

11. Review of the Policy Contract Rules

The bill on the new Insurance Contract Law was passed by the Diet on 30 May 2008 and promulgated on 6 June 2008. The rules of private law concerning insurance policy contracts, currently set forth in Chapter 10, Part 2 of the Commercial Code, will come into force as a special law by 5 June 2010.

The current rules and regulations related to insurance business were first established in 1899, when the Commercial Code was enacted, and partly amended in 1911. However, most of the said rules and regulations have remained with no particular change for almost a century. Accordingly, they did not only lack provisions concerning injury and/or illness-related insurance and liability insurance but constituted also somehow rigid rules based on old-fashioned theories.

As such, in several aspects, they were not suitable to modern insurance theories or current business practices. Recognition of these defects prompted the authorities to both, drastically review the basic civil laws regarding our economic activities, and amend the text of contract rules so that they may fit to current times and be easily understood by ordinary people. We have now this new Insurance Contract Law as a result.

The Insurance Contract Law provides the following measures to better protect insurance policyholders and maintain the soundness of the insurance system in Japan:

- a) Application of the Law to cooperative insurance: The Insurance Contract Law is now applicable to cooperative insurance policies to which provisions in the Commercial Code were applied *mutatis mutandis* previously.
- b) New regulations on injury and/or illness insurance-related contracts: The Insurance Contract Law stipulates provisions on not only life and non-life insurance contracts but also injury and/or illness insurance contracts, which were not specifically regulated by the Commercial Code.
- c) Unilaterally enforceable provisions clearly-stated: Most of provisions in the Commercial Code are understood as permissive rules that grant priority to the provisions of policy clauses. This Insurance Contract Law stipulates that, with respect to representation obligations, time of claims payment, rescissions due to a serious reason, and insurance reserve funds, among others, any unfavorable arrangement for policyholders should be declared void.

Provisions of the Insurance Contract Law exert a great impact on the business practice of the insurance industry. Newly-created or significantly-amended regulations are as follows:

- New rules against solicitors' activities encouraging misrepresentations from customers
- Lien of the victim in liability insurance
- Provisions on changes of beneficiary based on testaments
- Continuation of life insurance policies (injury and/or illness-related) based on beneficiary's own will
- Policy rescissions right due to a serious reason
- Provisions concerning the time of claims payment
- The Insurance Contract Law comes into force on the day specified by Cabinet Order within a period not exceeding two years from the date of promulgation.

In principle, the Insurance Contract Law may not apply to insurance contracts concluded before the enforcement of this Law except for:

- Consent of the insured regarding the assignment of right of insurance claims
- Decrease of insurance risk
- Policy rescission due to a serious reason
- Effect of policy rescission
- Time of benefits payout for insured events occurring after the enforcement of this Law
- Exercise of the right of intervention by garnishers against policy rescissions after the enforcement of this Law