

11. Legal Framework for Consumer Protection

In recent years, Japan has increasingly been heading to a market-based economy, and the financial markets have also been shifting toward ones with transactions based on the principle of market competition and self-responsibility. In this context, the Consumer Contract Act and the Law on Sales of Financial Products were put into force on 1 April 2001 with the common objective of protecting customers who tend to be in disadvantageous situations compared to their counterparts (sales staff or financial products provider) in terms of the information available and bargaining skills in actual negotiations.

a) The Consumer Contract Act

Taking into consideration “the gap in both the quality and quantity of information and negotiating skills” between consumers and providers under consumer contracts in general, the Consumer Contract Act was drawn up to protect the interests of consumers by granting consumers the right to rescind contracts or nullifying unfair contract clauses.

(1) Applicable events and conducts

(a) Withdrawal of consumers’ declaration intending to apply for a contract or accept the agreements in the contract

(b) Nullification of clauses in the consumer contract

Any contract clauses, if they exempt the insurer’s liability for damages or harm the interests of consumers in an unfair manner, may be nullified in part or in whole (however, currently such clauses do not seem to exist in life insurance policy provisions).

(2) The Consumer Contract Act and Life Insurance Contracts

(a) Applicable insurance transactions

Life insurance contracts concluded for individuals only

(b) Linkage with the Insurance Business Law

As any acts regarded to be conflicting with the Consumer Contract Act fall also under the category of Insurance Business Law (“prohibited conducts in soliciting activities” prescribed for under Paragraph 1 of Article 300), actually the enactment of the Consumer Contract Act does not restrict more severely the business activities of insurance companies. However, unlike the Insurance Business Law, under which insurance contracts concluded with violation do not immediately become subject to rescission, the Consumer Contract Act enables consumers to void insurance contracts more readily than before.

b) The Financial Products Sales Law

The Financial Products Sales Law is based on the recognition that disparity in information exists between business operators and consumers. Thus the Law aims to partially alter the principle concerning wrongful acts, so-called the “tort law” under the Civil Code. The two pillars of the Financial Products Sales Law are: 1. “obligation to explain material (important and significant) facts defined by the law” and 2. “obligation to develop and announce solicitation policies.”

(1) Formulating the guideline concerning the Law

On 17 November 2000, the LIAJ published the “Guideline Concerning <the Financial Products Sales Law>,” which provides the basic self-regulations that should be respected by life insurance companies, including legal interpretations of the Law in the life insurance sector.

(2) Material matters related to life insurance business are as follows:

- (a) Risk of loss of principal as a direct result of fluctuations in interest rates, currency or stock prices, etc.;
- (b) Risk of loss of principal not necessarily due to business failures but as a direct result of changes in business environment or financial conditions of the entity which sells the financial products
=> This means that credit risk lies in any insurance products;
- (c) Other risks prescribed by the cabinet order (however, so far there are no such risks subject to fall into this category); and
- (d) Setting of limitations on the period of exercising rights or the period during which contracts may be terminated (there are no cases at present which come under the subject).

(3) Formulation and publication of insurance solicitation policies

Under the Law, financial product providers must ensure that their solicitation activities can be carried out appropriately. The Law also requires that solicitation policies be developed and be published in certain designated form. Life insurance companies are posting their solicitation policies on their websites or putting them on a bulletin board at branches and sales offices for public perusal.

**Comparative Table:
Application and Legal Effects of the Three Laws**
- the Consumer Contract Act,
the Financial Products Sales Law and
the Insurance Business Law -

	Consumer Contract Act	Financial Products Sales Law	Insurance Business Law
Contracts covered	Insurance contracts concluded vis-à-vis individuals only (contracts concluded "as business or for the use of business" are excluded)	All insurance contracts (except in cases where customers have expert knowledge or have declared that explanations are not necessary)	All insurance contracts
Prohibited or Regulated practices	<ol style="list-style-type: none"> 1. Misrepresentation of "material matters" 2. Giving judgmental statement on unpredictable matters, such as the amount of future benefit 3. Intentional nondisclosure (or concealment) of disadvantageous aspects related to "material matters" 4. Annoying acts (against customers) such as unlawful trespassing (undesired entry in private area) or confinement 	<p>Insurers have the accountability (obligation to explain) for "material matters" (elements that contains material effects and needs be considered when taking out life insurance products) such as:</p> <ul style="list-style-type: none"> - Market risk - Credit risk 	Insurers must provide customers with explanations concerning material matters and also take other measures to ensure sound and proper management of operations.

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	Consumer Contract Act	Financial Products Sales Law	Insurance Business Law
Prohibited or Regulated practices	<ul style="list-style-type: none"> ▪ False explanations, nondisclosure of material matters ▪ Solicitation to recommend “twisting” without telling the customer about its disadvantageous aspects as a consequence ▪ Comparing or presenting the contents of contracts, in a misleading manner ▪ Giving judgmental statement on matters of which future benefit amount is unpredictable ▪ Misleading explanation about material matters of insurance contracts that may influence decision-making in concluding insurance contracts 	<ul style="list-style-type: none"> ▪ The so-called “conversion” of contracts requires providing the following: <ol style="list-style-type: none"> a) Types of insurance, insured amount, policy period, insurance premium amount, premium paid-in period, and other important matters in concluding insurance contracts b) Whether there is a possibility that the policyholder can review/modify the existing insurance coverage into one which still meets the actual needs while maintaining the existing contract, and if so, how such review will be possible ▪ Enhancement of capability in terms of insurance solicitation activities ▪ Other matters deemed material in the contents of insurance contract 	<p>Measures to ensure required explanations by issuing documents which describe the following:</p> <ol style="list-style-type: none"> 1. Documents necessary to conclude a contract to be credited in special accounts (e.g. variable insurance, etc.) <ol style="list-style-type: none"> a) Types of assets held in special accounts and method for valuating such assets b) Asset management policy c) The fact that future insurance benefits is not predictable depending on the results of asset management 2. Market risk in foreign currency-based insurance 3. If there are any particular contract provisions that do not return cash (surrender) value, this should be clearly stated
Accountability	Insurance companies or individuals who become the parties to insurance contracts for the purpose of business (sales agents, agencies and insurance brokers included)	Insurance companies, agencies, insurance brokers (sales agents excluded)	Insurance companies, company directors, insurance solicitors, insurance brokers, company employees
Legal effects	Insurance contracts shall be cancelled.	<p>Compensation shall be required for any damage caused by the acts which did not satisfy the obligation of explanation</p> <p>*The amount of such damage shall be set at the amount of the loss of principal</p>	<p>Administrative punishment or penalties shall be imposed</p> <p>*As for the legal effects of private (civil) law, “tort liability” (for unlawful acts) may arise depending on legal interpretation of such act</p>
Prescription requirements	The right to rescind contracts will terminate in 6 months after any of the above acts became available to confirm, or in 5 years after the contract was concluded.	In three years after the damage and the person who caused the damage became known, or in 20 years after any unlawful act was committed	