

## 摘 要

保險契約中之停效與復效制度，為有別於一般民事契約之特殊制度，其目的在使一時忘記或無力繳交續期保費，不會立即遭到保險人終止保險契約，要保人並得在一段復效期間內，於符合一定條件下，恢復原保險契約之保障。至於復效時必須符合之條件，各國規定不盡相同，但通常包括下列項目：(1)復效申請書(2)提供被保險人之可保證明(3)繳清欠繳保費(4)保險人之同意。我國過去因舊保險法、施行細則及示範條款三者間，對復效應具備之要件規範並不一致，引起學說之重大爭議，法院判決亦常見不同之判決結果，致保險實務上糾紛不斷。

為解決保險市場之脫序現象，九十六年七月十八日修正之保險法，乃對保險法第一百十六條作大幅修正，明確規定如下：「停止效力之保險契約，於停止效力之日起六個月內清償保險費、保險契約約定之利息及其他費用後，翌日上午零時起，開始恢復其效力。要保人於停止效力之日起六個月後申請恢復效力者，保險人得於要保人申請恢復效力之日起五日內要求要保人提供被保險人之可保證明，除被保險人之危險程度有重大變更已達拒絕承保外，保險人不得拒絕其恢復效力。」新法對保險市場新秩序之重建應有重大助益，但新法也衍生一些新的問題，諸如，可保證明之意義及範圍、要保人提供不實可保證明時應如何依法處理、危險程度有重大變更已達拒絕承保程度之認定標準及核保標準、保險人有無要求附條件同意復效之權利，以及復效生效時點如何認定…等疑義，均有待釐清及解決。本研究廣泛蒐集及比較各國立法制度，並整理我國實務判決重要爭點，剖析新法對保險市場產生造成之影響，並對新法產生之新問題提出本文意見與建議，以作為日後研擬修法時之參考。

關鍵詞：停效、復效、復效申請書、可保證明、保險法第一百十六條、附條件同意復效、復效生效時點、不實可保證明

## Abstract

The suspension and reinstatement system of insurance contracts is a specific system different from other civil contracts. Its purpose is to prevent proposers, who forget to or are unable to pay premium other than the initial premium, from being terminated of insurance contracts by insurers. The proposer may reinstate the original policy within the time period for applying for reinstatement and when conforming to certain terms. Regarding the terms of reinstatement, the contents are varied among countries but usually include the following items: (1) a reinstatement application; (2) evidence of insurability; (3) prepayment of any overdue premium; and (4) approval of the reinstatement application. Before the Amendment to the Insurance Act in 2007, the terms of reinstatement were stipulated differently among the Insurance Act, the Enforcement Rules for the Insurance Act and the Model Provisions for life Insurance Policies. As a result, there were serious debates of schools, while different judgments delivered by courts of law for similar cases. Thus disputes were continuously happened in terms of insurance practices.

Resolving the disorderly phenomenon in the insurance market, Article 116 of the Insurance Act was amended on 18 July 2007 as the following: “A suspended insurance contract shall be reinstated after the premium, the interest stipulated in the insurance contract, and other expenses are paid, provided that such payment is made within six months from the date of suspension. Where the proposer applies for reinstatement more than six months after the date of suspension, the insurer may require that the proposer furnish proof of insurability for the insured, and the insurer may not refuse reinstatement unless the insured's degree of risk has undergone a change that is sufficiently material as to justify refusal to insure”. The amended Act contributes the rebuilding of the order of the insurance market. However, it also produces some new problems. For example, the meaning and scope of the evidence of insurability, how to deal with the reinstatement when the proposer providing lapsed evidence of insurability, the approval and underwriting when the insured's degree of risk has undergone a change that is sufficiently material as to justify refusal to insure, whether the insurer has the right to require some conditions for its approval of reinstatement, and how to recognize the effective time of reinstatement. All these problems still remain unsolved. The study widely collects and compares different countries' legislative systems, gets together the important points in dispute, analyzes the amended Act's impacts on the insurance market, and presents opinions and recommendations, which could be reference for amending the Act in the future, on these new problems caused by the amended Act.

Keywords : suspension 、 reinstatement 、 reinstatement application 、 approval of the reinstatement application 、 overdue premium 、 Article 116 、 evidence of insurability