consent should therefore be invalid. This case is similar to the English case of *Shilling v Accidental Death Insurance Co*.<sup>51</sup>

It is obvious that consent as an alternative approach for insurable interest is problematic. It is suggested that consent of the life insured should not be treated as equivalent to the actual possession of insurable interest by the proposer in the life insured. Consent as an alternative ground should be abandoned and replaced by economic relationship. The second paragraph of art.31 can be rewritten:

"In addition to the persons mentioned in the preceding paragraph, the proposer shall be deemed to have an insurable interest in another *if he can show an economic dependency on that person or a reasonable expectation of economic loss upon the death or disability of that person.*"

Consequently, other relationships which are not included in the list of art.31(1)–(4) but are supported by economic interest can be covered by this paragraph.

### **Consent as a condition for the validity of a life insurance**

Chinese law makes the life insured's consent not only an alternative ground for establishing insurable interest, but also a condition for a valid contract under which the insurance money is payable on the death of the life insured.

Article 34 of Insurance Law provides:

"Where the insurance contract is a contract under which the death of the life insured is a condition for the payment of the insurance money, the insurance contract shall be void without obtaining the consent of the life insured in terms of the contract itself and the amount insured."

The purpose of art.34 is to provide further protection for the life insured from moral hazard. For a valid death policy, the proposer must demonstrate he not only has an insurable interest in the life insured, but also obtained the life insured's consent to the insurance and the amount insured.

The approach of consent as an additional requirement is also adopted by some other jurisdictions. In New York law, for example, in addition to demonstrating a lawful and substantial economic interest in the life insured, the policyholder must *\*J.B.L. 346* also show the life insured's consent to the insurance.<sup>52</sup> Under German law, consent of the life insured is necessary before insurance can be taken out on anyone's life for the value of more than it would cost to bury that person.<sup>53</sup>

It has been convincingly argued by experts that the consent of the life insured should be a condition precedent to the validity of a life policy.<sup>54</sup> Such consent would clearly diminish the risk of murder. If a person has consented to the taking out of insurance on his life by a third party, he is at least put on notice that a motive for murder has been created. It is important that the person should know that insurance on his life does exist. Such consent also gives the life insured an opportunity to discuss the desirability of the policy with the proposer—for example, in the case of a creditor's policy on his debtor, whether an alternative form of security is preferable. <sup>55</sup>

An issue has been left open, that is, how to prove that the consent has been given by the life insured. In China, the 1995 and 2002 versions of the Insurance Law required *written* consent,<sup>56</sup> while the requirement of *written* consent was deleted in the 2009 version.<sup>57</sup> It is not clear why the 2009 version deletes the requirement for written consent. The law also fails to provide how to prove the life insured's consent.

The current practice is that both the proposer and the life insured are required to sign the declaration at the end of the proposal form.<sup>58</sup> The signature of the life insured is deemed to be the evidence of written consent to the contract. However, it often happened that the life insured did not sign the proposal form; other persons did it on his behalf. First, sometimes the proposer signed the proposal form and also signed it on behalf of the life insured. Secondly, the insurance agent often signed the form on behalf of the life insured where the agent could not get hold of the life insured but wanted to finish the proposal form in hand for the sake of the commission.<sup>59</sup> Thirdly, for a group policy, the manager of a factory or a *\*J.B.L. 347* company signed the form on behalf of all his employees to be insured. In any of the above situations, the insurer may refuse the liability on the ground that the proposal form was not signed by the life insured, thus the policy was void. The insurer thus appears to be in an "all to gain" and "nothing to lose" position. This is unfair to the policyholder. It is suggested that consent "in writing" is still necessary and should be retained in the Insurance Law.

For group insurance, it is practically inconvenient to put all the life insureds' signatures into the group policy. Requiring all the persons to sign a policy may cause problems. The case



of *Mrs Chen v Pingan Life Insurance Co Shanghai Branch*<sup>60</sup> illustrates this. The Office of People's Affairs of Caolu Town in Shanghai effected a group accident policy for its 14 members of staff (as a kind of benefit for them) in August 2008. Mr Chen was one of the members insured and died by accident in September 2009. Mrs Chen claimed but was refused by the insurer on the ground that Mr Chen did not sign the proposal form. The court held that the policy was void because no consent of the life insured was obtained. It is submitted that it is inconvenient and unnecessary for a group policy to have all the persons' signatures on the form. On the other hand, a group life policy effected by an employer is for the benefit of his employees, not for the employer's own benefit. The death of his employee in a group policy is to the employer's detriment but not to his benefit. There is no motive at all under such a group policy for the employer to murder any employee. The purpose of the requirement of the life insured's consent for a death policy is for protecting the life insured from being murdered. So there seems no need for such consent for group policies of this type. It is suggested that, for a group policy, the English approach may be followed. If the class or description of the lives insured is stated in the policy with sufficient particularity to establish the identity of all persons who at any given time are entitled to benefit under the policy, there is no need for all the person to give signatures (as consent) to such a group policy.<sup>61</sup>

As discussed earlier, both art.31 and art.34 adopt the approach of consent, but for different purposes. Article 31 introduces consent as an alternative ground for insurable interest, but art.34 uses consent as an additional ground for a valid contract. The concurrent existence of the two consents may cause problems. For a death policy to be valid, the proposer must satisfy two requirements: an insurable interest in the life insured and consent from the life insured. For the categories covered in art.31(1)–(4), in addition to showing the insurable interest, for the validity of the contract the proposer must also show the consent of the life insured. For the categories not covered in art.31(1)–(4), the proposer needs only to show the life insured's consent because it satisfies both requirements for insurable interest **\*J.B.L. 348** and for the validity of the contract. Owing to the fact that all proposers are required to obtain the life insured's consent to satisfy art.34, categories of insurable interest in art.31(1)–(4) are effectively made superfluous. For example, for a death policy, there is no difference between a policy under which a husband insures his wife and a policy under which a person insures his friend, as both policies need the life insured's consent in terms of the validity of the contract. This reasoning provides further support for the recommendation of abolishing consent as an alternative approach for establishing insurable interest.

Another issue that needs to be considered here is whether a life insured may withdraw his consent. The law requires the life insured to give consent at the time of the contract, but does not mention whether the consent can be withdrawn afterwards. The law neglects the simple fact that the life insured may wish to withdraw his consent when he feels that his life is at risk because of the existence of the death policy on his life. The law expressly entitles the proposer to terminate the contract,<sup>62</sup> but does not give such a right to the life insured. It is the life insured whose life may be at risk of moral hazard, so he should be entitled to withdraw his consent in the situation where he feels his life at risk. It is recommended that a new paragraph be added into art.34 of the Insurance Law that provides:

"The life insured shall be entitled to withdraw his consent to a contract under which his death is a condition for the payment of the insurance money and the contract shall be

terminated accordingly."

The issue of the prohibition of insurance on a person without capacity for civil acts is briefly considered here. Article 33 of the Insurance Law provides:

"A proposer may neither propose nor an insurer may underwrite life insurance on a person who has no capacity for civil acts where the death of such a person is set as the condition for payment of the sum insured."

This provision prohibits a death policy to be effected on a person who has no capacity for civil acts, and thus precludes the chance of any malefactor benefiting from the insurance money by killing the life insured who has no capacity for civil acts. The exception to this rule is that parents can effect a death policy on their minor children, but the sum insured is limited. This point will be considered below.

### **The extent of insurable interest—the amount that can be insured**

The issue here is whether the amount insured in a life policy should be limited. Under the Insurance Law, the insured amount must be confirmed by the life insured for a death policy. The law renders a policy void where it is effected without the confirmation on the sum insured by the life insured.<sup>63</sup> In practice, sums insured are also limited by the insurer's willingness to accept the risk and the policyholder's ability to pay the premium. Most life insurers in China usually determine the maximum insured amount with reference to the age and the total annual income of the life insured. For those whose ages are 18–30, 31–40 and 41–60, the maximum insured amounts are 20, 15 and 10 times his total annual income respectively. In *\*J.B.L. 349* addition, the total premium paid by the proposer should not be more than 20 per cent of his total annual income.<sup>64</sup> A proposer tried to take out five life policies from five different insurance companies on the life of his sister-in-law (who had no financial relationship with the proposer) for amount of RMB 9,240,000. His application was rejected by the insurers for the lack of insurable interest and the exceptionally high amount to be insured.<sup>65</sup> In practice, insurers usually make their judgment on whether the insured amount is reasonable based on two factors. First, whether the extent of the loss to the family (or to the employer), if the life insured dies or loses his ability to work, is compatible with the insured amount. Secondly, whether the personal value of the life insured is compatible with the insured amount.<sup>66</sup> If the sum insured is unreasonably high, moral hazard would be created and the contract would in effect become gambling in the guise of insurance.

The sum insured for a life policy effected by a parent on the life of his/her minor child should not exceed the limit set by the financial supervision and control department, as stipulated in art.33 of the Insurance Law.<sup>67</sup> The China Insurance Regulatory Commission (CIRC) acts as the financial supervision and control department. The limit of the total sum insured on such a policy or policies was set to RMB 50,000 by CIRC in 1999,<sup>68</sup> and increased to RMB 100,000 in 2010.<sup>69</sup> Insurers are required, at the time of contract, to explain to the parents the relevant rules and regulations in respect of insurance on minor children, and to ask whether the parents have effected such a policy with other insurers and for what amount. Where the accumulative insured amount with one or more other insurers has already reached RMB 100,000, the insurer shall not underwrite a life policy on that minor child.<sup>70</sup> If an insurer provides a coverage in excess the limit seriously, the CIRC

shall order rectification and impose a fine of between RMB 50,000 and RMB 300,000 on the insurer.<sup>71</sup> In *Mr Hu v Life Insurance Co*,<sup>72</sup> Mr Hu effected a life policy on his 13-year-old son's life in 2001. The insured amount was RMB 200,000. Hu had no idea at all of the limit of insured sum set by CIRC. The insurer neither explained the relevant rules to Hu nor asked Hu any question about the total amount insured, but effected the policy. On the death of his son in 2004, Hu claimed. But the insurer was prepared to pay only RMB 50,000 (that was the limit then) and return the corresponding premium. The court held that (1) the contract was valid *\*J.B.L. 350* only for the part of RMB 50,000, the rest for RMB 150,000 was invalid; (2) at the time of contract, the insurer did not perform his duty of informing Hu of the limit, and was thus liable to compensate Hu by paying him the additional RMB 150,000. The court's decision (1) was made according to the Contract Law, which provides that where a contract is partially invalid, and the validity of the remaining parts thereof is not affected as a result, the remaining parts are nevertheless valid.<sup>73</sup> The legal basis of the court's decision (2) will be discussed shortly. The Insurance Law and CIRC regulation do not provide any remedy for the policyholder if the insured amount exceeds the limit as a result of the insurer's fault. It is submitted that the remedy to the policyholder should be provided in the CIRC regulation.

There is a point to make from this case. Assuming that Hu had murdered his son for the insurance amount (RMB 200,000), he would not have committed the murder if the insured amount were only RMB 50,000. Then the question is whether the insurer should be made responsible (at least partially) for such a murder owing to his fault in effecting such a policy which induced the murder. The current Chinese law does not cover this point and there have been no reported cases. In the United States, issuing a policy without interest in the absence of reasonable investigation is actionable negligence.<sup>74</sup> This means that the insurer who issues a life policy to a person who has no insurable interest in the life insured is required by tort law to pay damage to the injured party.<sup>75</sup> It is suggested that an insurer should be made liable for paying damage to the injured party if he negligently effected a life policy on a minor child with the insured amount more than the limit and consequently caused the murder of the life insured.

### **The time when insurable interest must exist**

The 1995 and 2002 versions of the Insurance Law did not specify the time when interest is required.<sup>76</sup> This caused disputes in practice. In *Mr Wang Lianshun v Yingshun Branch, China Life Insurance Co*<sup>77</sup> Mrs Wang (the plaintiff's wife) was employed by the defendant insurance company who effected cancer screening policies for its female employees for three years (starting from October 30, 1995) as a welfare. The insurance company would pay the insured (or her beneficiary) if she was diagnosed as having cancer. In July 1997, Mrs Wang changed her employer. In August 1997, the insurance company (as her former employer) terminated Mrs Wang's policy on the ground of cessation of insurable interest, but did not inform her of this termination. Upon being diagnosed to have womb cancer in January 1998, Mrs Wang claimed but was refused by the insurance company on the ground that she had left the company, so the insurable interest lapsed and the policy was void. On her death, Mr Wang sued the insurance company. The court made judgment for him, holding that insurable interest should be required only at the time of effecting the policy. In order to avoid the uncertainty as to the time when the insurable interest is required in life

insurance, a new article **\*J.B.L. 351** has been added to the 2009 version of the Insurance Law, which provides that an insurable interest is required at the time a life policy is effected.<sup>78</sup> This is also the approach in English law.<sup>79</sup>

This approach may, however, give rise to mischievous consequences, because the interest may lapse after a life contract is effected. The case of a creditor and a debtor is a typical example. A creditor may insure his debtor's life for the amount of his debt. The debt may be repaid shortly thereafter, yet the creditor may keep up the policy until the debtor dies. A divorced couple is another example. A man is allowed to continue with the policy until his ex-wife dies. There is certainly an element of wagering and a motive for murder here. It is suggested that a number of methods could be employed to deal with the situation where the interest lapses. First, the law should require proof of interest at date of death in addition to the interest at the time of the contract, the amount recoverable being limited to actual loss.<sup>80</sup> Secondly, if the debt is repaid before the death of the debtor, then the interest lapses, the policy should automatically lapse with it, subject to payment of the appropriate cash value to the policyholder.<sup>81</sup> Thirdly, the debtor may take over the policy for his own benefit and change the beneficiary from the creditor to his family member(s), subject to some compensation to the creditor in respect of the premium he has paid. And fourthly, the policy can easily be converted into the creditor's own-life policy. He can change the life insured from the debtor to his own life and nominate a new beneficiary in the policy. Chinese law allows the life insured or policyholder to change beneficiary during the currency of a life policy.<sup>82</sup> This would facilitate the application of the third and the fourth methods.

### **Consequences for life policies without insurable interest**

By virtue of art.31 of the Insurance Law, the contract is void where the proposer has no insurable interest in the life insured at the time of the contract. However, the Insurance Law does not say what the legal consequences are for a void contract. In judicial practice, judges usually turn to the Contract Law for solutions. Article 58 of the Contract Law provides:

"If a contract is void or rescinded, property obtained under that contract shall be returned; where it is impossible or unnecessary to return it, its value shall be made good. The party who was at fault shall compensate the other party for the loss caused thereby; where both parties were at fault each party shall bear his corresponding liability."

Accordingly, there can be three kinds of remedies for a void policy, depending on who is responsible for causing the contract to become void. In the first place, if the invalidity of the policy is due to the fault of the proposer (no fraud being involved), the insurer is not liable for paying the insurance money, but should **\*J.B.L. 352** return the premium. As mentioned earlier, in *Mr Gao v Life Insurance Co*,<sup>83</sup> Gao adopted a girl but failed to register the adoption with the civil affairs department. He insured his adopted daughter. It was held that the policy was void for lack of insurable interest because the adoption was not legally recognised without registration with a civil affairs department. In this case the proposer's own negligence caused the contract to be void. The insurer was not liable for paying the insurance proceeds but for returning the premium.

In the second place, if the invalidity of the policy is due to the insurer's fault, he must take

the responsibility for his fault and pay the insurance money. There may be two situations in terms of the insurer's fault: the insurer did not raise questions on insurable interest at pre-contractual stage; or he was aware of the fact that the proposer did not have an interest but still issued the policy. For example, in *Mrs Li v Shencheng Life Insurance Co*,<sup>84</sup> Mr Li's sister, sister's husband (Mr Wang) and Mr Wang's sister and brother, as proposers, purchased 20 personal accident insurance cards for Mr Li (they had no interest in Mr Li) from the post office in December 2005. The cards were issued by the defendant insurer and sold by post offices as its agents. Some terms were printed on the cards: "The holder of the card is the life insured. Each card had insurance amount RMB 5000. Premium is RMB 10 for the card. The insurance duration was one year from the date of purchase." In August 2006, Mr Li died of an electric shock. Mrs Li (his wife) claimed but was refused by the insurer on the ground that the proposers did not have insurable interest in the life insured, the policies were void. The court held that (1) the insurance contracts were void because of the lack of insurable interest between the proposers and the life insured; (2) there were no terms and conditions regarding insurable interest on the card; (3) that the contract became void was due to the insurer's fault, so the insurer was liable for paying the insured amount as compensation<sup>85</sup> to Mrs Li. The insurer appealed but was turned down. It is submitted that this kind of life policy is in fact a gift and should be immune from the requirement of insurable interest.<sup>86</sup>

In the third place, if the invalidity of the policy is because of the fault of both proposer and the insurer, the remedy is that each party shall bear his relative responsibility. This can be seen from the case of *Mrs Zhou Jinfeng v Pingan Life Insurance Co Beijing Branch*.<sup>87</sup> Mrs Zhou effected a policy on her adult son in October 2002. As the proposer, she signed the proposal form and also signed it on behalf of her son without his knowledge and consent.<sup>88</sup> In 2006, Zhou claimed for returning the premium in full on the ground that the contract was void without her son's consent and the form was signed by herself on behalf of her son. The court held that the contract was void. Zhou took the major responsibility and the insurer was partially responsible for the void contract, because the insurer neither took reasonable steps to warn the proposer about the conditions for a void contract nor *\*J.B.L. 353* checked the signatures on the proposal form. The insurer was required to return 80 per cent of the full premium. Because there is no clear-cut law to follow on the proportioning of the relative fault of the two parties, the court made the decision at its discretion with reference to the Contract Law.<sup>89</sup>

Recently, in an attempt to provide some rules for void life policies, the *Supreme People's Court of China* published "*The second interpretation on certain questions concerning the application of the Insurance Law*".<sup>90</sup> Article 2 states:

"In life insurance, where the proposer has no insurable interest in the life insured, the life policy is void. The People's Courts should uphold the proposer's claim for returning the premium after deducting administrative costs."

However, this is inadequate for dealing with the more complex situations as discussed above. It is suggested that to be fair to policyholders and insurers, more rules for handling void life contracts should be provided either by the CIRC regulations or by the stipulations of the Supreme People's Court of China. This is certainly an area that deserves careful consideration.

## Should an insurer have a legal duty to check the existence of insurable interest at the time of the contract?

This is a controversial issue. Different jurisdictions have different approaches. English law does not impose a duty on insurers to check whether an insurable interest exists at the time of the contract.<sup>91</sup> The law allows insurers to write risks, collect premiums and then refuse to pay claims on the ground of lack of insurable interest. No penalty is imposed on an insurer who does this. Some 30 years ago, Professor Merkin made some suggestions for reform in this respect. He was of the view that it is necessary to place on the insurer the major burden of ensuring that policies without interest are not issued.<sup>92</sup> The Law Commissions have recently raised this issue, asking whether insurers should be under a statutory duty to check that the policyholder had an insurable interest in the life insured at the outset of any contract of life insurance,<sup>93</sup> and whether insurers who fail to inquire should be prevented from relying on lack of insurable interest as a defence to a claim. The majority of responses (9 out of 13) did not support the proposal of imposing a statutory duty on insurers and said that the insurer would check as a matter of course, but it was unnecessary to impose a statutory duty. The reasons are that it might contribute to additional costs or duplicate other regulatory requirements, *\*J.B.L. 354* including the principle of Treating Customers Fairly.<sup>94</sup> So the Law Commissions will not pursue the issue further.<sup>95</sup> It is disappointing that the Law Commissions shelved this important issue. As to the concern over additional costs, it can be argued that policyholders would rather pay a little more premium (to cover the additional costs) for the certainty of their claims not being refused on the ground of lack of insurable interest when the insured event occurs. So the reasoning that imposing a statutory duty might contribute to additional costs does not seem convincing.

Unlike English law, American law makes it an actionable negligence for insurers to issue a policy without interest in the absence of reasonable investigation.<sup>96</sup> *Liberty National Life Insurance Co v Weldon* was the first case in the United States holding a life insurance company responsible in tort law when it negligently sold a life policy to a proposer/beneficiary who had no insurable interest and who subsequently murdered the life insured.<sup>97</sup> In another American case,<sup>98</sup> a wife bought a life policy on her husband without his knowledge and consent, and then she poisoned him with arsenic for the insurance proceeds. The husband sustained severe injuries and subsequently accused the life insurer. The South Carolina Supreme Court made a judgment for the husband. In this case, the husband's signature on both the proposal form and inspection for life insurance form was a forgery. The insurer was aware of the forgery, but still issued the policy. The issuance of a policy of life insurance without the consent of the life insured gives rise to a cause of action in tort in favour of the life insured. Generally, an insurance company has a duty to take reasonable care not to issue a life policy without insurable interest and without consent of the life insured.<sup>99</sup>

Under Chinese law, an insurer has no legal obligation to check the existence of an insurable interest for a life policy that he issues. Thus the insurer is given an opportunity to turn down the policy at the time of claim on the ground of lacking of interest or without consent of the life insured (as shown in the cases mentioned above). In China, life policies are often sold by incompetent sales persons and unskilled commission agents.<sup>100</sup> In order to gain more commission they persuade people to take out life insurance without paying particular attention to the question whether the proposer has an insurable interest in the life insured.

They sometimes fill out proposal forms for the proposers, and even sign the forms on behalf of the proposer and life insured which should be signed by the proposer and the life insured themselves. When the completed proposal forms get into the hands of the insurer, he may keep one eye closed, not checking the forms carefully but accepting *\*J.B.L. 355* the risk. When a claim is made to him, he will open both eyes and check carefully to see if an insurable interest existed at the outset of the contract or to find out whether there is any other defence for rejecting the claim. Consequently, disputes will often arise from insurer's malpractice. In *Mr Xu v Life Insurance Co*,<sup>101</sup> Mr Xu was employed in a thermo-products making factory. His employer effected a group policy of personal accident insurance in April 2004. Xu presented to the insurer his ID card and other relevant documents upon the requirement of the insurer. The agent of the insurer signed the declarations on behalf of the proposer and the life insured. Xu died in a road accident in July 2004. His wife claimed but the claim was refused by the insurer, who argued that Xu did not give consent to the insurance (he did not sign the proposal form), so the policy was void. It is difficult to see why the insured rather than the insurer should bear the burden of the agent's misconduct or malpractice. If an insurer considers that employing agents who are inadequately trained is an economic advantage, it is completely unfair that he should be allowed to declare a life policy void and refuse to pay the insurance money because of his agents' deficiencies and malpractice.<sup>102</sup>

It is submitted that, in order to stop the problem at source, it is necessary to impose on insurers a statutory duty to check the existence of insurable interest before issuing the policies, as the onus of preventing insurance without interest should be placed on those best equipped to bear it.<sup>103</sup> An ordinary person usually does not know what an insurable interest is all about, so an insurer must elicit, by a list of clear questions in the proposal form, information which he needs for the judgment whether or not an insurable interest exists. The insurer should be bound by the policy he issued even if it was without interest, unless he can show that he could not reasonably have discovered the lack of interest. The policyholder would benefit from this statutory requirement of insurers checking of insurable interest at the time of the contract, as this would remove the possibility of the policy being declared void at some future date on the ground that no insurable interest existed when it was effected. It is recommended that in art.31 of the Insurance Law, a new paragraph be added which reads: "Insurers shall check that an insurable interest exists when a life insurance contract is concluded." A statutory obligation would be effectively placed on the shoulders of the insurers.

In addition, insurers should also have a duty not to issue a death policy without the written consent of the life insured in terms of the contract itself and the amount insured. It is therefore suggested that the wording in art.34, "the insurance contract shall be void without obtaining the consent of the life insured ...", should be replaced by "*the insurance company shall not underwrite such risk* without obtaining the *written* consent of the life insured ...". The implication of this proposed reform is that if the insurance company has issued such a policy, it should not be allowed to refuse a claim for insurance money on the ground that the contract is void without obtaining the consent of the life insured. *\*J.B.L. 356*

## **Assignment of life policies and insurable interest**

Life policies are undoubtedly a valuable piece of property, normally attracting a surrender value after the payment of a number of premiums. They can be sold out or otherwise disposed of or used as security. Many dealings of this sort with life policies are in law assignments of the policies.<sup>104</sup> The assignment of the policies is in fact a change of policyholder without change of subject-matter (the life insured) and the insurer. Insurance law allows the assignment of life policies. The second paragraph of art.34 provides:

"Policies issued for contracts in which the death of a person whose life is insured is set as the condition for payment of the insurance monies may not be assigned or pledged without the written consent of the life insured."

The law does not clearly stipulate whether the assignee must have an insurable interest in the life insured. No reported case in this respect has so far been found in China. There is no doubt that sooner or later disputes will occur in respect of assignment of life policies. The current law is certainly in need of clarification and reform.

It is clear that at least two requirements by law must be met by those who intend to assign the life policies to others. First, the policyholder must get a written consent from the life insured where the policy to be assigned is a death policy. Secondly, the policyholder must notify the insurer of the assignment of the policy and go through the relevant procedures.<sup>105</sup> It is not clear whether the policyholder must assign the policy only to a person who has an insurable interest in the life insured, as the law is silent on this point. However, it could be inferred from the law that the assignee is deemed to have an interest if the life insured agrees that the policy can be assigned to the assignee. As discussed earlier, the current law adopts consent as an alternative ground for establishing insurable interest. If the life insured gives consent to the policyholder to assign the death policy to a specified assignee, then the assignee should be deemed to have an insurable interest created by the life insured's consent. It would be very unlikely for the life insured to give consent to the policyholder for a death policy to be assigned to a stranger (who is neither a family member of nor has an economic interest in the life insured). On the other hand, the insurer may also be reluctant to allow the policy to be assigned to a person who has no insurable interest, for this would increase the risk that was insured against.

It is suggested that the law should make it explicit that assignees should be required to have insurable interest in the life insured. At least two reasons may support this idea: first, if an assignee does not possess an insurable interest in the life insured, upon assignment the policy would become a contract of wagering in the guise of insurance, and risk of moral hazard would increase. Secondly, if the assignee is not required to have an interest, assignment of the policy can provide a method of bypassing the requirement of insurable interest. For example, cohabiting partners A and B do not have an insurable interest in each other's life *\*J.B.L. 357* under Chinese law. A and B can effect life policies on their lives and then cross-assign their own-life policies to their partner. In this way A and B can lawfully side-step the requirement of insurable interest through assignment.<sup>106</sup> The United States Supreme Court<sup>107</sup> once said that "the assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name ...". It is therefore recommended that a new provision be added into the second paragraph of art.34, which would state:

"The assignment shall not be effective where the assignee of such a policy does not have an insurable interest in the life insured at the time of the assignment."



## Conclusions and recommendations

In China, in order to obtain a life insurance policy, there must be an insurable interest in the life insured at the time of the contract, otherwise the contract is void. The Chinese doctrine of insurable interest requires a legally recognised interest of the proposer in the subject-matter of insurance.<sup>108</sup> The term "a legally recognised interest" is vague, narrow, restrictive and interpreted differently in different courts, consequently giving rise to uncertainties in practice and unfairness to policyholders. It is suggested that strict test of "a legally recognised interest" be replaced by the broad test of "a reasonable expectation of economic loss". Instead of looking for "a legally recognised interest", an economic loss, or a reasonable expectation of loss, or a economic dependency could suffice regardless of its being legally recognised or not.

Article 31 of the Insurance Law provides three categories of insurable interest in life insurance: interest based on family relationships; interest supported by an employment relationship; and interest created by the consent of the life insured. Based on natural affection, a person has insurable interest in his own life and the lives of his spouse, children and parents. For other family members or close relatives, the proposer needs to demonstrate that there is a fostering, or support or maintenance relationship between the proposer and the life insured. For relationships other than family or employment ones, the law adopts consent of the life insured as an alternative ground for establishing insurable interest. This alternative ground has been proved problematic. It is suggested that this alternative ground be abolished. The proposed test of "a reasonable expectation of economic loss" would cover other relationships not set out in art.31(1)–(4). By the proposed new test, any person who is likely to suffer a pecuniary or economic loss as a result of the death of some other person is deemed to have an insurable interest in the life of that other person. It is recommended that the second paragraph of art.31 be rewritten:

"In addition to the persons mentioned in the preceding paragraph, the proposer shall be deemed to have an insurable interest in another *if he can show an \*J.B.L. 358 economic dependency on that person or a reasonable expectation of economic loss upon the death or disability of that person.*"

Chinese law also makes the life insured's consent an additional requirement for a valid death policy. In practice, this consent is evidenced by the life insured's signature on the proposal form. However, it often happens for a number of reasons that the life insured does not sign the proposal form, and other persons sign it on his behalf. Chinese law does not impose a statutory duty on insurers to check whether there is an insurable interest and whether the life insured has given his consent to the insurance at the time of the contract; thus the insurers are free to turn down life policies at the time of claim on the ground of lack of interest or life insured's consent. As a consequence, disputes often occur. It is submitted that, in order to stop the problem at source, it is necessary to impose on insurers a statutory duty to check the existence of insurable interest and not to issue a death policy without the written consent of the life insured. If the insurer has issued such a policy, he should not be allowed to refuse a claim on the ground that the contract is void as without insurable interest or without obtaining consent of the life insured. It is recommended that a new paragraph be added to art.31, which would read: "Insurers shall check that an insurable interest exists when a life insurance contract is concluded". The wording in art.34,

"The insurance contract shall be void without obtaining the consent of the life insured ..." should be replaced by "*the insurance company shall not underwrite such risk* without obtaining the *written* consent of the life insured ...".

For group insurance, it is practically inconvenient to put all the persons' signatures into the group policy. It is suggested that if the class or description of the lives insured should be stated in the policy with sufficient particularity to establish the identity of all persons who at any given time are entitled to benefit under the policy; there is no need for all the persons to give signatures (as consent) to such a group policy.

Chinese law does not provide whether the consent of the life insured can be withdrawn after the conclusion of the life policy. It is suggested that the life insured be entitled to withdraw his consent in the situation where he feels his life at risk. It is recommended that a new paragraph be added to art.34 which would provide:

"The life insured shall be entitled to withdraw his consent to a contract under which his death is a condition for the payment of the insurance money and the contract shall be terminated accordingly."

The Insurance Law does not clearly stipulate whether the assignee must have an insurable interest in the life insured. It is recommended that a new provision be added to art.34, which would provide:

"The assignment shall not be effective where the assignee of such a policy does not have an insurable interest in the life insured at the time of the assignment."

A life policy without insurable interest is void.<sup>109</sup> If the invalidity of the policy is due to the fault of the proposer, the insurer is not liable for paying insurance *\*J.B.L. 359* money but must return the premium. If it is due to the fault of the insurer, he should take the responsibility for the fault and pay the insurance money. If it is due to the faults of both the proposer and the insurer, each party shall bear his relative responsibility according to art.58 of the Contract Law. The proportioning of the relative fault of the two parties is at the discretion of the court.

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1. See [s.1 of the Life Assurance Act 1774 \(UK\)](#); [s.5 of the Marine Insurance Act 1906 \(UK\)](#); art.12 of the Insurance Law of China 2009; s.10110.1(a) of the California Insurance Code.

2. *Australian Law Reform Commission (ALRC), Report No.20, Chapter 5: Insurable Interest (1982), para. 107 (ALRC 20)*.

3. [Gambling Act 2005 s.334\(1\)](#). There is some debate over whether the [Gambling Act 2005](#) has abolished the need for insurable interest in marine insurance. See *R. Merkin, "Insurable Interest, the Repeal of the*

*Prohibition on Gambling*", *Insurance Law Monthly* (December 2005), pp.4–5.

4. The Law Commission and Scottish Law Commission, *Insurance Contract Law, Issues Paper 4, Insurable Interest* (January 14, 2008) (Issues Paper 4). The Law Commission and the Scottish Law Commission, *Insurance Contract Law: Post Contract Duties and Other Issues: A Joint Consultation Paper* (December 20, 2011) (Joint Consultation Paper).
5. In China, property and life insurance are governed by Insurance Law 2009 and marine insurance by the Maritime Code 1993.
6. Z. Jing, "Beneficiaries in Life Insurance in Chinese Law and Practice" [2013] J.B.L. 463.
7. The Marriage Law of the People's Republic of China was published in 1980 and amended in 2001.
8. The Adoption Law of the People's Republic of China was enacted on December 29, 1991.
9. The General Principles of the Civil Law of the People's Republic of China were promulgated in 1986 (the Civil Code).
10. The Insurance Law of the People's Republic of China was first enacted in 1995 and amended twice in 2002 and 2009.
11. In English law, legal interest is required in all types of insurance: [Macuara v Northern Assurance \[1925\] A.C. 619 HL](#) for property insurance; [c.5\(2\) of MIA 1906](#) for marine insurance; *Harse v Pearl Life Assurance Co Ltd [1904] 1 K.B. CA 558* for life insurance. Recently, the Law Commissions have recommended reform on this point and proposed that the test of "a pecuniary interest recognised by law" should be relaxed and replaced by the test of "a reasonable expectation of economic loss". See *Joint Consultation Paper (2011), para. 13.4(2)(a)*.
12. This case was cited in *Zhou Yuha, New Insurance Law and Cases* (Legal Press, 2008), p.21.
13. Adoption Law 1991 art.15.
14. This problem has also been found in property insurance. For example, in a Beijing case, the plaintiff, who insured a car, had already paid the full amount for the car but the process to register the transfer of ownership was still in progress at the time of the accident. The court held that the plaintiff had no insurable interest in the car because he was not the owner of the car before the completion of the transfer registration and there was thus no legal right to support his interest. This case was cited by H.Y. Yeo et al., "Insurable Interest Rule for Property Insurance in the People's Republic of China" [2009] J.B.L. 776, 790.
15. This is a new sub-article which has been added to the Insurance Law 2009.
16. Insurance Law art.31(1).
17. See *Colinvaux's Law of Insurance, 9th edn, edited by R. Merkin* (Sweet & Maxwell, 2010), para.18.001, p.761. In China, life policies are divided into three types, namely traditional life insurance, health insurance and accident insurance, according to the *Notice on "The tentative provisions for names of the life insurance products"* by the China Insurance Regulatory Commission (No.42, 2000).
18. In a Chinese case, *Jiqing v PICC Life Insurance*, a couple effected several life policies in 1995 on their own lives for their son's benefit; the insured sum was as high as RMB 1,500,000, which amounts to 100 times an ordinary Chinese worker's annual salary. It was allowed because the law does not limit the insurance amount on this type of life insurance. For a detailed discussion on the case, see Chen Xuqin, "Some Thought Arising from a Life Insurance Claim for a Huge Sum" (1997) 2 Chinese Legal Sciences 114.
19. Marriage Law art.20.
20. Insurance Law art.31(2). This point will be discussed further later.
21. Marriage Law art.21.
22. Marriage Law art.21.

- [23.](#) Article 15 of the Civil Procedure Law of People's Republic of China 1991 provides: "Organs, social organizations, enterprises and institutions may support the injured units or individuals to file a suit with the People's Court against acts that damaged the civil rights or interests of the state, collectives or individuals." In practice, actions are often taken by elderly parents whose sons or daughters do not supply maintenance to them.
- [24.](#) Based on the Marriage Law, the insurable interest may extend to the relationship of the unmarried mother or father and their children. Article 25 of the Marriage Law provides: "Children born from unmarried couples have the same legal position as those born from married couples." Step-parents and step-children may also be presumed to have insurable interest in each other, as do foster-parents and foster children, because the Marriage Law gives them the same rights and imposes on them the same obligations as those of the natural parents and their children. See arts 25–27 of the Marriage Law.
- [25.](#) The four elderly people are the husband's parents and the wife's parents.
- [26.](#) Some elderly people have a pension. But most people in China have no pension, especially farm workers in the countryside.
- [27.](#) Insurance Law art.33. The law does not allow a proposer to effect a death policy on a person who has no capacity for civil acts; however, a life policy effected by a parent on the lives of his minor children is an exception from this prohibition.
- [28.](#) This point will be discussed shortly.
- [29.](#) Marriage Law art.31(2).
- [30.](#) Marriage Law art.21.
- [31.](#) According to art.12 of the Civil Code, a child between 10 and 18 years old is a person with limited competence, who can enter into a contract of insurance with the written consent of his or her parent or guardian. A minor under 10 years of age is a person without capacity for civil conduct, his conduct of the effecting of an insurance contract must be represented by his parents or guardian.
- [32.](#) This is unlike the position in English law, under which there is no general statutory right for children to receive maintenance from their parents, although a child who is a minor could suffer a financial detriment on the death of a parent. See *Harse v Pearl Life Assurance* [1904] 1 K.B. 558.
- [33.](#) Article 11 of the Civil Code provides "A citizen aged 18 or over shall be an adult; he has full competence to perform civil acts and may engage independently in civil activities; he is a person with full competence to perform civil acts."
- [34.](#) Marriage Law art.6.
- [35.](#) Zhou Yongseng, *Insurance and Law* (1998), pp.134–135.
- [36.](#) [Family Law \(Scotland\) Act 1985 s.1\(1\)](#) provides that the obligation of aliment is owed by a parent to a child, or to a person accepted as a child of the family. Under [s.1\(2\)](#) the obligation is to provide "such support as is reasonable in the circumstances".
- [37.](#) See *Miss Li v Life Insurance Co of Xichang City* (2003). This case is included in *Li Zongjian (ed.), Insurance Case Book (China Modern Economic Publishing House, 2007)*, pp.63–65. In this case, it was held that there was no insurable interest between cousins.
- [38.](#) Insurance Law art.31(3).
- [39.](#) Marriage Law art.28.
- [40.](#) Article 29 of the Marriage Law provides: "Elder brothers or elder sisters who can afford it shall have the duty to bring up their younger brothers or sisters who are minors, if their parents are dead or have no means to bring them up."

41. Marriage Law art.31(3).
42. For example, it is not difficult for an employer to insure the life of a senior executive or of a manager on whom the successful running of a business depends.
43. In other jurisdictions, the mutuality of the insurable interest between the employer and employee has long been established. For instance, in England, an employee is allowed to insure the life of his employer; the interest is limited to a sum representing his contractual rights against the employer. See [Hebdon v West \(1863\) 3 B. & S. 579](#).
44. In some Canadian provinces, insurable interest is not required if the life to be insured consents to the insurance. See Insurance Act (Ontario) R.S.O. 1990 c.18 s.178(2). In the case of a minor under the age of 16, consent has to be provided by one of his or her parents or by their guardian (Insurance Act (Ontario) R.S.O. 1990 c.18 s.178(3)).
45. In Spain, according to art.83 of the Insurance Contracts Act Law No.50/1980, insurance can be arranged on one's own life or on that of another. If the insured and the person whose life is being insured are different persons, it is necessary to obtain written consent from that other person. However, consent would not be necessary where the policyholder's interest in the existence of the insurance can be presumed. Where the person whose life is insured under the contract is a minor, written consent will need to be obtained from their legal representatives. The Act prohibits life insurance being arranged for anyone who is incapacitated or under the age of 14.
46. "We tentatively propose that consent of the life insured should provide an alternative ground for establishing insurable interest, where the policyholder and the life to be insured do not fit within the categories of natural affection or a reasonable expectation of loss." See *Issues Paper 4 (2008)*, para. 7.79.
47. *Joint Consultation Paper (2011)*, para.13.60.
48. This case is cited in *Liu Jianxun, New Insurance Law and Cases (Law Press China, 2010)*, pp.59–68.
49. In order to terminate the life policy, Zheng would have invoked art.47 of the Insurance Law 2009, which allows the policyholder to terminate a life contract and get back the cash value of the policy.
50. The case was cited in a *newspaper article*, "A Patient bought Insurance but his Doctor benefited from the Insurance Contract" (May 22, 2007), [http://www.sc.xinhuanet.com/content/2007-05/22/content\\_10087157.htm](http://www.sc.xinhuanet.com/content/2007-05/22/content_10087157.htm) [Accessed June 2, 2014].
51. [Shilling v Accidental Death Insurance Co \(1857\) 2 Hurl. & N. 42](#).
52. In New York, for example, even if the policyholder can establish a "lawful and substantial economic interest in the continued life" of the life insured, it is compulsory that the life insured (provided that he is of lawful age and is competent to contract) must give written consent at the time or before the contract is made. See s.146(3) of the New York Insurance Law. The requirement for consent is waived in the following cases: a person who takes out insurance on the life of his spouse; a person who has an insurable interest in the life of a minor under the age of 14 years and 6 months, or a person upon whom the minor is dependent for support and maintenance, up to a maximum amount of \$25,000; and a person who has entered a group life insurance, group or blanket accident and health insurance, or family insurance (New York Insurance Act s.3205(3)(c)).
53. Section 150 of the German Insurance Contract Act 2008 provides:

(1)Life insurance may be taken out for the policyholder or of another.

(2)Where the life insurance is taken out against the death of another person and the agreed benefit exceeds normal funeral costs, the written agreement of the other person shall be necessary for the contract to be effective; this shall not apply in the case of collective life insurances in company pension schemes. If the other person has no legal capacity to act or only limited capacity to act, or if a custodian has been appointed and the

policyholder is entitled to represent that person's interests, he may not represent the other person when giving his consent thereto.

- [54.](#) See Hasson, "Evidence to the Australian Law Reform Commission" (1977), p.2.
- [55.](#) R. Merkin, "Gambling by insurance: A study of the Life Assurance Act 1994" (1980) 9 Anglo-American Law Review 331, 339.
- [56.](#) Insurance Law 1995 art.55 and Insurance Law 2002 art.56: "Where the insurance contract is a contract under which the death of the life insured is a condition for the payment of the insurance money, the insurance contract shall be void without obtaining the *written* consent of the life insured in terms of the contract itself and the amount insured."
- [57.](#) Insurance Law art.35.
- [58.](#) The Declaration usually states: "I declare that the above is true to the best of my knowledge and belief, and hereby agree to effect the policy. You have explained to me the clauses of the policy, particularly the exclusion clauses. I agree with the content of clauses and specially agreed clauses."
- [59.](#) A Chinese case can illustrate this. In *Mr Wang v Pingan Insurance Co*, Mr Wang took out a life policy on his uncle (Wang could show a supporting relationship with his uncle, so an insurable interest therefore existed) in 2003. His uncle did not sign the proposal form. The insurance agent who handled the proposal form signed the declaration on behalf of his uncle. The uncle died in 2004. Wang claimed, but was turned down by the insurer owing to the fact that his uncle did not sign the declaration of the proposal form (as an evidence of consent), and thus the policy was void. See *Li (ed.), Insurance Case Book (2007)*, pp.37–39.
- [60.](#) *Mrs Chen v Pingan Life Insurance Co Shanghai Branch, Report of Civil Department of the Second Middle Court of Shanghai (2009) No.408.*
- [61.](#) This is the English approach to bypass the requirement by [s.2 of the LAA 1774](#) of inserting the person's (the lives insured/beneficiaries) names into the policy. [Section 50 of the Insurance Companies Amendment Act 1973 \(UK\)](#) provides that [s.2 of the LAA 1774](#) does not invalidate a policy for the benefit of unnamed persons from time to time falling within a specified class or description if the class or description is stated in the policy with sufficient particularity to establish the identity of all persons who at any given time are entitled to benefit under the policy. In New York, the compulsory requirement for consent of the life insured is waived in the case of a person who has entered a group life insurance (see fn.52).
- [62.](#) Insurance Law art.47.
- [63.](#) Insurance Law art.34.
- [64.](#) *Ma Jie, "Assessment of the Insured Amount in Life Insurance for the Purpose of Reducing Moral Hazard" in Insurance Case Book (2007)*, pp.50–53.
- [65.](#) *Ma, "Assessment of the Insured Amount in Life Insurance for the Purpose of Reducing Moral Hazard" in Insurance Case Book (2007)*, pp.50–53.
- [66.](#) The personal value of the life insured is assessed on a number of factors, such as education, experience, professional skills, job title, annual income, social status, credibility, etc.
- [67.](#) Article 33 of the Insurance Law stipulates: "(1) A proposer may neither propose nor an insurer may underwrite life insurance on a person who has no capacity for civil acts where the death of such a person is set as the condition for payment of the sum insured. (2) Proposals of personal insurance by parents for their minor children shall not be governed by the preceding paragraph, provided that the total sum insured payable upon the death of minor children whose lives are insured does not exceed the limit set by the financial supervision and control departments." If an insurer effects such policy on a person without capacity for civil acts, he will be given a fine between RMB 50,000 to 300,000 by the financial supervision and control department by art.164 of the Insurance Law.

- [68.](#) See the Notice concerning "the limitation of the sum insured for a death insurance taken out by a parent on his minor child payment of the insurance money", CIRC, No.43 (March 22, 1999), <http://www.circ.org.cn> [Accessed May 30, 2014].
- [69.](#) See the Notice concerning "the limitation of the sum insured for a death insurance", CIRC, No.95 (November 15, 2010), <http://www.circ.org.cn> [Accessed May 30, 2014].
- [70.](#) See the Notice concerning "the limitation of the sum insured for a death insurance", CIRC, No.95 (November 15, 2010), <http://www.circ.org.cn> [Accessed May 30, 2014].
- [71.](#) Insurance Law art.164.
- [72.](#) This case was cited in *Li (ed.), Insurance Case Book (2007)*, p.132.
- [73.](#) Contract Law art.56.
- [74.](#) *Liberty Nat. Life Insurance Co v Weldon* 267 Ala. 171 (1957). Weldon sued Liberty National Life Insurance Co to recover damage of \$100,000 for the wrongful death of his minor child. The Supreme Court of Alabama affirmed a \$75,000 judgment of the lower court. This case will be further discussed later.
- [75.](#) G. Salzman, "Tort Law and Insurable Interest in Life Insurance" (1963) 1 American Business Law Journal 25.
- [76.](#) Insurance Law 1995 art.52 and Insurance Law 2002 art.53.
- [77.](#) *Yearly Report of the Supreme People's Court of China 2001 (Press of People's Court, 2003)*.
- [78.](#) Article 12 of the Insurance Law provides "The proposer in life insurance shall have an insurable interest in the life insured at the time the contract is concluded."
- [79.](#) [\*Dalby v India and London Life Assurance Co \(1854\) 15 C.B.365.\*](#)
- [80.](#) *Birds' Modern Insurance Law, 8th edn, edited by J. Birds (Sweet & Maxwell, 2010)*, p.43.
- [81.](#) Merkin, "Gambling by Insurance" (1980) 9 Anglo-American Law Review 331, 352.
- [82.](#) Insurance Law art.41. For more on beneficiaries, see Z. Jing, "Beneficiaries in Life Insurance in Chinese Law and Practice" [2013] J.B.L. 463.
- [83.](#) *Gao v Life Insurance Co*, cited in *Zhou, New Insurance Law and Cases (2008)*, p.21.
- [84.](#) This case was reported in the newspaper *Liao Shen Evening*, November 17, 2007.
- [85.](#) According to art.58 of the Contract Law.
- [86.](#) In England, this sort of policy has long been treated as a gift and no insurable interest is required: [\*Crabb v Crabb \(1834\) 1 My. & K. 511 Ch D; Moate v Moate \[1948\] 2 All E.R. 486 Ch D; Pettitt v Pettitt \[1970\] A.C. 777 HL.\*](#)
- [87.](#) *Liu (ed.), Case Book of Insurance Law (2007)*, pp.238–247.
- [88.](#) As discussed, according to the Insurance Law, where the insurance policy is a death policy, the consent of the life insured in terms of the contract itself and the amount insured must be obtained (art.56 of the Insurance Law 2002, which was in operation then).
- [89.](#) See Contract Law art.58. See *Liu (ed.), Case Book of Insurance Law (2007)*, p.244, for comments.
- [90.](#) The second Interpretation was enacted by the Judgement Committee of the Supreme People's Court of China on May 6, 2013 and became effective on June 8, 2013. The Supreme People's Court stipulation, interpretation, judicial explanation or decision have legal effect according to arts 5 and 6 of the Stipulations of the Supreme People's Court on the Judicial Explanation (2007 No.12).

- [91.](#) In practice, insurers usually take reasonable care to ensure that they do not allow those without insurable interest to take out policies. Once they have concluded a contract they would not refuse to pay for lack of insurable interest at a later stage. But an insurer in financial difficulties or a closed book in a run-off without a reputation to maintain might not take the same approach, given its conflicting duty to shareholders. *Issues Paper 4 (2008)*, paras 4.21 to 4.23.
- [92.](#) See Merkin, "Gambling by Insurance" (1980) 9 Anglo-American Law Review 331, 359.
- [93.](#) See *Issues Paper 4 (2008)*, para.7.90.
- [94.](#) The Treating Customers Fairly principle, regulated by the Financial Service Authority, requires that insurers must pay due regard to the interests of the customers and treat them fairly.
- [95.](#) See *Joint Consultation Paper (2011)*, para.13.62.
- [96.](#) *Weldon 267 Ala. 171 (1957)*. Weldon sued Liberty National Life Insurance Co to recover damage of \$100,000 for the wrongful death of his minor child. The Supreme Court of Alabama affirmed a \$75,000 judgment of the lower court.
- [97.](#) Salzman, "Tort Law and Insurable Interest in Life Insurance" (1963) 1 American Business Law Journal 25.
- [98.](#) *Ramey v Corilina Life Insurance Co 135 S.E. 2d 362 (1964)*.
- [99.](#) *Weldon 267 Ala 171 (1957)*; *Ramey v Carolina Life Insurance Co 135 S.E. 2d 362 (1964)*; *Weston v National Manufacturers and Stores Corp 253 Ala. 503; 45 So. 2d 459 (1950)*.
- [100.](#) Insurance company usually recruit people who are unemployed or self-employed to work as agents for the insurer. The insurance company usually provides training for these people for a few weeks or months. Then the people will start selling policies as the insurer's agents. The salary for those agents consists of two parts: basic salary and commission. So the more policies an agent sells, the more he will earn. It is not surprising that agents are actively canvassing policies in order to earn more commission.
- [101.](#) This case was cited in *Li (ed.), Insurance Case Book (2007)*, p.208.
- [102.](#) Merkin, "Gambling by Insurance" (1980) 9 Anglo-American Law Review 331, 358.
- [103.](#) Merkin, "Gambling by Insurance" (1980) 9 Anglo-American Law Review 331, 339
- [104.](#) See *Birds' Modern Insurance Law (2010)*, p.365.
- [105.](#) The Insurance Law does not provide any rule on this point. Rules in arts 84 and 88 of the Contract Law may be followed. Article 88 states: "upon consent by the other party, one party may concurrently assign its right and delegate its obligations under a contract to a third person." Article 84 provides: "Where the obligor delegates its obligations under a contract in whole or in part to a third person, such delegation is subject to consent by the obligee."
- [106.](#) They can also take out insurance on each other through consent as an alternative to creating insurable interest.
- [107.](#) *Warnock v Davies 104 U.S. 755, 779-780 (1881)*, per Field J. See *M. Clarke, The Law of Insurance Contracts, 6th edn (Informa, 2009)*, para.3-2, p.117.
- [108.](#) Insurance Law art.12.
- [109.](#) Insurance Law art.31.



