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ACCOUNTING, CORPORATE GOVERNANCE & BUSINESS ETHICS | RESEARCH ARTICLE

The insurance law in Cambodia: the economic modernization and the insurance contract law

Chou Meng^{1*}

Abstract: This article begins with a brief overview of the Cambodian Economic Development and offers a brief history of the insurance market industry. The article continues with a more detailed discussion about insurance law and a critical look at the current insurance contract law in Cambodia that has yet to establish a sufficient legal framework for its insurance industry's development. The Insurance Law of Cambodia, particularly the insurance contract law, the definition of insurable interest, the principle of duty of good faith, and its remedies are in flawed condition. A suggestion for future legislation reform has then made in this article. Consequently, the discussion and comparison of the current status of Cambodian insurance law with the well-developed insurance law in common law system will be taken part as a route reference for future reform in Cambodia.

Subjects: Asian Law; Legal Theory; Commercial Law

Keywords: Cambodia; Economic Modernization; Insurance Contract; Insurable Interest; Duty of Good Faith

1. Introduction

For past few decades, the insurance market has grown at an increasingly rapid rate in developed countries. Within the process of the world financial liberalization and economic integration, the increase of insurance markets in some developing countries has been witnessed. Due to this trend, the question about how insurance market activity could promote country economic growth has been raised. From the beginning, insurance has been used for the purpose of risk transfer and indemnity of damages, but in today's economy it also facilitates a myriad of economic transactions. Ward and Zurbrugg (2000) found that the activities in insurance markets may impact the growth of a country's economy, not only as a financial intermediary but also in risk transfer and indemnification.¹ Moreover, with the recent studies by Levine and Zervos (1998) it has been demonstrated that "*financial services of the banking sector and insurance sector have great potential for spreading positive externalities in all aspects of the commercial sector of an economy.*"² Insurance activity is a great medium through which to encourage the accumulation of new capital flow and could mobilize domestic savings into productive investments.

In this context, insurance is not only of primitive import in international economies, but in domestic economies as well. It has been argued that the accession of the role of insurance in the development process is very difficult. Studies have found that, in many developing countries the financial systems they had inherited could not adequately serve their countries' development needs. During the past three decades, a change in the system's structure has been considered to better control the operation by themselves in order to channel savings into investments which has been considered a priority within their development programs.³ Currently, numerous developing

countries have started up dominant domestic insurance industries. The demand for insurance services still remains low, however. In Cambodia, a large number of the people are still not yet aware of the benefits of insurance. Many consider insurance as an extra expense rather than an investment. It has been argued that many people do not have full trust or confidence in the insurance sector especially because it is not a tangible product.⁴

The insurance industry is one part of the financial field in which Cambodia has demonstrated particular interest, and it is one of the main priorities for the government within the Millennium Development Plan (The Rectangular Strategy for Growth, Employment, Equity and Efficiency).⁵ Furthermore, Cambodia is a country with a very open economy owing to explicit policy decisions. Not only are its borders porous, it is located between two large export-oriented economies in the region (Thailand and Vietnam), and is a member of the ASEAN Free Trade Area (AFTA) with special preference of the ASEAN Economic Community (AEC 2015). Consequently, instead of integrating into this regional flood of market economy, Cambodia is a post-conflict state in southeast Asia which is enjoying the fruits of the region's latest economic miracles while the country works through its vague future. The two latest challenges faced by Cambodia is how to constructively manage its location and attract private capital flow whilst its institutions, political system, and especially legal system are still very much in uncertain condition. The Cambodian government is determined to modernized its industrial system and financial services with a very broad range. In addition, the government of Cambodia intends to modernize its legal system to attract more foreign capital flow and investment. Therefore, the discussion on insurance law reform is very relevant to this paper. This paper will focus on some of countries wherein insurance law is very developed and can potentially provide a model for law reform.

2. The current status of Cambodia's economic development

Cambodia is a smallest country in the region, one of the world poorest countries,⁶ and has a transitional economy. Many factors led to Cambodia's societal and economic development: 9 decades of colonization by French, complex relationships with its two larger neighbors (Thailand and Vietnam), a profound and tragic enmeshment in Indochina region for decades, the murderous regime of the Khmer Rouge, and finally the aggression of Vietnamese troops.⁷ Cambodia has enjoyed periods of peace and prosperity only for a few short times, namely in its first decade after achieving independence from France in 1953 and recently since its peace settlement in 1991⁸ which paved the way for its first formal national election in 1993. Since 1992, Cambodia's economic growth has been rapid with an average of 7% per annum.⁹ With this speedy growth, it has been called a faster one when compared with other post-conflict countries of the same age, resulting in a doubling of income per capita. The country's economic growth was unexpectedly fast over the past decade of mid-1990s to mid-2000s. This trend of growth has also been volatile, owing to country's narrow economic basis, some external economic shocks factors, and the instability of domestic politics.

Since 1993, Cambodia has entered into a new era and is open to both national and international trade and investment. Cambodia has implemented new policies to enlarge capital inflow from their neighbors and encourage regional cooperation. Cambodia has become the world's fastest growing economy and most welcomed investment country in the Southeast Asian region. Its past economy was stricken with long decades of volatile growth, competing political ideology, and domestic war. Currently, however, Cambodia reflects a modernizing and expanding economy. The Cambodian government (RGC) is expanding its economic ties to both the ASEAN region and the world's global economies. A largest related strategy has been implemented for the root of this reform agenda "The Rectangular Strategy"¹⁰ and the major "Strategic Framework for Development Cooperation Management".¹¹ This accelerated reformation, restructuring and adjustment has been underway since the early 1990s. At the same time, there have been major reforms in state's administrative and judicial systems, improved governance, and others financial factors. In 1993, trade policies were completely liberalized and most of the restrictions policies which stifled commercial firms and individuals were removed; engagement in international trade cooperation has greatly

opened.¹² The reform strategy is consistent with a generalized change in structure which occurs in the process of a country's economic development path.¹³ The country's agricultures sectors—dominated by rice—experienced robust growth during 1990s and when some products of fishing and forestry industries were included, its sheered about 46–55% of GDP. However, in the 2000s, it fell sharply to 36% of the national GDP. This sharp decline is thought to be due to product manufacturing, a share of GDP which increased by over 10% points in that same period.¹⁴ This economic dynamism is the result of opening trade and investment doors through policy as well as generous fiscal support in the industry sector. Beside this, service sectors have also grown drastically, including transportations, communications, private services, and especially trade services. Financial structure is also under reform; a banking system is being established with new large-denomination banknotes; most non-tariff barriers have been streamlined and some tariffs have been streamlined; and foreign investment law has been liberally adopted.¹⁵ Cambodia has made remarkable progress in restoring its stability, both political and economic, and is gradually reintegrating into the international community.¹⁶

To further develop its economic strategies and open doors to the world, Cambodia has made two largest pushes. First, it joined the ASEAN (Association of Southeast Asian)¹⁷ in 1999, wherein it could benefit from the Free Trade Area (AFTA). The visions of ASEAN Economic Community (AEC) are, (1) to create a single market and production-base in the region, (2) to promote regional economic competition, (3) to push regional equitable economic development, and (4) a fully integrate the region into the global economy. This move entailed trade liberalization, the elimination of all tariff and non-tariff trade barriers, improve interconnectivity and other measures to enhance free-flow of goods, capital, investments, services and labor skills.¹⁸ The ASEAN Free Trade Area (AFTA) helps Cambodia tone up its industry competition, free markets, and attract foreign investment. Cambodia hopes to reach its goal of promoting economic growth by turning to regional economic integration. With its commitment to accession with ASEAN and AFTA, Cambodia has agreed on a reduction of tariff rates for imported goods from other members in the region. Thus, Cambodia believes it can attract more foreign investment and enhance market access in the region.¹⁹ Second, by accessing regional trade (ASEAN) and with its openness policy has served as a stepping stone for World Trade Organization (WTO) membership. The current government of the Kingdom of Cambodia is eager to acquire a stable, sustainable, and prosperous economy.²⁰ In order to achieve these goals, Cambodia should increase its international economic integration, particularly through WTO membership. As a Least Developed County,²¹ Cambodia faces many struggles in the face of WTO membership and criticism by many NGOs about the effects of WTO accession. However, other members of WTO are crucial for Cambodia in order to be given the right to take advantage of the trade terms embodied by the WTO agreements (including GATT agreement). Furthermore, Cambodian government has made a significant deal of progress since it adopted a pre-WTO stance in the early 1990s, followed with sharply policies to aim of member engagement.²² Simultaneously, the process of this accession plays a great role for Cambodia future reforms. These steps toward WTO membership are a signal of the country's aim in global economic integration, enjoy more efficient investment with other members, and also would also allow them to take advantage of the GATT agreement with a status of most favored nation (MFN) and without discrimination. Finally, Cambodia could attract more foreign aid and international assistance which would be a much-needed boost in economic growth.

3. The insurance industry in Cambodia and its contribution to economic development

3.1. History of insurance market in Cambodia

The business of insurance in Cambodia does not have a long history; the presence of insurance in Cambodia is erratic and has not played a good function on market. In 18th century, Cambodia was involved in the Indochinese region with two other countries, Laos and Vietnam. By the mid-18th century, French troops landed in Saigon, then planted the tricolor in Indochina (Cambodia, Lao and Vietnam).²³ At that time, some western insurance branches had emerged in the Indochina's market. In addition to the economy and local governments being under the control of the

French, the market was also occupied by France's insurance company.²⁴ The report of the Department of Financial Industry of the Ministry of Economic and Finance stated that, the first insurance business started in 1956, whilst some insurers has been serving the market's need at that time. These insurers were established under joint-venture status and at the end of 1963 the government bought back all of the private shares. A year later on January 9th, the "Law on Monopoly" was adopted by the National Assembly.²⁵ Since then, *Societe National d' Assurance* (SNA) has been the only insurance company established to serve the market need for a national insurer. This insurer (SNA) monopolized the marketplace until 17 April 1975 when the Khmer Rouge took control of the country. Under the Khmer Rouge regime, all infrastructures were destroyed, all financial systems were broken down, currency was abandoned, markets were fully closed, no trading activities were conducted, and all commercial activities were ceased including the insurance activities.

The insurance sector development resumed in the 1990s. At this time only few necessary regulations have been issued to serve the need for social and economic development.²⁶ In conformity with the Royal Government Reform's policies on economic and financial sectors, a Sub-decree 24 RNK was issued on 20 September 1990. The aim of this sub-decree is to establish the Ministry of Finance, regulating its organizational bodies and functions; it also specifies goals to establish the Cambodian National Insurance Company (CAMINCO). CAMINCO not only became the only state-owned enterprise to operate in the insurance market but it is also the sole operating company in the entirety of the Cambodian insurance market. Since its beginning in 1990 and until 1996, it held the monopoly market position in the insurance industry. Most applicants and policy-holders were foreign and officers of Non-Governmental Organization's (NGOs). The main scope of the insurance business operated during this period including general insurance,²⁷ health insurance, motors vehicle insurance and marine cargo insurance. In the end of 1992, the Permanent Council of Ministers Committee of the Royal Government of Cambodia, issued a circular No. 1811 SCN-BH which permitted the CAMINCO to cooperated with a French company called Groupement European d' Assurance Maritimes "GEAMT". Under this cooperation, the French company worked as a technical consultant for CAMINCO to prepare the initial business in the market. One-year later, on 15 June 1993 the first Marine insurance policy was issued to applicants.²⁸ By the end of 1996, however, the agreement for technical assistant was terminated. Meanwhile, there were four other insurance companies entering the Cambodian market which included: Indochina Alliance Insurance Company (1996–2004), PANA Trading Cambodia (1996–2002), Asia Insurance Ltd (Cambodia branch, 1996–2002) and Forte Trading Private Ltd Company (1997–2002).²⁹ However, none of them were allowed to operate independently; they were appointed as CAMINCO's agency. Soon after, the 1997–98 economic crisis in Asia had a great impact on the economic development of its countries. Many countries suffered huge blows to their economies, particularly Thailand, Malaysia, Japan and Hong Kong. Although Cambodia was a small country and its economic strength was not large, the crisis still affected it deeply. During this crisis, two of the insurance companies were withdrawn from the Cambodian market, Indochina Alliance Insurance Company and PANA Trading Cambodia which withdrew in 2002 and 2004, respectively.³⁰

3.2. The current market status and the future development perspective

In 2001, the Royal Government of Cambodia decided to convert CAMINCO company from a state-owned operation to a Public Enterprise by its Sub-Decree No 132 issued on 31 December 2001. It was the first Public Enterprise which was operated and acted as an insurer player in the Cambodian insurance market. It also was the first insurance industry that gained a license by Ministry of Economic and Finance to operate the General Insurance services in Cambodia for a period of five years. One-year later, the first Reinsurance company (Cambodia Re) joined the market. This company was also a public enterprise in the form of state-owned enterprise.³¹ Both of these public enterprises were wholly under technical supervision of the Ministry of Economy and Finance. The early 2000s was the watershed period for Cambodian insurance sector development. The government moved forward by allowing foreign investors to set up joint ventures and/or private companies in Cambodia. Furthermore, the government also moved a step forward

to privatize its state-owned enterprise. Since then, the government has ended its history of monopoly over the insurance market in Cambodia. In 2003, other two of CAMINCO's agents (Asia insurance and Forte Trading company) were licensed by the Ministry of Economy and Finance for five-year license and were transformed to general insurance companies. These two companies were formed as private companies. This new policy boosted development of the insurance industry which once again loosened the insurance market control. According to the reports of the Ministry of Economy and Finance show that from 2000 to 2006 the total premium of insurance industry was enormously increased from 8.8 million US dollars in 2003 to 12.14 million US dollars in 2006.³²

At present time, the development of Cambodian insurance market is still in its primary stage; and until 2012 life insurance and micro-insurance merely stated their presence in the market. With the increasing number of market participants, the marketplace is also gradually increasing. Until the end of 2014, 11 insurance companies were licensed by the government to doing their business in Cambodian markets; six of them are general insurance companies, 3 are life insurance, and the other 2 are micro-insurance companies. Since the rapid development of the insurance industry, the non-life insurance (general insurance) has taken advantage of the market and experienced robust growth. It has been reported by the Insurance Association that—with the exception of a big claim made on fire insurance which reached 73% in 2011—during the 9-year period from 2005 to 2014 the premium for general insurance grew at an average rate of 19.7% annually; this was an increase from USD8.8 million in 2005 to USD53 million in 2014.³³ In 2014, the total market premium of insurance industry reached USD60 million. In 2017, the market premium had reached USD153 million. During the outbreak of the Covid-19, the economic growth of Cambodia had a negative impact, however, its insurance market has continued growing significantly and maintaining a stable and strong position with grow rate at 8% to 10% in 2020–2021. If compared with the last five years, it has an average growth at about 20% since the total premium in 2021 reached USD300 million.³⁴

Compared with other ASEAN countries, Cambodia was ranked as having the slowest rate of insurance development. This is especially true when it's compared with its neighbor, Vietnam, where the development of life insurance entered the market 13 years earlier than Cambodia.³⁵ A report made by the Department of Financial Industry shows that in 2008 the insurance premium was tiny and stood only at 0.2% of its country GDP.³⁶ This indicated that the market of insurance industry in Cambodia is still nascent, yet it has a great potential for future growth.

In 2006, the Government of Cambodia adopted “The Financial Sector Development Strategies (FSDS) for 2006–2015” which identified policies that should be instituted to improve the insurance industry by putting forward the privatization of insurance business. According to the report of the Insurance Association of Cambodia, there are 39 insurances companies in Cambodian market,³⁷ including 18 general companies: Asia Insurance (Cambodia) Plc., Cambodia-Vietnam Insurance Plc., CAMINCO Insurance, Campu Lonpac Insurance, Forte Insurance (Cambodia) Plc., Infinity General Insurance Plc., People &Partner Insurance Plc., East Insurance Plc, Ly Hour Insurance Plc, Phillip General Insurance (Cambodia) Plc., Newa Insurance (Cambodia) Plc., Dara Insurance Plc., CB General Insurance Plc., BIC Insurance Plc., Civil Safe Insurance Plc., Etiqa General Insurance (Cambodia) Plc., Huione Insurance Plc., and Prosur Insurance Plc.; 14 life insurance companies: AIA (Cambodia) Life Insurance Plc., Dai-Ichi Life Insurance (Cambodia) Plc., Etiqa Life Insurance (Cambodia) Plc., Forte Life Assurance (Cambodia) Plc., Fortune Life Insurance Plc., FWD Life Insurance (Cambodia) Plc., GC Life Insurance Plc., HK Yue Tai Life Insurance Plc., Huione Life Insurance Plc., Manulife (Cambodia) Plc., Phillip Life Assurance (Cambodia) Plc., Prudential (Cambodia) Life Assurance Plc., Sovannaphum Life Assurance Plc., and Titan Stone Life Insurance Plc.; 7 micro insurance companies: Cambodia Life Micro Insurance “CamLife” Plc., Cambodian People Micro Insurance Plc., K2 Micro Insurance Plc., Mekong MicroInsurance Plc., MILVIK (Cambodia) Micro Insurnace Plc., Prevoir (KAMPUCHEA) Micro Life Insurance Plc., and Serendib MicroInsurance Plc.; and one Reinsurance company called Cambodia Reinsurance Plc.

“CambodiaRe”. Apart from these Insurance companies, up to now, there are 19 Insurance Brokers and Agencies conduct their business in Cambodia market.³⁸

Generally, the development of the insurance industry is depending heavily upon the wills of its government. The insurance market in Cambodia has great potential to experience growth, even though the market is still quite small. To further develop and obtain market proportions that contribute in a substantial way to economic development, further measures of critical components should be taken.

3.3. How the insurance industry boosts economic development

Due to long decades of colonization, a long period of civil war, and an era characterized by genocide, the insurance industry in Cambodia is still in its infancy. The first insurance regulations adopted in 1990 are functional for dominant marketplaces of the insurance industry. For an extended period, CAMINCO alone controlled the whole market with little comprehensive regulation. Furthermore, CAMINCO is a state-owned enterprise run by the Ministry of Finance (Ministry of Economy and Finance).³⁹ The Royal Government of Cambodia eventually dismantled the monopoly of CAMINCO,⁴⁰ implemented an opening policy to increase market competition, and terminated state-power to control the insurance industry. After opening up, other foreign insurers were licensed to underwrite insurance business and there was anticipation of further market liberalization. Even though the current economy is booming and the GDP per capita is rapidly increasing, the majority of Cambodian citizens are still poor. Many are peasant farmers and some are unemployed. Consequently, the precarious financial status of these farmers leaves them little room for potentially ill-advised insurance purchases. The nature of insurance products is complex; consumers are unable to perceive whether or not they have been misinformed or misled until the loss occurs or compensation falls short of expectations. Insurance is a kind of commercial contract wherein the aim is to compensate for a loss upon the occurrence of a particular event. It is unlike other products and services, because consumers cannot see, taste or evaluate it until it has been purchased and used.⁴¹ Hence, the insurance consumers’ knowledge of insurance terms and conditions depends solely on the terms or words stated in policy, or the policy explanation by the agents. Such an inequality of information and bargaining power between the insurers and consumers is an inherent disadvantage for insurance development.

Along with increasingly rapid changes in financial markets and an increase in insurance requirement, it is necessary for the government to undertake a comprehensive review of its existing legal framework for insurance regulation and its supervision. In 2000, the government stepped forward to reform its insurance regulation by introducing new insurance law. Yet, this law still remains unfit to influence the market. To address this issue, the Asian Development Bank sent a group of Technical Assistances to aid the government’s entity, Ministry of Economy and Finance (MEF) in reviewing the law (2000 insurance law) and draft new legal reform. This work has been progressing well, and the new insurance law was adopted in 2014. This presence of new law in Cambodian regulation, the MEF can adequately control the market. The new law has not only significantly strengthened over time but it also bolstered procedures for healthier growth and has highly promoted honesty in industry. The law stipulated regulation and supervision of insurance business which covered legal, financial and economic aspects in number of articles.⁴² The insurance industry is a very promising sector in the Cambodian economy as it contributes not only to social protection but also to economic growth. Since the stability and strong growth of the economy in 2000, it is also another significant indicator of the promising future outlook for Cambodian insurance industry. In the ASEAN region, it seems that Cambodia is the most positive and receptive towards the privatization of the insurance industry.

4. Insurance regulation and the existing problems

The first regulations concerning insurance business in Cambodia were adopted on 30 January 1992, the Law on Insurance Business⁴³ which contained only 4 articles. The purpose of this law was to promote social security, insurance industry, and economic development

following the government's liberalizing policies. This law stipulated that supervision and regulation of insurance business shall be exercised by the state. Since then, the National Assembly (NA) has enacted other insurance regulations, including sub-decrees, circulars, and Prokas⁴⁴ to address the management of the insurance business, define the scope of business, and establish private insurance companies.

With an increase for insurance demand, in 2000 the National Assembly adopted the new insurance law. The 2000 Insurance Law was approved by Parliament, and came into effect on 20 June 2000; this law was supplemented by the Sub Decree enacted on 22 October 2001. The law produced two important effects: (1) it broke the CAMINCO's monopoly in domestic marketplace and (2) created a new framework for the future of insurance industry development. The insurance law and Sub Decree, both required the insurance company (Non-life and Life insurance) have at least 5,000,000 (Riel) SDR or US \$7,000,000 capital at the time of registration. Small-sized insurance companies could have enjoyed great flexibility in terms of capital requirement policies issued by the Ministry of Economy and Finance. Those capital requirements will be given a grace period of up to 5-year.⁴⁵ The aim of the government in adopting this law is to move forward with the privatization of a currently state-owned enterprise. The insurance law contains eight chapters and 56 articles and covers many kinds of insurance including property insurance, life and personal insurance, compulsory third-party insurance, passenger transport and motor liability insurance, construction insurance; insurance company regulation and administrative control of insurance, insurance agents and its brokers, and related regulation of legal penalties.⁴⁶

Many insufficient concepts and insurance theory appeared in the 2000 Insurance Law. The loopholes of the law and significantly unfit circumstances with the current market have been found. Since then, the very long awaited (one and half decades) Insurance Law was finally promulgated by the King of Cambodia, Norodom Sihamoni on 4 August 2014. This new insurance law took six months after its promulgation to come into effect in February 2015. The 2014 new insurance law contained 14 chapters with 114 articles, doubled the old law, and covers all business activities on insurance including Life, Non-life and micro-insurance.⁴⁷ Despite the rooted content of these chapters and articles, it also provided three mainstays of a workable framework. First, it aims to stabilize the management of insurance business; second, to define the operating management and the operation of insurance business; and third, offers a framework to boost the competition, promoting good faith, and transparency in insurance business.⁴⁸

The Cambodian Government seems to have discovered that social and financial benefits of insurance industry as a part of key elements of its economic modernization. Although the new law of insurance adds many articles, there are many technical and theoretical problems remaining. The insurance regulations are insufficient to control for potential market growth. Hence, further reforms are still needed in Cambodia.

4.1. The insurable interest

Insurance is a product through which people can attempt to gain control of their lives, decrease stress, live with a peace-of-mind, and to transfer their risk to a third person party. Yet, the buyer has to fulfill some requirements defined by the relevance law. The buyer of insurance should have an insurable interest in the subject matter of that which is insured. The insurable interest should stand in relation to the right or benefit to the person or thing that had been insured.⁴⁹ This requirement is the prerequisite condition for an effective insurance contract. Without insurable interest, the policy of insurance will be null and void.⁵⁰ The Cambodian Insurance law (insurance law) of 2000 required an applicant or the insured to have an insurable interest or benefit from that insured subject matter. Article 16 stated that: "(1) The insured shall have an insurable interest from the subject matter insured. (2) An '*insurable interest*' means an interest or benefit to which the insured shall have the right in relation to the insured subject matter. (3) An '*insured subject matter*' means any property or benefits in relation to the property, life or body of an individual."⁵¹ On the other hand, insurance law did not stipulate any rule corresponding to the invalidation of insurance

contract when the insurable interest is absent. Secondly, it also did not differentiate insurable interest in life insurance from insurable interest in general (property) insurance. A long-awaited new Insurance Law was finally announced in 2014 (the 2014 insurance law), and implemented in early 2015. Although the 2014 amendment law increased the number of chapters and articles from 56 to 114, the amendment law retains the structure and the organization of the old law (the 2000 insurance law); some articles have been changed. The article stipulated that the definition of insurable interest has also been changed. The article 15 of the 2014 law specifies that: “(1) The insured shall have an insurable interest from the subject matter insured. (2) An ‘insurable interest’ means the indemnity in relation to the insured subjects matter. (3) An ‘insured subject matter’ including: property, body and life of an individual.”⁵² This new amendment of insurance law keeps the requirement of insurable interest as a prerequisite condition for an effective of insurance contract. Yet, the legal consequences of the lack of insurable interest, the differentiation of insurable interest both in general and life insurance, the specific time requirement of insurable interest existing still remains equivocal.

4.2. How to differentiate the insurable interest between life insurance and general insurance?

Life insurance was known as contingency insurance. Measurement of the insurable interest in life insurance is neither necessary nor existent at any time. It is required that the policyholders should have an insurable interest of the insured matter (person) at the time when the insurance is undertaken.⁵³ This calls into question whether or not life insurance is truly a wager. In the life insurance, the traditional, surviving rule states that: “People are allowed to insure only the lives of those whom, as the law sees it, they will not be tempted to kill.”⁵⁴ Life insurance is a kind of contract which aims to pay a certain amount of money upon the occurrence of the death of the insured person. In short, the payment is dispersed upon the death of another individual, not the one who will get the payment.⁵⁵ In some developed countries, there are many types of life insurances such as in United State where the types of coverages of life insurance are divided as universal life insurance, variable life insurance, whole-life insurance, industrial life insurance, credit life insurance, term life insurance, joint life insurance, and endowment life insurance.⁵⁶ Life insurance has been a well-recognized investment to facilitate the transfer and distribution of the risk of loss from an unpredicted death. The earlier the person’s death, the sooner the beneficiary get paid; however, the earlier the death, the smaller the amount of insurance covered the beneficiary get.

In a different legal context, the definition of insurable interest in life insurance is different. In the context of English law, the human nature was dismal; in short, spouses are listed in insurable interest.⁵⁷ On the other hand, the human nature has been taken positively in the United States; many part of US’ states, the insurable interest in life insurance not only allowed by marriage relation (spouses), but also including family relationship, such as sibling and children on parents (by blood or by law), a substantial and lawful economic correlated interest.⁵⁸ Furthermore, in some state courts, the insurance between engaged persons has been allowed, although others have not. Hence, the generalized definition of insurable interest in life insurance still leaves considerable room for scholarly and judicial interpretation. However, the requirement of insurable interest is the most important in life insurance. It is a significant measure to prevent wagering and the unsavory possibility of homicide.⁵⁹ Consequently, both American and English law, had adopted that, without an insurable interest in life insurance, that insured policy would henceforth be null and void.⁶⁰

4.3. Insurable interest in general insurance (property insurance)

Property insurance is also known as indemnity insurance; it is wholly different from contingency insurance (life insurance) in the law. In short, property insurance aims to reimburse the insured; no net gain in excess of reimbursement, otherwise, it is against the public policy. In property insurance, given that its purpose is to indemnify the insured, the doctrine of insurable interest is inseparable from the principle of indemnity. In property insurance—unlike life insurance—the amount of payment by the insurer is determined by the actual level of the insured’s loss. Then, the requirement of

insurable interest is very important for insurer to prove so that the loss can be calculated.⁶¹ In traditional insurance law regarding property insurance, the insured must be the owner of the property insured, or if not, at least have some interest in that property insured.⁶² For this reason, a person can insure the property (house) which he/she agreed to buy, usually before they certainly own that house against its unexpected loss by fire. In English common law system, the insurable interest in property law requires people to stand in “a legal or equitable relation” to that insured property, which is recognized by the property law. This requirement seems to have arisen recently. Since then, the people who can enjoy insurable interest has been enlarged, such as owners of property, personal representatives, trustees, mortgagees, mortgagors, lessors, lessees and bailees; and the people who have significant economic interest in property seem to be left out.⁶³ Later, this theory was dropped in some other commonwealth countries such as Canada, Australia and the United States.

In Cambodian insurance law, the law requiring that a policyholder shall have an insurable interest from the subject matter insured. It seems to presume that he/she bears the loss on occurrence of the risk of insured subject. However, both the old (the 2000 insurance law) and new law (the 2014 insurance law) have no regulation to stipulate about the invalidation of an insurance contract concerning whether or not it has insurable interest. Secondly, the laws do not specify that the applicant for life insurances shall have an insurable interest in that person insured while the insurance contract is signed. On the other hand, the insurance—with respect to property—shall have an insurable interest in that insured subject matter when the insured event occurs. A lack of differentiation between life and non-life insurance, the insurable interest between the two, and the unspecified time of the existing insurable interest are all big loopholes in Cambodian legislation. This will cause confusion in the legislation’s interpretation and in insurance practices.

According to the definition given by the insurance law, the “applicant” is a person who has signed the insurance contract and paid the premiums so that he/she will become an insured.⁶⁴ This definition created an illusion that the signer of an insurance contract and the individual who pays the premium must have an absolute and legitimate right to the loss claiming. In other words, the applicant’s entitlement to the claim is dependent upon the applicant’s payment of premiums rather than the applicant’s possession of the insurable interest. Legislators did not solve this problem in the 2014 amendment of insurance law. In addition, given that Cambodia is a Civil Law system country, the judiciary has no law-making function as a judiciary has in common-law countries. The statutory laws, administrative rules (decree issued by government and ministry) serve as the main source of law, so the vague definition of insurable interest both in life and non-life property leads to unanswerable questions in judicial practice.

4.4. Duty of utmost good faith in insurance contract

The common origin Principle of Good Faith was founded in Roman Law; judges applied this law to find more equitable solutions in cases that have no support in existing law.⁶⁵ The most common lapse in Good Faith was identified by the English Lord Chief Justice⁶⁶: “a contract dealing with false representation by a contract party; and withholding relevant information which causes other party’s consent to enter into contract.”⁶⁷ The Lord Justice, drew attention to the misrepresentation or non-disclosure which created inequalities in contractual relationships. In the decision of *Carter v Boehm*, the Lord Mansfield introduced this principle of Good Faith, particularly in insurance law and in general to other contracts.⁶⁸ The contract in insurance law is based on speculation, truthfulness and confidence; it is an equal right and duty to both insurer and insured to access and provide information. The insured has a duty to disclose any facts related to the insured’s objective which are known to him or would be known to him; and the insurer has a duty to acquire all information from the insured which he considers important.⁶⁹ Since then the Good Faith principle became well known as Principle of Utmost Good Faith (*uberrima fides/uberrima fidei*) in the contract of marine insurance.

The Duty of Utmost Good Faith (*uberrima fides*) is a topic which looms large in a variety of discussions on insurance contract law. Utmost Good Faith requires a duty to both parties in the

insurance contract.⁷⁰ This duty's origins are codified in sections 17–20 of the English Marine Insurance Act of 1906; it is referenced most often in pre-contractual disclosure duty of insurance law.⁷¹ Utmost Good Faith requires the contract parties to bargain the contract fairly, openly and honestly. In the history of marine insurance law, both parties in the contract have not only to disclose all related material facts, but also have to avoid any type of misrepresentation. The general principle of Utmost Good Faith was recognized by the English Common Law, specifically of the English Insurance Act 1906 (MIA). Section 17 stated that: “A contract of marine insurance is a contract based upon the Utmost Good Faith, and, if the Utmost Good Faith be not observed by either party, the contract may be avoided by the other party.”

This section established the general principle of Utmost Good Faith in insurance contracts and extended to all classes of insurance; this principle also developed into a continental law. This fundamental principle aims to encourage good faith, prevent fraud, and to ensure balance in the exchange of all information between the contract's parties.⁷² Either a contract of marine insurance or a contract of general insurance, therefore, is based on the parties' duty of Utmost Good Faith. If either party fails to observed the Utmost Good Faith, the other party may void the contract.⁷³

4.5. Fair information matters: misrepresentation and non-disclosure

Often in common law, including both English and American Law, the breach of the duty of Utmost Good Faith is proven by misrepresentation or omission of material facts. The concept of non-disclosure and misrepresentation are consistently revealed; however, both of them overlap regularly⁷⁴; usually misrepresentation involves non-disclosure and vice-versa.⁷⁵ The duty of Utmost Good Faith must be mutual; both parties in the contract have a duty of Utmost Good Faith and a duty to disclose all relevant information to one another. “Misrepresentation” is indicated by misleading or wrong answers to given questions. On the other hand, non-disclosure is measured by non-volunteered answers while no specific question was asked.⁷⁶ The first case in England wherein the court imposed the insurer's duty of disclosure was in the decision made by Pain J. in *Horry v. Tate & Lyle Refineries Ltd.*⁷⁷ Apart from that, in *Carter v Boehm* (1766), the premium paid may be recovered by assured and the contract could be voided when in the case that the assured is unknown, but the insurer known that the insured vessel has arrived.⁷⁸

Breaches of duty of Utmost Good Faith require that material facts of the insured's objectives are misrepresented or non-disclosed. This was required by the statute of law⁷⁹ and also by case law.⁸⁰ The marine insurance law section 18(1) determines that “the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the insured. If the insured fails to make such disclosure, the insurer may void the contract”. The materiality circumstance is further defined by the statute of law in section 18(2), as every circumstance “which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk”. The question has been raised about how to test this. A hypothetically “reasonable” or “prudent” insurer was placed as a standard. Hence, the conduct of a prudent insurer has been morphed into an objective standard. The insurer, with his reasonableness, would diligently consider any relevant circumstances in determining whether he will take the risk or not; and in the case, that he accepts it in which conditions, including the terms and premium.⁸¹ This statute led in the case of *Pan Atlantic Insurance Co. v Pine Top Insurance Co.*; However, this test's broad meaning has been criticized; as Lord Mustill comment a key question:

“Where section 18(2) and 20(2) of the 1906 Act relates the test of materiality to a circumstance ‘which would influence the judgment of a prudent underwriter in fixing the premium, or determining whether he will take the risk,’ must be shown that full and accurate disclosure would have led the prudent underwriter to a different decision on accepting or rating the risk; or is a lesser standard of impact on the mind of the prudent underwriter sufficient; and, if so, what is that lesser standard?”⁸²

This query was likely raised as a result of the decision made in the appeal court case *Container Transport International Inc. v Oceanus Mutual Underwriting Association (Bermuda) Ltd.*,⁸³ wherein this test was taken into consideration. It is highly likely that the debate has been both centered on the understanding of the test of material facts and the fairness or unfairness of a prudent insurer or underwriter which have been introduced in this case. In conformity with the mutuality of the duty, it is affirmed that the test of the material facts is also identical for both insured and insurer. Furthermore, in *Banque Financiere de la Cite v. Westgate Insurance Co Ltd*, in appeal court the Lord Jauncey in his judgment pointed that:

“The duty extends to the insurer as well as to the insured ... The duty is, however, limited to facts which are material to the risk insured, that is to say, facts which would influence a prudent insurer in deciding whether to accept the risk and, if so, on what terms, and a prudent insured in entering into the contract on the terms proposed by the insurer. Thus, any facts which would increase the risk should be disclosed by the insured and any facts known to the insurer but not to the insured, which would reduce the risk, should be disclosed by the insurer.”⁸⁴

The definition of the test of material facts as described by Lord Jauncey is of constant benefit; his definition limited the level of necessity of disclosure of the risk relevance to insured subjects. This test has been applied by the latter cases, for example, in *Aldrich v. Norwich Union Life Insurance Co Ltd.*⁸⁵

4.6. Good faith in civil code

It is known that the historical principle of good faith came from the civilian legal system. In Cambodia, during the King Chey Chetha II (1618–1628), the first codification of law or *Kram Khmer* (Khmer Code) in Cambodia was drafted in 1620.⁸⁶ However, the code was not implemented or published until the period of French colonization (1863–1953). During this period, Cambodia officially involved the civilian legal tradition and its legal system according to the Romano-Germanic system as transplanted by the French. The first Civil Code (old code) was adopted on 26 July 1915 and implemented 5 years later in 1920.⁸⁷ In 1975, the Democratic Kampuchea (government enforced by the Khmer Rouge) took control of the country. During this regime, the Khmer Rouge destroyed the judicial system and all pre-existing laws were abandoned; most of the legal scholars were killed and some fled the country. This atrocious regime collapsed in 1979; however, the civil code (old code) was no longer used by the court. It was not until 2007 that the new Cambodian Civil Code (new civil code)⁸⁸ was adopted and promulgated by the Royal Kram No 12,007/030 and was issued by the king on 8 December 2007. Yet, the implementation of this code was delayed until 2011 after another Royal Kram No 0511/07 was issued on 31 May 2011. Although this new civil code does not regulate the insurance contract, it at least contains both (1) principle of good faith in contract law and (2) law of obligation. Article 5 of the 2007 civil code stipulates that, “rights shall be exercised and duties shall be performed in good faith”. Accordingly, both parties are obliged not only to the matters upon which they expressly agreed, but also to act upon obligations which emanate from the purpose of the contract, with the fair dealings, and the principle of good faith.⁸⁹ Moreover, the article 440 also requires the obligor to perform in good faith of his/her obligations in conformity with the terms and conditions of obligations stipulated.⁹⁰ On the basis of these articles, the principle of good faith can be evidenced in Cambodia’s matters of unfair competition, consumer protection matters, and commercial affairs, etc. However, there has been no definition of the concept of good faith in the judicial decisions of Cambodia, the concept has less often been discussed in academic study.⁹¹ Due to the civil code, there is no guidance of the determination and application of this concept, such as when good faith must be presented or when it ends. Since the scope and requirement of socio-ethical standards were unclear, the principle of good faith seems very complicated in judicial decision.⁹²

4.7. Good faith in cambodian insurance law

Insurance regulations are not regulated by the civil code (2007), but rather by a separate law known as insurance law (The Law on Insurance). The first Cambodian insurance law was

promulgated in 2000 and revised in 2014. The 2014 insurance law made a clear and explicit reference to the principle of good faith. Article 9 of the Cambodian insurance law states that, “In making insurance contracts, the insured and insurers shall respect the principle of good faith, mutual benefit, and unanimity through negotiation and shall not harm the public interests.” This article intends to state that, both insurers and insured are inclined toward a duty of good faith. As we can see in Cambodian insurance law, the insurer’s and insured’s pre-contractual duties are stipulated in article 10 and 19 respectively. Article 10 establishes that, “the insurance company has a duty to clearly explain to the insured about conditions of insurance contract and the meaning of the attached insurance application and insurance certificate or/and other related documents”. Article 19 establishes that, “(1) An insurance contract shall be voidable if the insurance company has found that the insured has concealed the truth, or intentionally misrepresented the material facts which led to any change of the risk of insured subject matter. (2) Forgetful or unintentional unclear declarations of the insured shall not be a ground for voiding the insurance policy.” Unlike the English Marine Insurance Act (MIA), the Cambodian insurance law does not clearly differentiate between non-disclosure and misrepresentation. However, for the insured, what the law does ensure that the insured who wishes to enter into contract with an insurer has a duty to “sincerely declare the truth of any material facts which could define the condition of the risk of the subject matter”. The concealment or misrepresentation of material facts or circumstances, those that if the insurer had known, he/she would not take the risk, or if so, would proposes more onerous conditions or higher premium, will give him to the right to avoid the contract.

On the other hand, on article 19 paragraph (2) establishes that in the case where an unclear declaration made by the insured in the condition of forgetfulness or un-intention, the insurer is not allowed to void the contract. On the account of general contract law, whether as a misrepresentation or misstatement, as well as for non-disclosure, either the insurer and insured or an applicant, nonetheless if it is made innocently or by mistake, the aggrieved party has the right to rescind the contract. The statement of facts made by insured is a statement including the present time or the past time in which the insured would have known or would be known. Thus, if the misstatement or non-disclosure is made mistakenly or innocently, and not entitled to damages, the insurer is allowed to void the contract as an aggrieved party. Although, the law does neither obliges the applicants nor the insured to disclose any material information which is already known by the insurer or to disclose the facts that they do not have at all. Nevertheless, it would be a surprise to the insured that the idea of law is highly designed around the human mind and memory, particularly forgetfulness. Applicants are obligated at the beginning of contract negotiations to disclose not only the facts and information that he actually has in mind, but also the information that he knew previously⁹³ and has forgotten. It is assumed that the information that one once knew is always known; and the individual with poor memory is expected at least to have a good notice.⁹⁴ The duty of misrepresentation and non-disclosure are vital tools with which to protect the insurers. Moreover, in the common-law system, such as United states and England, the illiterate have generally not been excused from binding contracts which were despite their unawareness of its content. The article 19 section (2) of Cambodian insurance law bars the insurer from voiding the contract while the insured’s misrepresentation or non-disclosure is unintentional or made under the circumstances of forgetfulness. Thus, the insurer’s right to void the contract unfairly is constrained in circumstances where doing so would violate the root principles of good faith or where it would contradict the general principle of contract law in civil code.

4.8. Remedies

Theoretically, the misrepresentation and/or non-disclosure would lead to a voidable contract. The remedy for this voidability *am initio* as a principle is extremely suggestive of the breach of duty of Utmost Good Faith in common law foundation, which achieved by the unilateral election of the plaintiff entitled to void the contract.⁹⁵ There is no court intervention to for the aggrieved party to exercise this right. If voided or more properly rescission, its effect is entirely retroactive. It will be restored back to the position where both parties began, before they entered into contract. Typically, in the agreement of an insurance contract, when the duty of good faith has been

violated by the insured because of his/her misrepresentation or non-disclosure of the material information, the other party's consent is said to be flawed. The effect of flaw in consent always entitles an insurer to void or rescind the contract. In an insurance relationship, the Lord Mansfield in *Carter v Boehm* confirmed that, both parties in insurance have to fulfill the obligation of good faith and in the case of failure it would constitute fraud and thus the contract would be considered void.⁹⁶ Generally, when voiding the insurance contract, the insurer should refund the premium to the insured. It is similar to traditional contract principle where an insured party is generally obligated to return the premium when there has been a flaw of consideration.⁹⁷

Likewise, in insurance policies, which formed by the insurers and issued to insured, contain provisions with regard to the breach of duty of good faith which can render the contract voidable. In voiding the contract, no risk would be assumed by the insured with regard to paying the premium. Within "no risk, no premium" principle, no suffering will befall the insurers, thus insurers have no right to retain the premiums. Furthermore, the necessary result of a voidance is that both parties should be placed in status quo ante, thus, all liabilities which were established—regardless of whether or not they have been paid—should be restored to the other party.⁹⁸ This kind of rule was fulfilled in the 1906 English marine insurance act (MIA), whereby, it was established that when the insured fails to pay the premium and there has been no fraud or negligent, the premium must be returned to the insured. On the other hand, beside a voidance of the contract, the insurer is entitled to the right to refuse all claims made by the insured even before or after the contract is voided.

In some cases, the voidance remedy may have surprising results. For example, in the case of the insured's misrepresentation or concealment of material facts, and if in the place where the insurer would have increased only 5% of the premium, then the insurer may choose to void the contract. This remedy has been criticized as too harsh. On this matter, Rix LJ in *Drake Ins. Plc v Provident Ins. Plc* QB 601 (CA) concluded that: "*The doctrine of good faith should indeed 'be capable of limiting the insurer's right to avoid in circumstance where that remedy, which has been described in recent years as draconian, would operate unfairly.'*"⁹⁹ Accordingly, in this case his lordship also proposed a conceptual process called "Concept of Proportionality" which is implicit in fair dealings within insurance contract law.¹⁰⁰ This concept was grown out from the criticisms of the traditional remedy for voidance. Two proportional penalties were proposed: (1) if the insurer could show that but for breach of non-disclosure or misrepresentation, he/she would not have entered into the agreement of contract, if so, would have with different conditions or with higher premium, thus, the contract may be treated as to include those different conditions; (2) as in circumstance (1), then the insurer can proportionately decrease the amount of the claim.¹⁰¹ However, these proportionalities would only be appropriate in the case of misstatement and is made under the condition of innocence. Most of the civil law counties, particularly in France, the proportionality is already generally employed as the legal remedy for the violation of duty of Utmost Good Faith.¹⁰²

Gross negligence, either mistaken or made innocently, are grounds for breach of contract due to misrepresentation and non-disclosure. Cambodian insurance law stipulates the elements of the breach of duty of good faith; two situations constitute a breach: (1) the intention of insured to misrepresent the facts and (2) concealing material information. Additionally, the law specifies that the breach would be assumed only where the violation was sufficient to lead any change of the risk of the subject matters.¹⁰³ The phrase "change of the risk" here means that if the change of the level of the risk would have affected the insurer's decision whether to provide insurance or not, or if so, what kinds of the terms would be or in which conditions the amount of premium. When the insured breaches the duty, then the insurer is entitled to void or rescind the contract. In contrast, in article 19 section (2) of Cambodian insurance law, it is implied that the insurer is not entitled to void the contract where the misrepresentation or unclear declaration is made as a result of forgetfulness or un-intention of the uncured whether those facts are material or not. This article excludes the misrepresentation or non-disclosure made due to the forgetfulness and un-intention of the insured from the scope of voidability without legal backgrounds. As already stated above, an

act of forgetfulness or an unintentional act is not a blameless error, but it is obviously a mistake or carelessness act of the insured. As in the case of law in United State, the court's decision favors the insurer if the misrepresentation is material even the insured's act is regardless of intention.¹⁰⁴ Thus, as long as the material facts are sufficient to affect the decision of the insurer on the insured's insurability, the classification of the risk and the associated premium, the adverse selection or subsidization will have caused by these falsities of such material facts. As a matter of insurance contracts, there is no difference whether the falsity of information is intentional, mistaken or innocently, if demonstrated that that act violates the principle of Utmost Good Faith and breaches the duty at law.¹⁰⁵

The remedy of the breach of duty of Utmost Good Faith in insurance contract seems unbalanced while it favors not the insured, but the insurer.¹⁰⁶ Article 10 of Cambodian insurance law establishes the insurer has a duty to the insured to explain clearly about insurance contract into which he is about to enter meaning the policies and other relevant documents.¹⁰⁷ In this article, there is no rule which stipulates about the remedy when the insurer breaches the duty, thus, it poses the question: if the insurer breaches the duty, which remedy should be applied? It is surprising that there has been no legal basis to answer this question in Cambodian insurance law since the law has not established any regulation to settle this issue on the one hand, and the law did not entitle the insured to the right to rescind the insurance contract on the other hand. The insured have no interest in seeking to rescind the contract even when the insurer breached the duty. In principle, or perhaps the only way for the insured to exercise the right in seeking remedy is to avoid the contract in accordance with the general principle of contract law and obligation law in civil code. Thus, regrettably, there is no legal protection for insurance policyholders in Cambodian insurance law.

As the matter of insured breaches the duty, Cambodian insurance law only endows the insurer with the right to void a contract. However, the law did not state any rule about returning the premium after contract rescission. In practice, without regulation regarding the remedy, the insurer may possibly not refund the premiums to insured, or perhaps in the insurance policy they put some rules which entitle them to retain the premiums. Cambodian insurance legislation is still in vague condition, and this loophole of the insurance law has been criticized by many scholars.

5. Concluding remarks

This paper has sought to advance the work of Ward and Zurbruegg (2000) and Levine and Zervos (1998) on the interrelationship between the insurance industries and the development of domestic economy. However, the important matter of this study was focused on the insurance regulation. With respect to the law of insurance contract, including insurable interest, the duty of misrepresentation and non-disclosure and its remedies originated from the duty of Utmost Good Faith. Although, Cambodian insurance law was revised in 2014, almost every article in the old law associated with insurable interest, duty of good faith, and its remedies is still retained in the new law. Accordingly, some problems found in the old law still remain. This is likely because Cambodia just rebuild its legal system in the recent decades or because the modern era of insurance law was not established until 2000, the expectation of insurance law and other relevant regulations of Cambodia to be perfected through the amendment in 2014 is unrealistic.

As seen throughout this paper, both Cambodian and other countries are adopted the insurable interest concept in insurance contract. Regrettably, the law only requires that the insured should have insurable interest, however, no differentiation is made between the insurable interest in life insurance and non-life insurance has been defined. Additionally, the law was not explicit on the matter of the timing in which an insurable interest must exist. Furthermore, on the matter of duty of good faith, Cambodian used a "one-sided" method which only entitles the insurer to the right to void the contract when the insured breaches the duty. In addition, no rule stipulates the remedies for pre-recession losses wherein the insured event occurred (both in case of gross negligence or

negligence); and if the contract recession, whether or not the insurer has to return the premium. In the infancy of its legal system, Cambodian insurance law is still too flawed. This creates an uncertainty in legal practices and subsequent judicial difficulties. Finally, in a case wherein the insurer breaches the duty, there are no legal grounds for the insured to grant the right to avoid the insurance contract. The remedies under Cambodian law appear to be extremely weak while there is no protective mechanism for the insured who in a position of less bargaining power in contract negotiation. Therefore, it can be said that there is no system of protection for the insured in Cambodian insurance law.

While the current amended laws and regulations on insurance of Cambodia do not yet meet, the minimum standards imposed by its accession to WTO and in the ASEAN region integration would increase the regional competitiveness and provide adequate consideration to promote the development of insurance industries, the further legislative revisions regarding insurance contracts and should therefore be considered. First, definition and status of the insurable interest both in life and non-life insurance and explicit the timing of existence of insurable interest. Second, although the principle of good faith was established in Cambodian law, its status is problematic. The law must undergo additional revisions within the scope of both the insurer's and insured's duty of representation and disclosure and the breach duty remedies. On the other hand, the law should address various kinds of remedies concerning the refund of premiums to the insured when the breach occurs. Further studies are necessary to satisfy the demand for comprehensive and distinct insurance legislation in Cambodia. The Cambodian government cannot avoid this certainty. Reform is imminent.

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Notes

1. Tsangyao Chang, Chien-Chiang Lee& Chi-Hung Chang, *Does Insurance Activity Promote Economic Growth? Further Evidence based on bootstrap panel granger causality test*, The Journal of Finance 1187 (2014).
2. See, Ming-Sun Horng, Yung-Wang Chang& Ting-Yi Wu, *Does insurance demand or financial development promote economic growth? Evidence from Taiwan*, Applied Economics Letter, Routledge Taylor& Francis Group, 105 (2012).
3. See, J. Francois Outraville, *The Economic Significance of Insurance Markets in Developing Countries*, The Journal of Risk and Insurance, 488 (1990).
4. See, *Insurance- Why it is Essential?* Insurance Association of Cambodia.
5. The structure of the Rectangular Strategy in the Fourth strategic of Growth Rectangular has four sides: Rectangle 1: Enhancement of Agricultural Sector which covers: (1) improved productivity and diversification of agriculture; (2) land reform and clearing of mines; (3) fisheries reform; and (4) forestry reform;
Rectangle 2: Continued Rehabilitation and Construction of Physical Infrastructure, involving: (1) continued restoration and construction transport infrastructure (inland, marine and air transport); (2) management of water resources and irrigation; (3) development of energy and power grids, and (4) development of Information and Communication Technology;
Rectangle 3: Private Sector Growth and Employment covers: (1) strengthened private sector and attraction of investments; (2) promotion of SMEs; (3) creation of jobs and ensuring improved working conditions; and (iv) establishment of social safety nets for civil servants, employees and workers; and
Rectangle 4: Capacity Building and Human Resource Development, including: (1) enhanced quality of education; (2) improvement of health services; (3) fostering gender equity, and (4) implementation of population policy.
6. See, Hill Hal and Jayant Menon, *Trade Policy Challenges in a Small, Open, Fragile, Post-conflict Economy: Cambodia*, 141 Asian Development Bank (ADB) working paper series on Regional Economic Integration, 2 (2014).
7. See, Hill Hal and Jayant Menon, *Cambodia: Rapid Growth with Weak Institutions*, 8 Asian Economic Policy Review, 46–65 (2013).
8. The Paris Peace Accords was sign in 1993 in Paris, France.
9. National Strategic Development Plan, Royal Government of Cambodia (2005):43–3; see, Data source of the WTO report, the Asian Development Bank database (2012), World Bank, World Development Indicators database, International Monetary Fund, World Economic database in Hal Hill, *Trade Policy Challenges in a Small, Open,*

- Fragile, Post-conflict Economy: Cambodia*, 141 Asian Development Bank (ADB) working paper series on Regional Economic Integration, 2–3 (2014).
10. The “Rectangular Strategy” was addressed by the Prime Minister of Cambodia at the first cabinet meeting of the third legislature of the national assembly, Phnom Penh City-Cambodia (2004).
 11. The “Strategic Framework for Development Cooperation Management” is a policy document of the Royal of Cambodia. It reaffirms the role and responsibilities of line ministries and agencies for external resources mobilization and aid coordination functions in accordance with existing Laws and Regulations of the Kingdom of Cambodia. It also outlines the objectives and principles that shall guide the management of development cooperation programs and a national program to implement RGC’s development cooperation management strategy. It was adopted on 30 January 2006, Royal Government of Cambodia (2006).
 12. See, Hang Chuon Naron, *Trade Liberalization: A Cambodian Perspective*, World Trade Organization working paper, Asia Pacific Press, 03–8 (2003).
 13. See, Hill Hal and Jayant Menon, *Trade Policy Challenges in a Small, Open, Fragile, Post-conflict Economy: Cambodia*, 141 Asian Development Bank (ADB) working paper series on Regional Economic Integration, 2 (2014).
 14. See, Hang Chuon Naron, *Trade Liberalization: A Cambodian Perspective*, World Trade Organization working paper, Asia Pacific Press, 03–8 (2003); and Hill Hal and Jayant Menon, *Trade Policy Challenges in a Small, Open, Fragile, Post-conflict Economy: Cambodia*, 141 Asian Development Bank (ADB) working paper series on Regional Economic Integration, 2 (2014).
 15. The Investment Law was adopted in 1994, which granted foreign investors a wide range of incentives and relaxed foreign investment regulations. This law was adopted by the Cambodian National Assembly on 4 August 1994 and implemented on 4 September 1994 (In Cambodia, all the laws which adopted by the national assembly, it will be implemented in Phnom Penh city in 10-day latter, and one month in the whole country).
 16. See, Hang Chuon Naron, *Trade Liberalization: A Cambodian Perspective*, World Trade Organization working paper, Asia Pacific Press, 03–8 (2003).
 17. At the beginning, ASEAN was founded primarily for political and regional security purposes. Currently its contained 10 members with a total population of about 550 million. See, Rodolfo C. Severino, *SEAN, Southeast Asia Background Series No. 10*, Published by Institute of Southeast Asian Studies 41 (2008).
 18. See, Anna Floresca F. Fimalino and Jefferson A. Arapoc, *Development Gaps in the ASEAN: A Comparison of the ASEAN6 and CLMN Using Gravity Models of Trade*, 12 *Journal of Global Business and Trade*, 43–51 (2016); Chan Sophal, Tosshiyasu Kato & Long Vou Piseth, Jeffrey Kaplan, Kun Nhem, James Roberton & Harold Pohoresky, *Cambodia: Challenges and Options of Regional Economic Integration*, Conference Papers, Cambodia Development Resource Institute, Phnom Penh 28–31 (1998).
 19. See, Tuck Cheong Tang & Koi Nyen Wong, *Foreign Direct Investment, Merchandise and Services Trade in a Transition Economy: The Case of Cambodia*, 25:2 *International Economic Journal*, Routledge-Taylor & Francis Group, 251–267 (2011).
 20. Prime Minister Hun Sen, *My Vision for Cambodia*, Address at the Cambodia Investment and Trade 2002 Conference (15 May 2002), in Rebecca Povarachuk, *Cambodia’s WTO accession: A Strenuous but Necessary Step for a Poor Nation Seeking Economic Prosperity*, 13 *Pacific Rim Law & Policy Journal Association*, 648 (2004).
 21. In September 2003, during the World Trade Organization (“WTO”) Fifth Ministerial Conference, Cambodia became the first least-developed country (“LDC”) to accede to the organization through its full working party process. See, Rebecca Povarachuk, *Cambodia’s WTO accession: A Strenuous but Necessary Step for a Poor Nation Seeking Economic Prosperity*, 13 *Pacific Rim Law & Policy Journal Association*, 645 (2004).
 22. WTO’s report of the working party on the “Accession of Cambodia”, *supra* not 7, para. 6. See, Rebecca Povarachuk, *Cambodia’s WTO accession: A Strenuous but Necessary Step for a Poor Nation Seeking Economic Prosperity*, 13 *Pacific Rim Law & Policy Journal Association*, 660 (2004), *supra* not 156.
 23. See, JOHN TULLY, *A SHORT HISTORY OF CAMBODIA: FROM EMPIRE TO SURVIVAL*, 80 (Allen & Unwin Publisher, 1st 2005).
 24. See, *The Report on Southeast Asian Insurance Markets*, Chinese Insurance Newspapers, 21 January 2016. Last visited on 12 December 2019, http://xw.sinoins.com/2016-01/21/content_182626.htm.
 25. See, *Insurance Annual Report on*, Department of Financial Industry, Ministry of Economic and Finance 17 (2009).
 26. “Cambodia Insurance Market at a Glance”, Insurance Association of Cambodia (2017). See, www.iac.org.kh.
 27. In Cambodia insurance law, the “General insurance” is referred to “Property Insurance”.
 28. See, *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance 19 (2009).
 29. CAMINCO insurance company, see <http://www.caminco.com.kh/profile.html>, last visited on 12 December 2019.
 30. *Id.*
 31. The Cambodian Reinsurance Company established by the Royal Government of Cambodia on 24 January 2002.
 32. See, *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance (2005) at 24, and *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance 18 (2006).
 33. See, *Cambodia Insurance Market at a Glance*, Insurance Association of Cambodia (2017). See, www.iac.org.kh.
 34. See, 2021 Annual Report on Cambodia Insurance Market (2021) at <https://irc.gov.kh/en/article/list?category=publication&page=1> last visit on 14 November 2022.
 35. See, Tang Jin Cheng & Chen Li Yong, *The Research on the Development of Vietnam Insurance Market*, 5 *Around Southeast Asia*, 5 (2012).
 36. See, *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance (2009), at 27.

37. See, Insurance Regulator of Cambodia at <https://irc.gov.kh/en/insurance-institutions> last visit on 14 November 2022.
38. *Id.*
39. See, Sub-Decree 24 RNK, in *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance 27 (2009).
40. See, Royal Government's Sub-Decree No 132, issued on 31 December (2001).
41. See, Jennifer A. Meyer, *Let the Buyer Beware: Economic Modernization, Insurance Reform, and Consumer Protection in China*, 62 *Fordham Law Review*, 2124–2157 (1994).
42. See, *Cambodian Insurance Law* (2014).
43. See, *Insurance Annual Report*, Department of Financial Industry, Ministry of Economic and Finance 14 (2005).
44. “*Prakas*” is the regulations which issued by the Ministry, (2005).
45. See, *Insurance Annual Report* Department of Financial Industry, Ministry of Economic and Finance, 33 (2006).
46. *Cambodian Insurance Law* (2000).
47. *Id.*
48. *Cambodian Insurance Law*, at 2 (2014).
49. See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 26 (Oxford University Press 2005).
50. *Id.*, at 26.
51. *Cambodian insurance law* of 2000, article 16.
52. *Cambodian insurance law* of 2014, article 15.
53. See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 27 (Oxford University Press 2005).
54. *Id.*, at 27.
55. Unknown Authors, *Insurable Interest in Life Insurance: Nature of the Contract of Life Insurance*, 14 *Dickinson Law Review*, 29 (1909).
56. See, Peter N. Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, *Drake Law Review*, 477–543 (2005), at 478.
57. See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 27 (Oxford University Press 2005).
58. It is defined broadly by both judicial case law and state insurance statutes of American Jurisdiction. See, Peter N. Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, *Drake Law Review*, 480 (2005).
59. See, e.g., *Hopkins v. Hopkins*, 614 A.2d 96, 98 (Md. 1992) (holding that the primary purpose of the prohibition of insuring another person's life without an insurable interest “is to prevent wagering on the life of another, although . . . prevention of murder is another rationale”); see also *Rubenstein v. Mut. Life Ins. Co. of N.Y.*, 584 F. Supp. 272, 279 (E.D. La. 1984) (noting similar purposes); Ferdinand S. Tinio, Annotation, *Killing of Insured by Beneficiary as Affecting Life Insurance or Its Proceeds*, 27 A.L.R.3d 794 (1969 & Supp. 2004) (collecting cases discussing issues surrounding life insurance policies when the insured was killed by the primary beneficiary), See, Peter N. Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, *Drake Law Review*, 477–543 (2005), *supra* not 5.
60. In American Law, without insurable interest, the insurance policy will be declared null and void based upon public policy. Likewise, in English Common law, in 1774 the British Parliament adopted a statute stipulate that any life insurance contract without an insurable interest in life of the insured would henceforth be null and void. See, Peter N. Swisher, *The Insurable Interest Requirement for Life Insurance: A Critical Reassessment*, *Drake Law Review*, 477–543 (2005).
61. See, Kaun-Chun Chang, *Commentaries on the Recent Amendment of the Insurance Law of the Peoples' Republic of China Regarding Insurance Contract from the Perspective of Comparative Law*, 10 *Washington University Global Studies Law Review*, 748–788, 755 (2011).
62. See, W. S. Holdsworth, *The Early History of the Contract of Insurance*, 17 *Columbia Law Review*, 85–113, 90 (1917).
63. See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 32 (Oxford University Press 2005).
64. *Cambodian insurance law* of 2014, article 4.
65. Daniel Vázquez-Vega, *A Comparative Analysis of Utmost Good Faith in Colombian and English Insurance Law*, 5 *Journal of International Law*, 79 (2014).
66. The Lord Mansfield was appointed as Lord Chief Justice of the King's Bench in 1756. He was an expert in the civil law and law of merchant. He had studied the most important marine insurance codes from many countries in Europe and was therefore able to introduce the principles of insurance into common law of England, See, Daniel Vázquez-Vega, *A Comparative Analysis of Utmost Good Faith in Colombian and English Insurance Law*, 5 *Journal of International Law*, 81 (2014).
67. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 1 (Informa Professional Ltd, 2nd 2004).
68. *Id.*, at 2.
69. See, Daniel Vázquez-Vega, *A Comparative Analysis of Utmost Good Faith in Colombian and English Insurance Law*, 5 *Journal of International Law*, 82 (2014).
70. The Marine Insurance Act 1906 (MIA) section 17 stated that: “A contract of marine insurance is a contract based upon the Utmost Good Faith, and, if the Utmost Good Faith be not observed by either party, the contract may be avoided by the other party.” This simple statement reveals that the duty is reciprocal in that it is owed by the assured to the insurer and by the insurer to the assured.
71. See, Rob Merkin and Jenny Steele, *The Insurance Act 2015: Rebalancing the Interests of Insurer and Assured*, *The Modern Law Review*, 52 (2013).
72. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 46–47 (Informa Professional Ltd, 2nd 2004).
73. See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 7 (1998).
74. Distinguishing between a misrepresentation and non-disclosure is not always easy and in the latest House of Lords judgment in this area there was a tendency to merge the two topics (*Pan Atlantic*). See, RAY HODGIN, *INSURANCE LAW: TEXT AND MATERIALS*, 171 (Cavendish Publishing Limited, 2nd 2002).
75. See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 14 (1998).

76. See, RAY HODGIN, *INSURANCE LAW: TEXT AND MATERIALS*, 171 (Cavendish Publishing Limited, 2nd 2002).
77. See, Reuben Hasson, *The Special Nature of the Insurance Contract: A Comparison of the American and English Law of Insurance*, 47 *The Modern Law Review*, 510 (1984).
78. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 285 (Informa Professional Ltd, 2nd 2004).
79. The 1906 Marine Insurance Act (MIA) section 18(1) and 20(1).
80. *Pan Atl. Ins. Co. v. Pine Top Ins. Co.*, [1994]3 All E.R. 581 (H.L.). In the American law this is a matter solely of case law, at least in the field of marine insurance. And The matter is thoroughly and accurately reviewed in *Albany Ins. Co. v. Wisniewski*, 579 F. Supp. 1004, 1985 AMC 689 (D. R.I. 1984). The materiality requirement was already present in the early case of *M'Lanahan v. Universal Ins. Co.*, 26 U.S. (1 Pet.) 170 (1828). In this case Justice Story cited earlier English and American precedents. Thus, the materiality requirement is as old as the duty itself; the materiality requirement in American law is undoubtedly derived from English case law of the eighteenth century. See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 17 (1998), *supra* not 104.
81. See, Daniel Vásquez-Vega, *A Comparative Analysis of Utmost Good Faith in Colombian and English Insurance Law*, 5 *Journal of International Law*, 84 (2014).
82. See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 18 (1998).
83. [1982] 2 *Lloyd's Rep.* 178 (Q.B.), *rev'd*, [1984] 1 *Lloyd's Rep.* 476 (C.A.), See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 18 (1998).
84. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 286–289 (Informa Professional Ltd, 2nd 2004).
85. *Id.*, at 289.
86. See, M. AVILLANEDA LOIC ET AL, *INTRODUCTION AU DROIT CAMBODGIEN*, Royal University of Law and Economics-Phnom Penh, 13 (Funan Editions 2003); Ly Tayseng, “*Formation of Contract and Third Parties in Cambodia*”, in MINDY CHEN-WISHART, ALEXANDER LOKE, AND STEFAN VOGENAUER, *FORMATION AND THIRD PARTY BENEFICIARIES*, 343 (Oxford University Press 2018).
87. This civil code which was entirely influenced by the France’ Napoleonic Civil Code was implemented 5 years after adopted by the Royal Ordinance issued by the King Norodom Sowsat.
88. The new Civil Code was established and drafted by a join group of legal scholars led by Cambodian Ministry of Justice and the group of professors and legal experts from Japan. This new code is similar and identical to those concepts and theories in the Japanese Civil Code.
89. Cambodian Civil Code (2007), article 384.
90. Cambodian Civil Code (2007), article 440.
91. See, Ly Tayseng, “*Formation of Contract and Third Parties in Cambodia*”, in MINDY CHEN-WISHART, ALEXANDER LOKE, AND STEFAN VOGENAUER, *FORMATION AND THIRD PARTY BENEFICIARIES*, 349 (Oxford University Press 2018).
92. *Id.*, at 349.
93. The law in the United Kingdom, Singapore, Australia and New Zealand are also required the insured to disclose not only material facts which he/she knows but also those facts which he/she ought to know.
94. See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 105 (Oxford University Press 2005).
95. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 437 (Informa Professional Ltd, 2nd 2004).
96. *Id.*, at 439.
97. See, Kaun-Chun Chang, *Commentaries on the Recent Amendment of the Insurance Law of the Peoples’ Republic of China Regarding Insurance Contract from the Perspective of Comparative Law*, 10 *Washington University Global Studies Law Review*, 748–788, 770 (2011).
98. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 449 (Informa Professional Ltd, 2nd 2004).
99. *Drake Ins. Plc v provident Ins. Plc* QB 601 (CA), See, MALCOLM CLARKE, *POLICIES AND PERCEPTIONS OF INSURANCE LAW IN THE TWENTY-FIRST*, 118 (Oxford University Press 2005).
100. *Id.*, at 118.
101. See, Thomas J. Schoenbaum, *The Duty of Utmost Good Faith in Marine Insurance Law: A Comparative Analysis of American and English Law*, 29 *Journal of Maritime Law and Commerce*, 36 (1998).
102. *Id.*, at 36.
103. Cambodian Insurance Law (2014), article 19 section (1).
104. See, e.g., *Bankers Life & Cas. Co. v. Long*, 266 So. 2d 780, 783 (Ala. Civ. App. 1972) (“Insurance companies are entitled to candid and truthful answers, and when such candor is withheld and involves matters material to the risk, no just complaint can be raised, when, in after investigations, the falsity is discovered and the policies issued in reliance upon the truthfulness of the statements, are avoided.”); *Elfstrom v. N.Y. Life. Ins. Co.*, 432 P.2d 731, 739 (Cal. 1967) (en banc) (finding that an insurer of a group insurance, despite the knowledge of the employer, may avoid a policy where the employee misrepresents material facts in the application to the employer acting as the agent of the insurer). See, Kaun-Chun Chang, *supra* not 120.
105. See, Kaun-Chun Chang, *Commentaries on the Recent Amendment of the Insurance Law of the Peoples’ Republic of China Regarding Insurance Contract from the Perspective of Comparative Law*, 10 *Washington University Global Studies Law Review*, 748–788, 767 (2011), *supra* not 120.
106. See, PETER MACDONALD EGGERS, SIMON PICKEN AND PATRICK FOSS, *GOOD FAITH AND INSURANCE CONTRACTS*, 441 (Informa Professional Ltd, 2nd 2004).
107. Cambodian insurance law article 10 stated that, “the insurance company have a duty to clearly explain the insured about the conditions of insurance contract and the meaning of the attached insurance application and insurance certificate or/ and other related documents”.

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