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硕 士 学 位 论 文

保证保险合同探析

Study on Bonding Insurance Contract

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内 容 摘 要

保证保险产生于西方国家，中国引进保证保险业务的时间还不长。在短短的时间内，保证保险显示了广阔的市场需求，但同时也矛盾重重。保证保险的法律关系相对较为复杂，保险公司的经营风险相对较高。对于保证保险合同的法律性质一直以来都引起很大的争议。争议的焦点在于保证保险合同是保证担保合同还是保险合同。我国对于保证保险的法律制度及配套体系滞后，理论界和实务界也莫衷一是。本文从分析保证保险合同的法律关系入手，通过比较分析的方法深入分析保证保险的法律性质，全面探讨保证保险在审判实践中存在的主要问题，最后对如何完善保证保险制度提出立法建议和对策。论文除了引言和结束语外，主要分为四章。

第一章保证保险概述。在保证保险的产生及沿革一节，从保证保险对保证局限性的突破方面论述了保证保险开办的理由，并介绍了保证保险业务在外国开展的历史；在保证保险合同的特性和特点一节，从介绍对保证保险合同概念的争议观点引出笔者对保证保险合同的定义，并介绍了保证保险合同的特点；在保证保险合同的种类一节，介绍了美国保证保险合同的种类，以期对我国保证保险业务种类的拓展有所借鉴。

第二章保证保险合同的法律性质。本章是论文的重点。第一节对保证保险合同从法律关系的主体、客体、内容三方面进行分析；第二节论述了保证保险合同是独立的具有特殊性的财产保险合同；通过第三节保险与保证的比较分析，第四节保证保险与保证的差异性分析，第五节保证保险与信用保险比较分析对保证保险进行深入地剖析，阐述保证保险合同的法律属性。

第三章保证保险合同在司法实践中的常见问题。本章从案由和诉讼当事人、法律适用问题、抗辩权问题、保险人代位求偿权问题四个方面，对保证保险在审判实践中的问题进行了论述，并提出了解决的思路。

第四章我国保证保险的制度完善。第一节介绍了我国保证保险业务的现状。第二节介绍了我国保证保险的完善，主要是就如何完善我国保证保险提出立法建议。

关键词：保证保险；信用风险；财产保险

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Abstract

Bonding insurance generated in the western countries. It was introduced into China for not very long. In this short time, bonding insurance showed its expansive market. But the conflicts also exist. Comparatively, the legal relationship of bonding insurance is complicated and the risk of the insurance company is high. There is much dispute on the nature of bonding insurance all the time. The dispute focuses on whether the contract of bonding insurance is a guarantee contract or an insurance contract. Our legal system of bonding insurance and its matching system fell behind the development of the practice. The academic and practical circles could not get into consistency. This thesis proceeds with the legal relationship. It analyses the nature of bonding insurance with the method of comparison and the problems in the judicial practice. At last, the author puts forward the legislative suggestions. Besides the introduction and conclusion, this thesis is divided into 4 chapters as follows:

Chapter 1 focuses on the general introduction of bonding insurance. In the first subchapter, this thesis introduces the reason why bonding insurance is created, and introduces the development of bonding insurance in foreign countries. In the second subchapter the disputing point of views on the definition of bonding insurance educes the author's definition of bonding insurance contract, and the author introduces the features of bonding insurance contract. In the third subchapter, the author introduces the categories of bonding insurance in American, so as to enhance our bonding insurance.

Chapter 2 deals with the legal nature of bonding insurance. This thesis lays strong emphasis on chapter 2. Subchapter 1 analyzes the aspects of subject, object and content of the bonding insurance contract. Subchapter 2 discusses that bonding insurance contract is an independent property insurance contract with special features. The third subchapter analyses between insurance and guarantee. The fourth subchapter analyses on the differences between bonding insurance and guarantee. The fifth subchapter analyses between bonding insurance and credit insurance. Through all the above analysis, this thesis elaborates the legal nature of bonding insurance contract.

The third chapter deals with the common problems in the practice of the bonding

insurance contract. This chapter discusses the problems in the judicial practice referring to the cause of case and the litigants, the problems in the application of law, the defence rights of the bonding insurance contract. Also, the author put forward the new way of solving problems above.

The forth chapter discusses the perfection of the system of bonding insurance in china. The first subchapter introduces the current situation of bonding insurance in China. The second subchapter focuses on putting forwards the legal suggestions for improvement.

Key words: Bonding insurance; Credit risk; Property insurance

厦门大学博硕士论文摘要

目 录

引 言	1
第一章 保证保险概述	2
第一节 保证保险的产生及沿革	2
一、保证保险产生的原因	2
二、保证保险在国外的产生及发展	3
第二节 保证保险合同的概念和特点	4
一、保证保险合同的定义	4
二、保证保险合同的特点	6
第三节 保证保险合同的种类	6
一、诚实保证保险	7
二、确实保证保险	8
第二章 保证保险合同的法律性质	10
第一节 保证保险合同的法律关系	10
一、保证保险合同的主体	10
二、保证保险合同的客体	11
三、保证保险合同的内容	11
第二节 保证保险合同的法律属性	12
一、保证保险合同是独立的保险合同	12
二、保证保险合同是特殊的财产保险合同	14
第三节 保险与保证的比较分析	16
一、保证	17
二、保险	17
三、保险与保证的比较分析	18
第四节 保证保险与保证的差异性分析	19
一、二者的主体不同	20

二、保证保险合同与保证合同的目的不同.....	20
三、保证保险合同是双务合同，而保证合同是单务合同.....	20
四、责任的法律性质和范围不同.....	20
五、二者的抗辩权基础不同.....	21
六、二者对基础合同的依附程度不同.....	21
第五节 保证保险与信用保险比较分析.....	21
一、信用保险.....	21
二、保证保险与信用保险比较分析.....	23
第三章 保证保险合同在司法实践中的常见问题.....	25
第一节 案由和诉讼当事人.....	25
一、案由.....	25
二、诉讼当事人.....	25
第二节 法律适用问题.....	26
一、争议的观点.....	26
二、保证保险的法律适用.....	27
第三节 保证保险合同的抗辩问题.....	27
一、保险人与保证人的抗辩权不同.....	27
二、保险人的抗辩权.....	28
三、投保人的抗辩权.....	29
第四节 保险人代位求偿权问题.....	30
一、保证保险代位求偿权的取得.....	30
二、保证保险代位求偿权的行使.....	31
第四章 我国保证保险的制度完善.....	32
第一节 我国保证保险业务的发展及现状.....	32
一、我国保证保险业务的开办.....	32
二、我国保证保险发展的现状.....	32
第二节 我国保证保险制度的完善.....	34
一、制约我国保证保险业务开展的因素.....	34

目 录

二、完善保证保险制度的立法建议	36
三、完善保证保险的其他制度建议	38
结 论	39
参考文献	40

厦门大学博硕士论文摘要库

厦门大学博硕士学位论文摘要库

CONTENTS

Introduction	1
Chapter 1 General Introduction of Bonding Insurance	2
Subchapter 1 The Origin and History of Bonding Insurance	2
Section 1 The Reasons of the Generation of Bonding Insurance	2
Section 2 The Origin and Development of Bonding Insurance in Foreign Countries	3
Subchapter 2 The Definition and Characteristics of Bonding Insurance Contract	4
Section 1 The Definition of Bonding Insurance Contract	4
Section 2 The Characteristics of Bonding Insurance Contract	6
Subchapter 3 The Categories of Bonding Insurance Contract	6
Section 1 Fidelity Bonds	7
Section 2 Surety Bonds	8
Chapter 2 The Legal Nature of Bonding Insurance Contract	10
Subchapter 1 The Legal Relationship of the Bonding Insurance Contract	10
Section 1 The Subject of the Bonding Insurance Contract	10
Section 2 The Object of the Bonding Insurance Contract	11
Section 3 The Content of the Bonding Insurance Contract	11
Subchapter 2 The Legal Nature of the Bonding Insurance Contract	12
Section 1 Bonding Insurance is an Independent Insurance Contract	12
Section 2 Bonding Insurance is a Special Property Insurance Contract	14
Subchapter 3 The Analysis between Insurance and Guarantee	16
Section 1 Guarantee	17
Section 2 Insurance	17
Section 3 The Analysis between Insurance and Guarantee	18
Subchapter 4 The Analysis on the Differences between Bonding Insurance and Guarantee	19
Section 1 The Differences on the Subjects	20
Section 2 The Differences on the Purpose	20

Section 3	Bonding Insurance Contract is a Bilateral Contract, but the Guarantee Contract is an Unilateral Contract.....	20
Section 4	The Differences on the Legal Nature and the Scope of the Legal Liability	20
Section 5	The Differences on the Basis of Defence Rights.....	21
Section 6	The Differences on the Degree of the Dependence to the Basic Contract	21
Subchapter 5	The Analysis between Bonding Insurance and Credit Insurance	21
Section 1	Credit Insurance.....	21
Section 2	The Analysis between Bonding Insurance and Credit Insurance....	23
Chapter 3	The Common Problems in the Judicial Practice of the Bonding Insurance Contract.....	25
Subchapter 1	The Cause of Case and the Litigants	25
Section 1	The Cause of Case	25
Section 2	Litigants.....	25
Subchapter 2	The Problems in the Application of Law	26
Section 1	The Views on Dispute.....	26
Section 2	The Application of Law of Bonding Insurance	27
Subchapter 3	The Defence Rights of the Bonding Insurance Contract.....	27
Section 1	The Difference of the Defence Rights between the Insurer and the Guarantor.....	27
Section 2	The Insurer's Defence Rights	28
Section 3	The Guarantor's Defence Rights	29
Subchapter 4	The Right of Subrogation of the Insurer	30
Section 1	Insurer's Acquisition of the Right of Subrogation	30
Section 2	The Implementation of the Right of Subrogation.....	31
Chapter 4	The Perfection of the System of Bonding Insurance in China.....	32
Subchapter 1	The Development and Situation of the Bonding Insurance in China.....	32
Section 1	The Launch of Bonding Insurance in China	32

CONTENTS

Section 2	The Development of the Bonding Insurance in China	32
Subchapter 2	The Perfection of the System of Bonding Insurance in China ..	34
Section 1	Elements That Restrict the Development of the Expansion of the Bonding Insurance in China.....	34
Section 2	The Legal Suggests on Perfection of the System of Bonding Insurance	36
Section 3	Other System Suggests on Perfection of the System of Bonding Insurance	38
Conclusion	39
Bibliography	40

厦门大学博硕士学位论文摘要

厦门大学博硕士学位论文摘要库

引 言

保证保险制度肇始于西方国家，在我国也只是从上个世纪八十年开始兴起。随着消费贷款在我国的蓬勃兴起，保证保险业务日益增多并显示了强大的生命力。然而，无论是保险理论界还是法律理论界对保证保险都缺乏深入的研究。对保证保险合同的法律性质、法律适用、当事人的法律地位等问题认识上的莫衷一是，以及立法上的空白带来司法实践中的混乱和保证保险实务上的困难。我国保险业的发展时间还比较短，国民的信用体系还没有建立。保证保险业务在我国还没有全面开展就面临着夭折的危险。对保证保险合同的法律性质进行分析，理清各当事人之间的法律关系，确定当事人之间权利义务的范围，解决保证保险合同纠纷实体上以及程序上的问题对我国保证保险制度的发展显得尤为迫切。本文以保证保险为研究题目，体现了内容的前沿性与新颖性。其次，本文通过对保证保险合同区别于一般财产保险合同的特殊性分析，通过与保证担保合同、信用保险合同的比较分析，阐释了保证保险合同的法律性质。此种对照也体现了笔者在写作方法上的创新努力。再次，通过对保证保险的域外发展和业务种类的介绍，以期对我国保证保险业务的广阔开展提供借鉴。最后，本文通过对保证保险合同纠纷在司法实践中常见问题的分析和对保证保险制度提出立法上的建议以期对我国保证保险法律制度的发展和完善尽绵薄之力。

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