

# FINANCIAL CONSUMER PROTECTION IN KOREA : LAWS AND REGULATIONS

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**International Academy of Financial Consumers**

# OUTLINE

- I. (No) Legal Definition of Financial Consumer
- II. Sector-based Laws and Rules
  - 1. Banking
  - 2. Securities
  - 3. Insurance
- III. New Financial Consumer Protection Bill Pending Legislative Review

# I. No Legal Definition of Financial Consumer

- Existing Sector Based Laws
  - Depositor, Investor, Policyholder
- New definition under “Foundational Law on Financial Consumer Protection” (Proposed Bill)
  - Professional financial consumers
  - Non-professional financial consumers

## II. Sector Based Consumer Protection Laws and Rules

# 1. Development of Banking Laws

- Up to the 1980s: Banks and financial intermediaries play a role in economic development
- 1990s: Privatization and Financial Liberalization
- 1997 Asian Financial Crisis
- 2008 Global Financial Crisis
  - Increase in financial consumer protection

## 2. Consumer Protection in Banking

- Duty to Explain (Disclosure Rules)
- Requirements for Advertisements
- Prohibition of Unfair Bank Sales Practices
- Prohibition of Unsound Business Activities

### 3. Development of Securities Laws

- Transition from bank-based system to market based system
- 1964 Capital Market Promotion Act
- 1976 Securities and Exchange Act
- **2009 (Integrated) Capital Markets Act**
  - Enacted in 2007 “Mother” of most consumer protection provisions in banking laws and insurance laws

## 4. Investor Protection in Securities Transactions

- Duty to Explain, Advertisement Rules, Reporting Requirements
- **Know-Your-Customer and Suitability Rules**
- Prohibition of Mis-selling and Rules on Conflicts of Interest



## 5. Development of Insurance Laws

- Insurance Contract Laws (private law) and Insurance Business Laws (public law)
- More consumer protection provisions since 2010

## 6. Consumer Protection in Insurance Contracts

- Disclosure and Advertisement Rules
- Know-Your-Customer and Suitability Rules
- **Duty to Verify Dual Contracts (Double Insurance)**
- Prohibition of Mis-selling and other Illegal Activities

## Sector Based Laws Converge

- Disclosure and advertisement rules
- Know you customer and suitability rules
- Prohibition of mis-selling and other unfair activities
- Consensus on increasing consumer protection
- But differences in types of protection remain because products are different.

# “Integrated” Consumer Protection Bill

- Same function/same regulation principle
- Classifies financial products into 4 types (deposit type, investment type, insurance type, loan type)
- Classifies financial consumers in to 2 types (professional /ordinary)
- Declarative provision on basic rights of consumers
- Expands regulations and sanctions

# Beyond the Law

- Proposed bill says nothing on Fintech...Because law is always retrospective
- Consumer protection devices turned out to be box checking exercises
- Implementing consumer protection laws for financial products based on new technologies/platforms will be a challenge

Thank you.



# **Financial Consumer Protection in Japan: Book Project & Revision of Insurance Business Act**

IAFICO, Fudan University

November 4, 2017

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\*This presentation material uses part of the material of my presentation at the Max Planck Institute, Hamburg, in March 2017.

# Book Project Contents 1

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## Part 1 Financial Consumer

1-1 General Introduction, 1-2 Population and Aging Society

## Part 2 Financial Consumer Protection System

2-1 Overview

2-2 Consumer Contract Act

2-3 Financial Products Sales Act

2-4 Financial Instruments and Exchange Act

2-5 The Act concerning the Protection of Personal Information

2-6 Duty of Explanation under the General Law of the Civil Code

2-7 Insurance Business Act

2-8 Insurance Act

2-9 Banking Act

2-10 Laws restricting the Interest Rate for Loan



# Book Project **Contents 2**

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## **Part 3 Financial Consumer Protection System**

3-1 Consumer Affairs Agency (CAA)

3-2 Financial Services Agency (FSA)

## **Part 4 Ex-post Protection**

4-1 Financial ADR

4-2 Protection in case of Bankruptcy of Financial  
Institution

4-2-1 Bank

4-2-2 Insurance Company

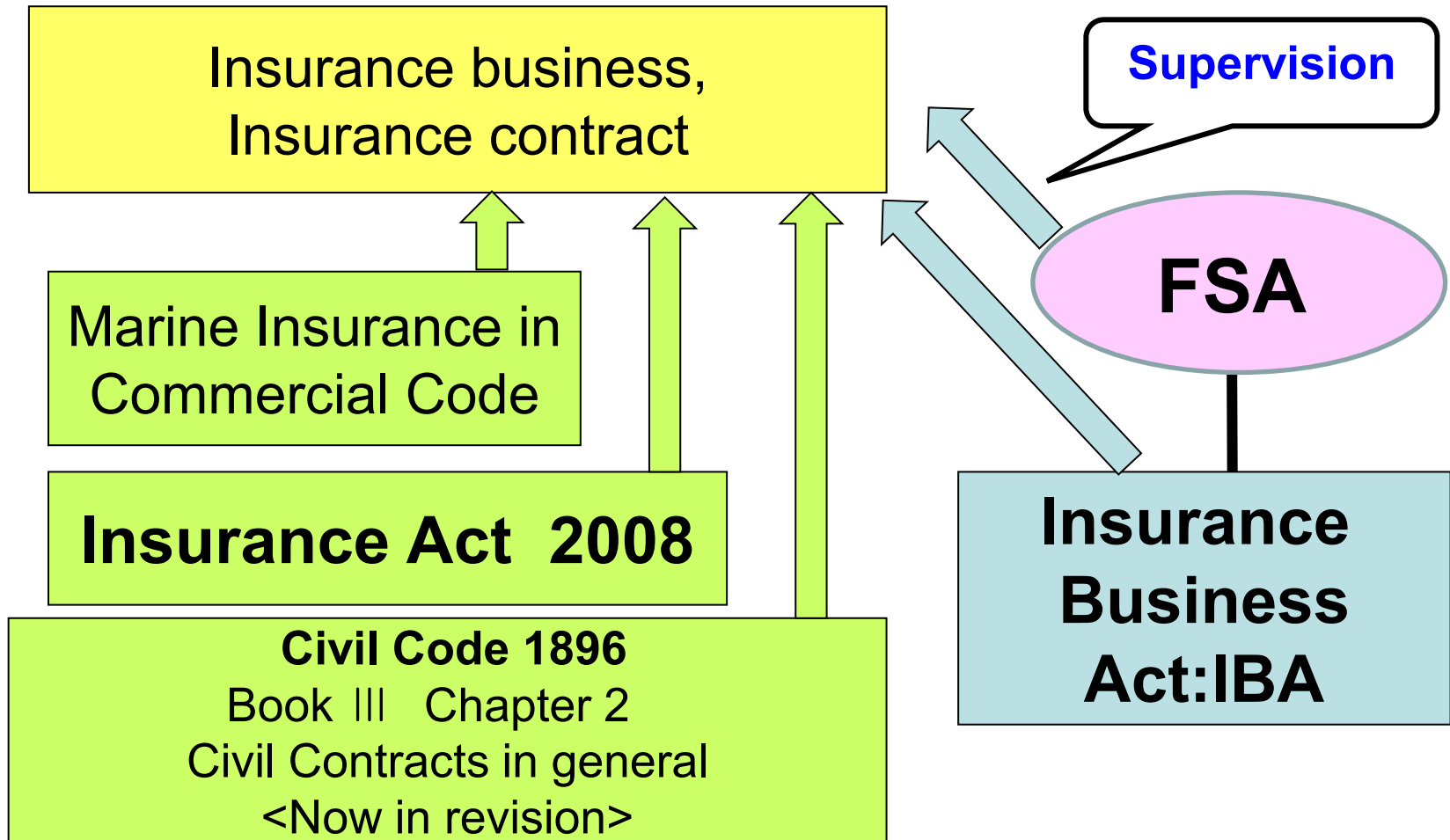
4-2-3 Securities Company

# Revision of Jap. Insurance Business Act

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- 1. Introduction**
- 2. Structure of Laws on Insurance in Japan**
- 3. Sales of Insurance Products in Japan**
  - Characteristics of Japanese Market
  - Recent Trend
- 4. Legal Status of Intermediaries under Japanese Law**
- 5. Revision of Insurance Business Act 2014 on the Solicitation of Insurance**
  - (1) Pre-contractual informational duty
  - (2) Duty on the management
- 6. Analysis**
- 7. Conclusion**

## 2. Structure of Laws on Insurance



# History of Insurance Business Act

**Insurance Business Act  
Revision in 1995**

**Consolidation and  
Major Amendment**

**Insurance  
Business  
Act  
1939**



**Law concerning  
Control of  
Insurance  
Solicitations  
1948**




**Law  
concerning  
Foreign  
Insurers  
1949**

# Insurance Business Act: IBA

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- **Major amendment in 1995**

**Convoy system**  **Fair Free Global**

Introduction of insurance holding company

Cross selling of life and non-life insurance

Introduction of insurance broker

Introduction of supervision using solvency margin

Establishing security fund for bankruptcy of ins. company

- **Frequent revisions after 1995**

to cope with the changing business environment

- **Revision in 2014**      Main part: rules on **solicitation**

effective from 29.5.2016

# 3. Sales of Insurance Products in Japan

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## **Non-life insurance market** (End of FY2013)

- Agent 91.6% 192,000 agents  
over 2 million people
- Direct selling 8.0%,
- Broker 0.4%

## **Life insurance Market** (End of FY2014)

- Sales by the employee of life insurance company  
229,000 sales persons
- 90,000 agents with over 1 million people  
growing after deregulation (~1996) esp. bank

# Legal Background

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## Life Insurance

- Prohibition of selling of insurance of other life insurance company Art.282(1)(2)  
Exception : Art.282(3)      In practice, very rare.

## Non-life Insurance

- Agent is allowed to be an agent for more than one non-life insurance companies.
- Concurrent business with other business is allowed for an agent. e.g. Car dealer, Estate agency, bank

## \*Insurance Broker

- Not allowed until the 1995 revision of IBA. Active only in large international business such as re-insurance.

# Historical background

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## Life Insurance

- After WW2 “Life insurance lady”  
so-called “**GNP sales**”: G (giri) N (ninjo) P (present)

## Non-life Insurance

- Agent  
Ins. company assigned business to renowned people  
esp. influential people in the local community  
Many company established their agents for their insurance.

## Background

- No substantial difference of coverage and price for general insurance before 1995.
- Consumers were not much interested in the contents.
- Decisive factor: human relations, fame of the company

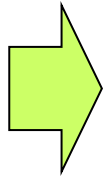


# Recent Trend

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## **Bank**      *bancassurance*

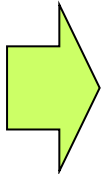
- Especially life insurance, including pension, variable life insurance



Necessity of adjusting rules with those on various asset management products

## **Emergence of new type agent “insurance shop”**

- Located in the shopping center, near railway stations
- Assigned by many insurance companies
- Legally an agent, but act like insurance broker



Necessity of rules on the comparison of products

# Characteristics

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## **Diversity of channel**

- from specialized insurance agent to an individual
- level of expertise differs greatly

## **Large numbers in industry**

- Non Life      over 2 million of people in agents
- Life            over 200,000 sales employee  
                    1 million of people in agents



**How to regulate and control the solicitation of insurance?**

## 4. Legal Status of Intermediaries under Jap. Law

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### **Sales persons employed by insurance company**

- Insurance company is responsible for their conducts.

### **Insurance agent**

- Agent is responsible for its conduct.
- Insurance Company is also responsible for the conduct of agent for insurance business unless the insurer proves certain matters. (IBA 283)

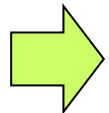
### **Broker**

- Acting for the client. Broker owes a duty of acting in good faith for client (IBA 299 + Guideline)  
**“Duty of best advice”**
- Insurance company does not owe liability for it under IBA.

### **Reform on the solicitation of insurance** (Main issue)

#### **In the former IBA**

- IBA stated prohibitions only. No rules on the duty.  
Exception: Duty of showing names etc. of insurance company entrusted and its status (agent or intermediary)
- Insurance Act 2008 does not state the duty, either.



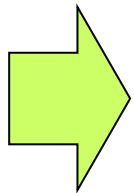
Necessity to show the duty

#### **Objectives: modernizing law on the duty**

- Enhancing communications between seller and buyer
- Enhancing the management level of agent
- Enhancing proper comparison of insurance products

## **No provision under Insurance Act** Why ?

- Existence of various Acts and general law
  - Insurance Business Act 1995
  - Act on Sales, etc. of Financial Instruments 2000
  - Consumer Contract Act 2000
  - Civil Code: Duty of good faith. Law on tort
- No strong support to include it in the Insurance Act
- Difficulties in showing the law properly



The matter needs to be regulated by IBA etc.  
and by general law.

# Analysis of Informational Duty

## <Various levels>

- Deceit, False explanation
- Insufficient provision of material information
- Lack of positive explanation of material facts
- Sufficient in general but not enough for the person to understand
- Sufficient as information but without confirming the intention
- Sufficient as information but without informing whether the product matches with the intention of policyholder
- Sufficient as information but not sufficient as an advice
- Sufficient in general but not sufficient as a best advice

Analysis by  
the author

## <Necessary information>

- disadvantageous matters in the contract
- major contents of the contract
- relative position among various products
- relating issues, e.g. Tax treatment, relation with social ins.

# Revision 1 Pre-contra. Informational Duty

- **Prohibition** of certain conducts (IBA 300)
- Duty of providing relevant documents for **financial type** insurance, special rules on financial products (Financial Instruments and Exchange Act 1948 amended) (IBA300-2)

## <New>

- (1) Duty of **providing information** (IBA 294, IBA ER 227-2)  
**comparative explanation** in certain situations (IBA ER 227-2)

## <New>

- (2) Duty of **ascertaining customer's intention**,  
**proposing** contract in line with the intention,  
**explaining** the contents, and  
**providing an opportunity to confirm** whether it meets the  
intention (IBA 294-2, IBA ER 227-6)

# New (1) Duty of providing information (IBA294)

A duty to provide policyholders, etc. with information on the contents of insurance contracts and any other information that should serve as reference for them to conclude an insurance contract. Information necessary to provide are;

(a) outlines of insurance contract necessary for policyholders to understand the insurance contract,

e.g. conditions of insurance payment, period of insurance cover, matters on premium and amount of insurance

(b) information to alert for the policyholders

e.g. duty of disclosure, starting time for insurance cover, major exclusions, cancelation and return of premium

(c) other important information

e.g. incidental services to insurance

Detailed  
Guidelines  
of FSA



# New (2) Duty of confirming intention (IBA 294-2)

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A duty to;

**ascertain** customer's intention,

**propose** conclusion of insurance contract in line with such intention,

**explain** the contents of the relevant insurance contract to the customer,

**provide** the customer with the **opportunity** to confirm that the intention accords with the contract

**Exception:** insurance on  
commercial business risk,  
compulsory insurance etc.

Detailed  
Guidelines  
of FSA

# Cf: Other Acts

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## a. Act on Sales, etc. of Financial Instruments 2000

- Duty of explanation of material matters specified in the Act  
risk of incurring loss, deficit etc.

\* Explanation necessary for the customer to understand

- Prohibition of conclusive valuations

**Violation**  **Right for damages.**

**Principal amount is presumed to be the loss.**

## b. Financial Instruments and Exchange Act

- Duty to provide certain documents

## c. Consumer Contract Act 2000

- Duty of explanation of material matters specified in the Act

**Violation**  Consumer can avoid its offer made by  
**misunderstanding**

## **d. Civil Code**      Various legal method

### **d-1) Avoid contract based on **mistake** Article 95**

#### **Avoid contract and **recover** paid premium**

\*Unjust enrichment for the cover already provided needs to be deducted.

### **d-2) Claim for damages in **tort** Article 1 (good faith) & 709**

#### **Breach of duty of good faith → Right for **damages** in tort**

\*Adjustment based on the contributory negligence, if any

\*No concurrent right for damages under contract  
(Supreme Court Decision)

# How regulatory law affects general law?

Prohibitions of Certain  
Conducts

Broker: Duty of acting in good  
faith. Giving best advice

**New**

Duty of providing  
information

**New**

Duty of confirming  
intention etc.



Mistake etc.



Adoidance  
of contract

Breach of  
Good faith



Damages  
in tort

# Revision 2: Duty on the Management

**Former:** Duty was on the **insurance company** only. Take measures to ensure sound and appropriate management, such as explanation of important matters to its customers, appropriate handling of customer information, and **proper execution of any business entrusted to a third party**. \*IBA100-2

<NEW>

\*IBA 294-3 IBA ER 227-7 to 227-15 Guidelines

Duty of **agent** and **broker** to take measures to ensure sound and appropriate operation of the business of insurance solicitation

- explanation of material facts
- proper protection of information of clients
- proper solicitation
- proper comparison of insurance products among insurers

Detailed  
Guidelines  
by FSA

### Combination 1: Regulatory Law + General Law

**Regulatory law**



**Conduct behavior, management**

- better to prevent problems and create better practice
- easy to show detailed rules and amend rules reflecting the change of circumstance
- easy to adjust the rule with the development of other laws on financial products
- various sanctions are available to control the conducts of seller

**General law  
(Civil Code)**



**Remedies for policyholders etc.**

- easy to reflect the development of general law
- flexible to adjust the damages using contributory negligence

## Combination 2

**Duty on the behavior of seller +  
Duty of establishing proper management**

Duty on the behavior. Regulate the way of solicitation.  
Duty of establishing proper management may be more flexible, depending on the size and nature of the seller.

## Combination 3

**Legal Duty under IBA and other Acts + Soft law**

Legal duty is the minimum standard.  
Soft law shows detailed procedures and is able to show best practice.

# How does the New Law affect the Business?

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## **1. Enhanced duty of explanation**

- Detailed procedures to do business.
- Regulate the method in detail and less freedom
- Much emphasis on prevention
- Possibility of increasing paper works and time for effecting contract.

## **2. Duty of building proper management**

- Effective to lead agents to be more independent and responsible
- In practice, insurance companies are providing standard tools for their agents to use.
- Possibility of increasing paper works and costs.



## 7. Conclusion: Evaluation of the revision **My view**

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- It is expected that the new law works to enhance the protection of consumers.
- Detailed procedures may protect sellers if they follow them, however, may hamper creativity of business method and increase the complexity of solicitation process and paper works.
- It is important that FSA regulates market so that it substantially improves the solicitation.

### **Important issue**

Too many people engaged in insurance solicitation

Some less expertise. May need restructuring.

Attitude of consumers is also important.

from **GNP** to **Risk Management**

Importance of education of consumers

**END**