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A Study on Pain Points in Claims Settlement and Rights Protection for Mainland Residents Insuring in Hong Kong

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Abstract. This essay conducted comparative legal and policy study to investigate cross-border insurance practice of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) insurance business from the perspective of comparative legal and policy analysis; combined data from Hong Kong Insurance Authority, cross-border personal data transfer standards and regulations in the Greater Bay Area Alternative Dispute Resolution instruments. This study found that though there is a move toward GBA digital connectivity, the strict stipulations of "utmost good faith" disclosure criteria in Hong Kong, high turnover in intermediaries and the formidable capital control mechanism are still major pain points of mainland policyholders. This paper points out an obvious research gap related to how to transfer automated cross-border electronic patient health record transactions under the standard contract for GBA impact general common-law discharge criteria. To resolve these problems, this paper proposes a coordinated framework including a closed-loop transaction clearing model, physical Closer Economic Partnership Arrangement (CEPA) after-sales service centres, unified GBA coordinated dispute models and mandatory unified definitions for critical illnesses.

Keywords: Claims settlement, rights protection, mainland residents insuring

1. Introduction

Adding to this service deficit, the core problem is caused by the fundamental contradiction between the civil law model under which Mainland China operates—the inquiry disclosure principle—and the common law jurisdiction that underlies Hong Kong—the common law strict utmost good faith rule requiring unlimited, full disclosure of all material facts (Insurance Law of the People's Republic of China, 2009; Insurance Ordinance (Cap. 41), 1983). This fundamental dichotomy's serious consequences were made clear in April 2018 when a policyholder from Mainland China shouted abuse in Harbour City after his policy's claim of a child suffering a critical illness was rejected by Prudential Hong Kong on account of a minor hospitalisation that he had suffered before the policy took effect but that had been undisclosed [1]. Hong Kong insurers have a vigorous and adversarial auditing process because of their anxieties about fraud, for example, a HKD 37. 5 million critical illness scam was prosecuted by the Independent Commission Against Corruption in June 2023, while policyholders also have to cope with tight capital controls (namely, a floor of 50,000 USD for foreign exchange quota and a bank clearance delay of 10 to 40 days for physical claims cheques) [2,

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3]. Finally, there is little recourse for consumers, as the Insurance Complaints Bureau is capped at HKD 1.5 million, and High Court lawsuits carry high court fees and a loser-pays rule [4].

This cross-border business is significant enough for these frictions to matter. Underpinning the performance of Hong Kong's long-term insurance sector is its largest single source of new individual business: customers from the mainland. According to the insurance authority, in 2024, new business premiums from Mainland visitors reached HKD 62.8 billion, up by 6.5 per cent from last year. The premiums account for 28.6 per cent of total new office premiums for individual business. Critical illness policies represent approximately 28 per cent of the policies sold to this segment [5]. As a result, even a small percentage of disputed claims generates a significant absolute number of disgruntled policyholders, most of whom do not have convenient access to Hong Kong courts, licensed local lawyers or even a claims handler once their original broker has exited the business.

The previously mentioned disclosure asymmetry is not only doctrinal but also a part of the actual sale of policies. Mainland policyholders often buy a critical illness or savings product during a short visit to Hong Kong, through an intermediary paid on a commission. Such transactions take place in a one-off setting with underwriting at point of sale rather than via a full medical examination. Because the common law duty of utmost good faith in Hong Kong imposes an obligation on the applicant to volunteer every fact a prudent insurer would consider material, and this extends to facts the applicant may reasonably think are not material, this means that an applicant unfamiliar with this must volunteer every fact clause, and not used to this Hong Kong common law standard, but being accustomed to the narrower inquiry-based disclosure principle in Mainland China, this means that this applicant is structurally more likely to make an innocent non-disclosure which only surfaces at the claims stage, often many years later when a critical illness is diagnosed [6, 7]. Consequently, the risk of retrospective underwriting is borne disproportionately by policyholders on the mainland – the insurer essentially underwrites the risk twice: first at the inception of the policy and again, more strictly, at the point of claim.

2. Literature review

Decisions and reports of scholars and regulators have invested extensively in the legal and institutional structure of cross-boundary insurance in the GBA. In the case of comparative insurance contract law, Feng and Yang, for example, discuss the theoretical transplantation of "utmost good faith" and note how the civil law transplant of good faith in Mainland China differs from the common law origins of good faith preserved in Hong Kong [6, 7]. This is echoed by Zhen, who provided a systematic study of Chinese insurance contracts, noting that protection of consumer interest in adhesion contracts involves two different approaches in the two jurisdictions [8]. Schmidt adds a critical note to this dialogue, arguing that individual policyholders remain in a fundamentally weaker bargaining position because they lack the professional skills needed to identify which facts are material under Hong Kong's demanding pre-contractual disclosure regime [9]. Industry market reports also address GBA connectivity projects from an institutional and financial-reporting perspective, such as the launch of cross-boundary medical insurance and the building of physical after-sales service centres, both intended to close regional protection gaps. However, data privacy researchers such as Bates et al. caution against this integrationist narrative, warning that differing legal definitions of protected data across jurisdictions make the actual cross-border flow of sensitive healthcare data highly problematic in practice [10].

Recent developments further confirm that the 2023-2024 wave of dataflow GBA instruments do directly reach the insurance sector. In December 2023, the Standard Contract mechanism was opened for "early and pilot implementation". Of the three sectors which were invited to participate

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in the first phase, one was healthcare, together with banking and credit referencing. This reflects the regulators' own recognition of cross-border medical data as central to GBA financial integration [11]. Another Practice Guide released in November 2024 proposed "Mutual Recognition of Security" designed to facilitate cross-border processing of personal information between the nine Mainland GBA cities and Hong Kong [12]. This suggests that regulators are moving towards the kind of permissioned, auditable data architecture that people argue should be a precondition for any reasonably workable EHR-sharing solution.

Despite this development, the Standard Contract regime still designates "sensitive personal information" a designation that is obviously intended to include medical records for enhanced impact-assessment and consent obligations. Therefore, the compliance burden associated with exactly the type of data people are concerned with in this paper remains significantly higher than that for ordinary personal data [11].

Another strand of Mainland scholarship is concerned with limiting the consequences of non-disclosure when underlying facts have become independently verifiable. Wang demonstrates that even though the statutory proximate-cause provision is nowhere to be found in the PRC Insurance Law, an increasing number of judgments from the mainland have nonetheless qualified the disclosure duty under Article 16 by reference to the proximate cause principle [13]. In particular, these judgments have declined to permit avoidance for negligent non-disclosure where the undisclosed fact was not the proximate cause of the loss claimed. In his study, Wang traces this principle to nineteenth century English authority on marine insurance, and argues that it should be formalised through a legislative amendment into a near-cause proportionality principle, that will apply generally across Mainland insurance law [13]. This literature has not previously been engaged with the materiality test of Hong Kong common law, which does not contain an equivalent causal limitation, as Part IV will show.

Nevertheless, Wang's proposal is not the only mainland scholarly approach to the disclosure duty [13]. The remainder of this literature suggests that, if imported into Hong Kong practice, a near-cause qualification cannot just overlay the existing rule. It will still face two further difficulties. Zheng argues that much of the interpretive difficulty surrounding Article 16 stems not from the causation question [14]. Wang addresses, but from a prior, more basic ambiguity over what counts as a fact the applicant ought to have known for the purposes of triggering the duty at all [13]. A causal limitation is of little help if courts cannot first agree on the scope of what had to be disclosed in the first place. There is a second complication. Liang takes the normative character of the disclosure duty to mean that reform could not freely narrow its restrictions, or consequences for breach [15]. Liang argues that the disclosure duty must be classified as a mandatory, non-derogable norm, because if insurers and applicants could contract around it (e.g. an insurer informally agreeing to relax the duty), there will be harm suffered by the wider pool of honest policyholders, resulting in adverse impact on the economic public order that the duty seeks to protect. This paper suggests creating a proximate-cause carve-out that lessens the consequences of non-disclosure rather than the duty itself. Liang's account serves as a significant constraint for shaping the present proposal [15]. In particular, it means that the case for a near-cause qualification must rest on the element of causal fairness developed in Part V of the paper. In addition, it cannot be just a matter of taking an inconvenient burden off the shoulders of individual applicants.

A further collection of Mainland scholarly works has a stronger connection to the case analysis in Part IV. Wang, studies a different but related mechanism, one that relates to the pre-existing condition clause commonly found in Mainland commercial health insurance, where the insurer will exclude cover for a condition that the applicant knew, or ought to have known, existed before the

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commencement of the policy [16]. Wang explains that if an applicant fails to disclose a condition due to no fault on their part, the outcome of applying the pre-existing condition clause vs the general disclosure duty rule differs materially [16]. The pre-existing condition clause only asks whether the condition existed and is excludable, while the general disclosure duty rule only asks whether the non-disclosure of that condition was itself culpable and material. The difference is important to the present paper as it offers a narrower, contract-based alternative to Wang proximate-cause reform [13]. This is because, instead of qualifying the insurer's right to avoid the policy as a whole, Hong Kong insurers could follow Mainland commercial practice and opt for condition-specific exclusion clauses that deny cover of the undisclosed condition itself while keeping the rest of the policy intact.

3. Case analysis: materiality and proximate cause in practice

The case of Leung Yuet Ping v Manulife (International) Ltd (HCA 2380/2006) most clearly illustrates the issue raised by this paper. That is to ask, once the insurer establishes that the undisclosed fact was material, is there any further inquiry possible under Hong Kong law? In other words, did the undisclosed fact cause the loss claimed? Eleven days prior to applying for a HK$1 million life policy, the deceased attended a doctor's consultation complaining of shortness of breath and palpitations but never disclosed the consultation despite direct inquiries. Two years later, he died of colon cancer, but the death certificate stated coronary heart disease too. The First Instance Court determined that the undisclosed visit bore significant weight, in that it was something a prudent insurer would want to know, and that this fact alone entitled Manulife to avoid the policy.

There was no investigation that took place, nor was one warranted, to ascertain whether the hidden heart symptoms had a causal connection to the colon cancer that actually killed the deceased.

A case from the mainland reported by Wang, J.Y. Case No 13 (M) first goes deeper and then finds that the applicant's undisclosed hypertension, cervical spondylosis and thyroid nodule were not held to be the proximate cause of subsequent diagnosis of thyroid cancer in the other lobe and, hence, insurer was ordered to pay. The same structural problem is present in both cases. This is an omission of health information which is not linked to the loss that actually occurred. Yet, the Hong Kong materiality test and the mainland proximate-cause qualification produce opposite outcomes on the same facts.

The information from Leung Yuet Ping also exposes a second gap. The symptoms that the deceased had that were never disclosed were a pre-existing condition of precisely that nature dealt with by a condition-specific exclusion clause, not a total avoidance [16]. Hong Kong law did not allow Manulife any intermediate remedy: once materiality was established, only whole-of-policy avoidance was available.

4. Proposal: a proximate-cause qualification for automated institutional disclosure

The proposal in this paper is for a single, narrow reform that addresses directly the research question in the case analysis rather than the broader institutional landscape of GBA insurance regulation. It is proposed for Hong Kong practice to adopt a rebuttable presumption; namely, a principle that is similar to what Wang, suggests for the Mainland law regarding near-cause proportionality: where an applicant negligently (as opposed to willfully) fails to disclose a fact which is, in principle, obtainable via an institutional EHR channel, for example, the GBA Standard Contract, the insurer should not be entitled to avoid the policy unless the insurer demonstrates that the undisclosed fact was the proximate cause of the loss actually claimed [13]. Where a party deliberately decides not to disclose a fact, the insurer would continue to be entitled to avoid the policy, which is the current

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scope of the materiality test. This is in line with Wang's recommendations for Mainland law and the policy rationale in either jurisdiction which would suggest that the strict Hong Kong rule is best seen as having as its aim the deterrence of dishonesty [13].

The doctrinal component does the real work; the operational component merely implements it. The operational segment consists of a closed-loop auditable data channel, which is modelled after the wealth management connect scheme for the Guangdong-Hong Kong-Macao Greater Bay Area [17]. A Hong Kong insurer may, with the applicant's consent and through the graduated impact assessment framework already used for sensitive personal data under the Standard Contract regime, check whether a particular historical fact was in principle available through institutional channels at the time of underwriting [11]. The given channel is relevant only because it provides the requisite factual predicate for the doctrinal question at hand. In other words, a fact is a good candidate for the presumption only if an equivalent institutional channel might, in principle, have supplied that fact. This is why the reform is limited to facts of the kind that the Standard Contract mechanism is meant to carry: not just any fact but those that one could procure freely from a hospital, etc., and not facts that can only be derived from the applicant personally, such as that applicants lifestyle or family history, where there is no institutional medical record to speak of.

The presumption of proximate cause does not hinge on the data channel being established. It could be developed by the Hong Kong courts through ordinary common law reasoning, just as Mainland courts have developed the equivalent qualification through judicial practice rather than through legislation. According to Article 84 of the Basic Law, courts in Hong Kong already enjoy the discretion to draw on case precedent from other common law jurisdictions in developing the duty of utmost good faith. There is, therefore, nothing in principle to prevent a Hong Kong court from drawing, by analogy, a functionally analogous qualification developed under a comparable civil law disclosure rule.

This is especially so in the present case where the reform responds to a genuinely new category of case — the non-disclosure of a fact the insurer could independently verify — that neither the nineteenth-century English authorities, nor Hong Kong's own limited post-handover case law, has yet had occasion to consider.

The above doctrinal reform deserves to be complemented by a narrower, contract-based alternative. According to Wang, Mainland insurers facing an undisclosed pre-existing condition can rely on a condition-specific pre-existing condition clause to exclude cover for that condition alone, rather than avoiding the policy in full [16]. Insurers in Hong Kong may be able to take up a similar drafting practice absent a change to the common law materiality test: a policy might provide that cover for claims connected to a specific, newly discovered cause is excluded, while cover for unrelated claims remains in force. This would not entail the application of any new doctrine at all, only a different contractual technique. One already in use on the mainland. Nonetheless, it is a weaker remedy than the proximate-cause presumption people propose above. It depends on the choice of the insurer to draft the relevant policy which way. Further, it also would give no relief to the applicant whose insurer, as in Leung Yuet Ping, chose instead a blanket clause to avoid liability. The proximate cause presumption and exclusion clause are complementary rather than competing reforms; the former operates as a backstop where the latter has not been adopted.

Liang's argument that the disclosure duty is a mandatory, non-derogable norm (see Part II) might be thought to count against both reforms, on the view that any narrowing of the consequences of non-disclosure erodes the public-order function the duty serves [15]. That objection has more force against the exclusion-clause technique, which depends on individual insurers choosing to adopt it and could in principle be withdrawn from weaker or less-informed applicants, than against the

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proximate-cause presumption, which would apply as a uniform rule regardless of an individual insurer's drafting choices and leaves the duty itself, and its deterrent function against deliberate non-disclosure, fully intact. This is a further reason, alongside the case analysis in Part IV, for treating the proximate-cause presumption as the primary reform and the exclusion-clause technique as, at most, a supplementary one.

5. Discussion

The insurer's objection ought not to be taken lightly. A proximate-cause qualification tweaks the deterrent effect of the disclosure duty and Hong Kong's documentation of organised medical-claims fraud actually shows that adverse selection is not a hypothetical concern [2]. The proposal resolves this problem by keeping the present and unqualified materiality test wherever there is a deliberate non-disclosure; it is only the negligent and incidental non-disclosure of institutionally verifiable facts — precisely the category least likely to reflect genuine fraud — that the presumption would affect. In practice, it would genuinely be difficult for Hong Kong courts to reliably distinguish deliberate from negligent non-disclosure at the pleading stage. Wang acknowledges that the same difficulty is faced in practice on the mainland [13]. While people do not resolve the concern here, it does not constitute a reason for abandoning the distinction since Hong Kong law already draws an analogous line (between fraudulent and innocent misrepresentation) for other purposes.

The privacy objection is better answered by the design of the data channel than by abandoning the proposal. Since the channel outlined in this document operates on a consent-based and closed-loop system and is limited to the data categories that are already part of the graduated impact-assessment framework of the Standard Contract, it does not entail having the insurers to seek blanket access to the applicant's medical history [11]. Rather, it requires only that a specific, disputed fact be verifiable after a claim has been made and contested. This narrower verification requirement will only affect a very few cases, since it creates a materially narrower intrusion than the full pre-contractual disclosure that every applicant is currently required to provide.

6. Conclusion

Automated institutional transfer of electronic health records under the GBA Standard Contract does not merely change how information moves between Mainland hospitals and Hong Kong insurers. It also changes who is capable of knowing a disputed fact. Furthermore, it also changes how fair it is to place the entire consequence of non-disclosure on the individual applicant. According to the materiality test for prudent insurers in Hong Kong in Leung Yuet Ping v Manulife (International) Ltd, the basis of avoidance for non-disclosure does not have to ask if the undisclosed fact causally linked to the loss which was actually claimed. Courts on the mainland are facing a similar problem, and increasingly, they are answering the further question through the proximate cause principle. The essay argued that Hong Kong should adopt an equivalent narrowly drawn presumption for negligent non-disclosure of facts that an institutional data channel could independently verify, while preserving in full the existing rule for deliberate non-disclosure. The reform is doctrinally modest and addresses a single, tractable question on which it can be shown that there is a genuine legal gap.

The paper's proposal is confined to negligent non-disclosure of facts capable of independent verification by an institutional data channel and takes no position on whether a Hong Kong court or the legislature is the proper adopting body. Because the analogy is drawn from a Mainland civil-law principle without common law equivalent, whether this will be accepted by the Hong Kong courts cannot be taken for granted.

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