

PRIVATIZATION OF CONSUMER LAW: CURRENT DEVELOPMENTS AND FEATURES OF CONSUMER LAW IN JAPAN AT THE TURN OF THE CENTURY

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I. *Introduction*

In the last decade of the 20th century, we have seen a number of new trends in the world of consumers; greater emphasis on services rather than goods, an aging population, deregulation, information technology and e-commerce, and economic globalization. These constitute the characteristic features of the current consumer law in Japan.

Japan's consumers have seen the economy go through many changes since the end of World War II. As seen through the eyes of a consumer, post-World War II economic history can be divided into four periods. The latter 1940s and all of the 50s constituted a period of recovery, when the top priority of economic policy was to address shortages and inflation. A period of rapid economic growth ensued in the 1960s, when the major emphasis was placed on product safety. As the Japanese people began to enjoy relative prosperity in the 1970s and 80s, the focus of policy came to be directed toward consumer credit, special types of selling and investment. The last ten years makes the fourth stage of the development of consumer law in Japan, against the backdrop of a collapsed "bubble" economy of the 1980s and efforts to carry out deregulation.

A number of laws designed to protect the interests of consumers, such as the Food Sanitation Law (Shokuhin Eisei Ho), were formulated during the period of post-World War II economic recovery. Although these were not touted as measures designed specifically for the purpose of consumer protection, they nevertheless did have that effect.

It was not until the period of rapid economic growth that consumer protection began to receive attention and the government and Diet started making an active effort to address the issue. This change was prompted by the fact that though standards of living had improved, unsafe and deceptively labeled products had started to harm consumers.

In 1961, the Council for Social Policy Improvement Strategies was established as a consultative body to the Director-General of the Economic Planning Agency.¹ The council issued the Proposal Concerning Consumer Protection in 1963, and in that same year the Ministry of Agriculture and Forestry established the Consumer Economics Division, the first

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¹ This Council was reorganized in 1965 as the Social Policy Council.

such division created by a central government agency. The Ministry of International Trade and Industry also set up its own Consumer Affairs Division in 1964, and in that same year the Unreasonable Premium and Advertisement Prevention Law was formulated in order to put an end to deceptive advertising.

In 1968, House members introduced the Consumer Protection Fundamental Law (Shohisha Hogo Kihon Ho) in the Diet, and this was subsequently passed into law. The Local Government Law (Chiho Jichi Ho) was amended in 1969 to require that prefectural and municipal governments address consumer protection issues.² In the 1970s, almost all prefectural governments and the major city governments worked to formulate consumer protection ordinances, and they established departments to take charge of related work. The Consumer Protection Fundamental Law and the Local Government Law constitute the backbone of Japan's consumer protection legislation and policy for thirty years.

Efforts made during the 1960s to establish a system of consumer protection legislation were unquestionably spurred on in part by an international climate of consumerism. Particularly important in this regard was the Special Message to the Congress on Protecting the Consumer Interest, a policy statement issued by U.S. President John F. Kennedy in 1962, which spelled out the consumer bill of rights.

In the following part of this paper, I will briefly summarize the structure of the consumer law and policy in Japan and discuss the important developments in the law over last few years, which I guess will change the characteristics of consumer law in Japan.

II. *Consumer Protection Fundamental Law*

1. **Structure of the Consumer Protection Fundamental Law**

The purpose of the Consumer Protection Fundamental Law is to "to secure the stability of and improvement in the consumption life of the people through facilitating a comprehensive promotion of the protection and the enhancement of consumer interest" (Article 1). To achieve that purpose, the law specifies the obligations of business and government at all levels (central, prefectural, and municipal) as well as the role to be played by consumers (Articles 2 through 5). In contrast with the previously mentioned policy statement by President Kennedy, which declared four fundamental rights of consumers, i.e., to "the right to safety," "the right to be informed," "the right to choose," and "the right to be heard", the Consumer Protection Fundamental Law says nothing at all about the rights of consumers. Consumer protection laws enacted around the world in recent years have included clear statements concerning consumer rights, including the rights to redress and access to justice. Japan's Consumer Protection Fundamental Law is thus inferior to this more recent legislation in other countries.

The Consumer Protection Fundamental Law requires the central government to establish all legislation and take all necessary fiscal measures to ensure achievement of the law's objectives (Article 6). The law also sets forth a number of specific objectives that the

² In 1999, when Local Government Law was substantially amended so as to expand the local government's power, the provision listing the duties imposed on local governments including consumer protection was deleted, because local governments are generally qualified to manage any local affairs.

government must work to achieve, as follows:

- Prevention of Danger (Article 7)
- Ensuring Correct Weights and Measures (Article 8)
- Establishing Proper Standards (Article 9)
- Proper Labeling (Article 10)
- Securing of Fair and Free Competition (Article 11)
- Promotion of Edification and Education (Article 12)
- Reflection of Public Opinion (Article 13)
- Establishment of Testing and Inspection Facilities (Article 14)
- Establishment of a Complaints Handling System (Article 15)

As shall be seen in the following sections of this paper, many consumer protection laws have been enacted to flesh out the framework described above.

The central government has established the Consumer Protection Council as required by Article 18 of the Consumer Protection Fundamental Law. The Consumer Protection Council is chaired by the Prime Minister, with the heads of the relevant government ministries and agencies serving as members. The Council meets once a year to discuss basic consumer protection measures. By studying the resolutions adopted by the Consumer Protection Council, one can understand the content and basic thrust of Japan's consumer protection policy.

In addition, the Social Policy Council has also been established in accordance with the requirements of the Consumer Protection Fundamental Law. Council members include representatives of the business community and consumers as well as academia. This council's task is to carry out studies and discussion concerning basic consumer protection issues. The government formulated the Products Liability Law of 1994 as well as the Consumer Contract Law of 2000 on the basis of reports prepared by this council.

2. Government-led Consumer Protection

A distinguishing feature of consumer protection legislation in Japan has been heavy reliance upon the role of government intervention grounded on administrative law. To be sure, there are many situations in which the protection of consumer interests cannot be achieved unless the government administers certain regulations on a regular basis. At the same time, however, the existence of strong regulations must be justified by the occurrence of a certain degree of harm to consumer interests. For this reason, most of the consumer protection legislation that falls into the category of administrative law is not enacted until after the occurrence of tragic harm to consumers. In other words, businesses that have no scruples about their reprehensible behavior are often able to engage the government in a never-ending game of cat-and-mouse. There is now an increasing awareness of the important need to enact consumer legislation with the nature of civil law that will clearly spell out the right of consumers and allow them to seek redress in court when their interests have been infringed.

III. *Safety of Products and Services*

1. Prevention of Danger

Article 7 of the Consumer Protection Fundamental Law seeks to protect consumers from danger. It states that *“To prevent goods and services from causing danger to life and to the property of the people in their consumer lives, the state shall establish necessary standards for the prevention of danger and take the necessary measures to maintain them.”* On the basis of the above, many laws concerning the safety of products and services targeted to consumers have been enacted.

These laws fall into two main categories. Laws in the first category require that products and services meet certain standards. The basic purpose of these laws is to provide the basis for administrative action against businesses that violate standards. The principle laws in this category are listed as follows.

Foodstuffs

Food Hygiene Law (Shokuhin Eisei Ho) (1947)

Agricultural Chemical Control Law (Noyaku Torishimari Ho) (1948)

Law concerning Preservation of Safety of Animal Feeds and Quality Improvement (Shiryō no Anzensei no Kakuho oyobi Hinshitsu no Kaizen ni kansuru Horitsu) (1953)

Law concerning Special Measures to Prevent the Poisoning of Food Products in the Distribution System (Ryūtsu Shokuhin eno Dokubutsu no Konnyū to no Boshi ni kansuru Tokubetsu Sochi Ho) (1987)

Law concerning the Regulation of Chicken Processing Plants and the Inspection of Chickens (Shokucho Shori no Jigyo no Kisei oyobi Shokucho Kensa ni kansuru Horitsu) (1990)

Pharmaceuticals and chemicals

Poisonous and Deleterious Substances Control Law (Dokubutsu oyobi Gekiyaku Torishimari Ho) (1950)

Pharmaceutical Affairs Law (Yakuji Ho) (1960)

Law concerning Regulations on Inspection and Manufacturing of Chemical Substances (Kagaku Busshitsu no Shinsa oyobi Seizo to no Kisei ni kansuru Horitsu) (1973)

Household products

Explosives Control Law (Kayaku rui Torishimari Ho) (1950)

Gas Utility Industry Law (Gasu Jigyo Ho) (1954)

Electrical Appliance and Material Safety Law (Denki Yohin Anzen Ho) (1961)

Law concerning Preservation of Safety of LPG and Appropriate Transactions (Ekika Sekiyū Gasu no Hoan no Kakuho oyobi Torihiki no Tekiseika ni kansuru Horitsu) (1967)

Consumer Product Safety Law (Shohi Seikatsu yo Seihin Anzen Ho) (1973)

Law for the Control of Household Products Containing Harmful Substances (Yugai Busshitsu o Ganyū suru Katei Yohin no Kisei ni kansuru Horitsu) (1973)

Automobiles

Road Trucking Vehicle Law (Doro Unso Sharyo Ho) (1951)

Housing

Fire Prevention Law (Shobo Ho) (1948)

Building Standard Law (Kenchiku Kijun Ho) (1950)

Law concerning Maintenance of Sanitary Building Environment (Kenchikubutsu ni okeru Eisei teki Kankyo no Kakuho ni kansuru Horitsu) (1970)

Many of these laws have resulted in the establishment of seals of approval that certify that a given product complies with a specific set of safety standards. Examples included the “S (stands for “safety”) mark” established in connection with the Consumer Product Safety Law, and another seal of approval established in connection with the Electrical Appliance and Material Safety Law. These laws stipulate that products without such seals of approval may not be sold. The recent trend toward deregulation, however, has brought changes. For example, in 1999, Consumer Product Safety Law, Electrical Appliance and Material Safety Law, Gas Utility Industry Law and the Law concerning Preservation of Safety of LPG and Appropriate Transactions were revised so as to replace the requirement of a government seal of approval for various categories of products with the qualified third-party certification requirement. For the rest of categories, a self-certification by manufacturers that their products meet the compulsory safety standards satisfies the requirement of laws. And the common “PS (stands for “product safety”) Mark” was introduced for those products regulated under these four laws.

2. Compensation for Loss or Injury

Safety laws that fall in the second category are designed to enable aggrieved parties to seek compensation for loss or injury caused by a particular product or service. The principle laws in this category are listed as follows.

Preventive Vaccination Law (Yobo Sesshu Ho) (1948)

Pharmaceutical Product Side-Effect Remedy and Research Promotion Organization Law (Iyakuhin Fukusayo Higai Kyusai Kenkyu Shinko Chosa Kiko Ho) (1979)

Product Liability Law (Seizobutsu Sekinin Ho) (1994)

The Product Liability Law was not enacted until 20 years after the need for such a law was first suggested.³ The rules of tort law provided in the Civil Code had formerly required that in order to receive compensation for damages from a manufacturer, the aggrieved party had to prove negligence on the part of a manufacturer. But the Product Liability Law changed the situation by requiring only proof of the existence of a product defect. The first judicial ruling in favor of a plaintiff on the basis of the Product Liability Law was handed down in June, 1999, at Nagoya District Court, in a case involving harm caused by a drink sold by a fast food restaurant, McDonald.⁴

³ For the details of Product Liability Law and its legislative history, see Tsuneo Matsumoto, *Recent Developments in the Law of Product Liability in Japan*, 25 HITOTSUBASHI JOURNAL OF LAW AND POLITICS 15 (1997). For the official explanation of the text of the law, see *An Explanation of Japan's Product Liability Law* (Thomas L Madden trans.) 5 PAC. RIM L. & POL'Y J. 299 (1996).

⁴ Nagoya District Court, Decision of June 30, 1999, HANREI TIMES, No.1682, p.106. For the details of the case, see Toshimitsu Kashiwagi & Luke Nottage, *Japan's First Judgement under its PL Law of 1994: Echoes of Donoghue v Stevenson*, 10 AUSTRALIAN PRODUCT LIABILITY REPORTER 121 (2000).

Before the passage of the Product Liability Law, a number of tragedies had already occurred in Japan in connection with the use of pharmaceuticals including cases involving SMON disease, thalidomide, and chloroquine. Pharmaceuticals are products, and as such are subject to the provisions of the Product Liability Law, but some side effects of pharmaceutical products are not included among the “defects” that fall under the coverage of the Product Liability Law. Compensation for injury connected with such side effects is paid out instead in accordance with the provisions of the Pharmaceutical Product Side-Effect Remedy and Research Promotion Organization Law. This law resulted in the establishment of a fund that pays medical bills, a disability pension, and makes other such disbursements in connection with injuries caused by pharmaceutical products. The fund is supported by compulsory contributions from pharmaceutical manufacturers.

IV. Ensuring Proper Measurement, Standards, Labeling and Fair Competition

1. Principal Laws and Regulations

The ability of consumers to make optimum purchasing choices depends on the existence of laws to ensure fair competition as well as proper measurement, standardization, and labeling. The principal laws in this area are listed as follows.

Fair competition

Anti-Monopoly Law (Shiteki Dōkusen no Kinshi oyobi Kousei Torihiki no Kakuho ni kansuru Horitsu) (1947)

Measurement

Measurement Law (Keiryō Ho) (originally in 1951, replaced in 1992)

Standardization and labeling

Industrial Standardization Law (Kogyō Hyōjunka Ho) (1949)

Law concerning Standardization and Proper Labeling of Agricultural and Forestry Products (Norin Busshi no Kikakuka oyobi Hinshitsu Hyōji no Tekiseika ni kansuru Horitsu) (1950)

Nutrition Law (Eiyō Kaizen Ho) (1952)

Household Goods Quality Labeling Law (Katei Yōhin Hinshitsu Hyōji Ho) (1962)

Unreasonable Premium and Advertisement Prevention Law (Futo Keihin rui oyobi Futo Hyōji Bōshi Ho) (1962)

Law concerning Efficient Use of Energy Resources (Enerugi no Shiyō no Gorika ni kansuru Horitsu) (1979)

Law concerning Proper Management of Environmental Hygiene related Businesses (Kankyō Eisei Kankei Eigyo no Un'ei no Tekiseika ni kansuru Horitsu) 1957)

Law for Promotion of Utilization of Recyclable Resources (Saisei Shigen no Riyo no Sokushin ni kansuru Horitsu) (1991)

Law concerning Supply and Demand for Key Food Grains and Maintenance of Price Stability (Shuyō Shokuryō no Jūkyū oyobi Kakaku no Antei ni kansuru Horitsu) (1994)

2. Civil Suits Against Violators of the Anti-Monopoly Law

The Fair Trade Commission (JFTC) was basically the only party in Japan that could bring action against violators of the Anti-Monopoly Law. Strictly speaking, consumers were also allowed to file suit to seek compensation for damages caused by violations of the Anti-Monopoly Law once the decision of the JFTC had become final and irrevocable. But it is so difficult to prove causation of the violation and the damages as well as the amount of damages that the option to file a civil suit was of no practical significance.⁵

Recently, however, there has been growing support for the establishment of civil remedies for violations of the Anti-Monopoly Law, which would allow aggrieved businesses and consumers to file suit to force violators to cease and desist from activities pursued in contravention of the Anti-Monopoly Law.⁶ In 2000, the Anti-monopoly Law was amended so as to allow such civil actions.

V. Protection of Consumers' Economic Interests

1. Principal Laws and Regulations

There are a number of laws that focus on the special nature of consumer contracts and have either: (1) been designed with the express intent of protecting consumers; or (2) had the same effect in practice. The principal laws of this type are listed as follows.

Product and service transactions

Travel Agency Law (Ryoko Gyo Ho) (1952)

Building Lots and Building Transaction Business Law (Takuchi Tatemono Torihiki Gyo Ho) (1954)

Domestic Labor Law (Kanai Rodo Ho) (1970)

Law concerning Door-to-Door Sales, etc. (Homon Hanbai to ni kansuru Horitsu) (1976)

Law concerning Regulation of Membership Contract of Golf Courses, etc. (Gorufu Jo to ni kakaru Kaiin Keiyaku no Tekiseika ni kansuru Horitsu) (1992)

Housing Quality Promotion Law (Jutaku no Hinshitsu Kakuho no Sokushin to ni kansuru Horitsu) (1999)

Consumer Contract law (Shohisha Keiyaku Ho) (2000)

Specified Commercial Transactions Law (Tokutei Shotorihiki ni kansuru Horitsu) (2000, replacing the Door-to-door Sales, etc. Law)

Law concerning the Exceptions to the Civil Code on Electronic Consumer Contracts and Electronic Notice of Acceptance (Denshi Shohisha Keiyaku oyobi Denshi Shodaku Tsuchi ni kansuru Minpo no Tokurei ni kansuru Horitsu) (2000)

⁵ See Tsuneo Matsumoto, *Consumer's Rights and their Enforcement in Japan — Case Studies of Unfair Practices and Product Liability*, in KARL KROESCHELL (ed.), *RECHT UND VERFAHREN 93* (C.F.Mueller, 1993).

⁶ Summary of the 1999 Report by Study Group on Civil Remedy System to the Antimonopoly Act violations, "Improvement on Civil Remedy System against the AMA violations" is downloadable at <http://www.jftc.go.jp/e-page/report/survey/98-99/civrem.htm>.

Consumer credit

Interest Rate Restriction Law (Risoku Seigen Ho) (1954)

Law concerning Regulation of the Money-Lending Industry (Kashikin Gyo no Kisei ni kansuru Horitsu) (1983)

Law concerning Regulation, etc. of Receiving of Capital Subscription, Deposits, Interest on Deposits, etc. (Shu:sshi no Ukeire, Azukarikin oyobi Kinri to no Torishimari ni kansuru Horitsu) (1954)

Installment Sales Law (Kappu Hanbai Ho) (1961)

Law concerning Regulations on Pre-paid Vouchers (Maebaraisniki Shohyo no Kisei to ni kansuru Horitsu) (1989)

Investment and business opportunity

Securities and Exchange Law (Shoken Torihiki Ho) (1948)

Commodity Exchange Law (Shohin Torihikijo Ho) (1950)

Law concerning Infinite Chain Schemes (Mugen Rensa Ko no Boshi ni kansuru Horitsu) (1978)

Law concerning Consignment, etc. of Futures Trading in Overseas Commodity Markets (Kaigai Shohin Shijo ni okeru Sakimono Torihiki no Jutaku to ni kansuru Horitsu) (1982)

Law concerning Regulation, etc. of Investment Advisors Business, etc. related to Securities (Yuka Shoken ni kakaru Toshi Komon Gyo to ni kansuru Horitsu) (1986)

Law concerning Contracts of Deposits, etc. of Designated Commodities, etc. (Tokutei Shohin to no Yotaku to Torihiki Keiyaku ni kansuru Horitsu) (1986)

Law concerning Regulations, etc. of Mortgage Securities Business (Teito Shoken Gyo no Kisei to ni kansuru Horitsu) (1987)

Financial Futures Transactions Law (Kin'yu Sakimono Torihiki Ho) (1988)

Law concerning Regulation of Business related to Commodity Investments (Shohin Toshi ni kakaru Jigyo no Kisei ni kansuru Horitsu) (1991)

Law concerning Regulation of Business related to Designated Debt Claims (Tokutei Saiken to ni kakaru Jigyo no Kisei ni kansuru Horitsu) (1992)

Real Estate Specified Joint Businesses Law (Fudosan Tokutei Jigyo Ho) (1994)

Insurance Business Law (Hoken Gyo Ho) (replaced in 1995)

Financial Products Sales Law (Kin'yu Shohin no Hanbai to ni kansuru Horitsu) (2000)

2. Door-to-Door Sales Law

The Law concerning Door-to-Door Sales, etc. (more commonly known as the Door-to-Door Sales Law) was enacted in order to provide for the regulation of sales conducted by businesses not operating from stores, thereby addressing the increasingly prevalent occurrence of consumers suffering damages as a result of this type of transaction. When the law was first passed in 1976, it covered four types of sales activities: door-to-door sales, distance sales, multilevel marketing, and negative options. The law was amended in 1996 to cover telemarketing, and in 1999 to cover certain types of continuous service contracts, such as beauty parlors and foreign language schools.

The establishment of regulations covering the provision of continuous services has made

it possible for consumers who have been made to sign long-term contracts for continuous services to terminate such contracts before their expiration, and the regulations further place a limit on the cancellation penalty that can be charged. The limit is determined by Cabinet order.

In November 2000, the Law was again amended to cover the sale of goods and services by soliciting business opportunity, and at the same the Law was renamed as the Specified Commercial Transactions Law.

All of these above amendments were carried out to address an increasing number of consumer complaints that were being raised concerning these types of businesses.

Most of the regulations contained in the Door-to-Door Sales Law grant a specific degree of regulatory authority to the relevant government agency or agencies. In the case of door-to-door sales, telemarketing, continuous services, multilevel marketing and business opportunity, these regulations grant consumers the right to unconditionally cancel a contract within a specified period (the "cooling-off period") after a contract has been signed and the required document has been delivered to the consumer. This has greatly helped consumers by providing them an avenue for prompt redress when their interests have been harmed.

Electronic commerce is a subject of intense interest these days, and sales executed over the Internet are treated in Japanese law as a type of distance sales. As such, e-commerce is subject to the provisions of the Specified Commercial Transactions Law. In 2000, the Law was amended in order to adapt to the special nature of e-commerce, and in 2001, a regulation was issued which declares illegal the practice of web merchants not securing the confirmation process for consumers who place orders through web pages. In addition to the said regulation, in 2000, the Law concerning the Exceptions to the Civil Code on Electronic Consumer Contracts and Electronic Notice of Acceptance was enacted in order to secure for consumers the opportunity to discover any errors made in ordering and to change their mind as to whether to order. Consumers may rely on the defense of unenforceability of the contract based on error, such as click miss, easier than before, under the above said law.

Another regulation was issued at the end of 2001 which requires un-solicited e-mail advertising shall contain the term "Advertising!" in the subject header in order to make option available for consumers to receive or not that e-mail.

3. Housing Quality Promotion Law

The problem of defective housing has been very much in the spotlight ever since the Great Hanshin Earthquake took place in Kobe in 1995. In order to address the problem of increasingly scarce land, people are now allowed to build three-story wooden houses, but most three-story wooden houses have been built illegally, and their safety is questioned by many. To address this problem, the Building Standard Law was amended in 1997 so as to improve the building inspection and certification system.

In addition, the Housing Quality Promotion Law was enacted in 1999 so as to ensure the construction of higher-quality housing. The Civil Code currently provides for builders' ten-year guarantees against defects, but the period of this guarantee is changeable under the agreement of the parties and, in practice, has often been shortened. Now that the Housing Quality Promotion Law is in effect, however, sales contracts or contracts for building that contain such shortened periods of guarantee are no longer valid. The new law also requires the

government to establish schemes to allow disputes over defective housing to be handled outside the judicial system.

4. Law for the Protection of the Legally Incompetent

It is increasingly common today for swindlers to target persons who have lost their judgement or ability to protect themselves due to old age, illness, etc.⁷ The Civil Code used to include provisions for declaring such persons “incompetent”(Kinchisan Sha) or “quasi-incompetent” (Jun Kinchisan Sha). When a contract was concluded with a person who had been thus declared, and the contract was disadvantageous to the person in question, the contract could be rescinded. For various reasons, however, this system had not been used much. In order to establish a more usable and flexible system for complementing the abilities of senior citizens and persons with disabilities, the Civil Code was amended in 1999, and was put in force in April 2000 at the same time that the Care Insurance Law (Kaigo Hoken Ho) entered into force.

Under the latter law, the private-sector is allowed to provide care services to senior citizens on a contractual basis. This is expected to bring a increase in the incidence of contract disputes in this area. In order to prevent these disputes from occurring, and to handle them properly in the event they should occur, proper legal procedures will be absolutely necessary for the protection of senior citizens.

5. Consumer Contract Law

In the area of consumer contracts, consumers are at a disadvantage vis-a-vis business due to the latter's superior negotiating position and access to information. In order to level the playing field, the Social Policy Council recommended in its December 1999 Report the enactment of the Consumer Contract Law.⁸ In 2000 the Law was passed by the Diet, and was put into force in April 2001.

The following three rules constitute the essence of the Law. (1) When a business concludes a contract with a consumer, the consumer shall have the right to rescind the contract if the business has misrepresented important facts, has made a predicative judgement, or intentionally withheld important information. (2) A consumer shall have the right to rescind a contract that he or she has entered into under certain types of duress including confinement and unlawful trespass. (3) Certain types of contract terms which are unreasonably disadvantageous to a consumer shall be deemed null and void.⁹

⁷ See Tsuneo Matsumoto, *Protection of the Weaker Party in Japanese Contract Law*, 4 JOURNAL OF THE JAPAN NETHERLANDS INSTITUTE 102 (1992).

⁸ The summary of the January 1999 Report of the Consumer Policy Section of the Council, “Towards the Legislation of the Consumer Contract Law (tentative name)”, is downloadable at <http://www5.cao.go.jp/99/c/19990128c-keiyaku-e.html>, although the December 1999 Report is not available in English.

⁹ For the situation of standard form in consumer contracts under Japanese law prior to the legislation of Consumer Contract Law, see Tsuneo Matsumoto, *EC Directive on Unfair Contract Terms in Consumer Contracts and Japan: Does Japanese Law Meet the Standards Set by the Directive ?*, 2 CONSUM.L.J. 141 (1994).

6. Financial Products Sales Law

There are many products and services on the market connected with asset building and investment transactions, but as the lists shown earlier in this article indicate, these laws are very fragmentary, with different government agencies formulating separate laws to apply to products and services falling within their respective areas of responsibility. There are times when a new product is not covered by any law at all. In response to this situation, and in connection with the current “Big Bang” financial deregulation program, the Ministry of Finance’s Financial Council reported that a comprehensive new set of rules to govern the entire financial services industry is necessary and recommended the enactment of a Japanese version of the UK Financial Services and Market Act.

As the first step, in May 2000, the Financial Products Sales Law passed the Diet, and in April 2001, was put into force. According to this Law, the seller of financial products has a duty to disclose market risk and its own credit risk to prospective customers. In violation of this duty, the seller has to compensate the potential damages the customer may suffer from the said risk.

7. Consumer Credit

Japan’s current system of consumer credit legislation is fragmented, just like the financial services legislation described above, along the lines of government agencies, type of business, and type of contract, and there are areas that are not covered by any laws at all. The 1996 “Report of the Financial System Study Committee” of the Ministry of Finance stated that Japan’s consumer credit system is a patchwork quilt slapped together in a haphazard manner, and that there is a need to formulate an integrated consumer credit law. It appears, however, that not much progress has been made in subsequent discussions.

VI. *Handling of Complaints and Disputes Settlement*

1. Handling of Complaints by Businesses

Paragraph 1, Article 15 of the Consumer Protection Fundamental Act states that “Businesses must endeavor to establish a necessary system for disposing properly and speedily of complaints that may arise from transactions between businesses and consumers.”

Most large corporations that deal directly with consumers already have a specialized division charged specifically with the task of handling consumer relations. In addition, most business associations also have divisions for dealing with consumers and handling complaints. In accordance with the report of the Social Policy Council, which recommended the introduction of Product Liability Law on one hand, most of the related industries have established a so-called “product liability center” to deal with consumer complaints relating to product safety. These centers act as a public consultation service and provide a mediation service when disputes arise in connection with an accident.¹⁰

¹⁰ See Luke Nottage & Yoshitaka Wada, *Japan’s New Product Liability ADR Centers: Bureaucratic, Industry or Consumer Informalism?*, 66 HOSEI KENKYU 844 (1999).

As for complaints raised in connection with contracts, the Japan Direct Selling Association, for example, has ten hotline centers located around the country to which calls from consumers are forwarded. Qualified consumer advisors work at these hotline centers to help consumers out with a wide range of questions and problems.

Major companies have a consumer complaint section. In May 1999, the Consumer Policy Committee (COPOLCO) of the International Organization for Standardization (ISO) recommended the formulation of a set of ISO policies to serve as the international standard for complaint handling procedures. Currently, a working group established under ISO Technical Committee 176, Sub-committee 3 is intensively engaged in drafting the standard. In Japan, "Complaints Handling Management Systems — Guidelines" was already issued in October 2000, as a Japan Industrial Standard (JIS).

2. Consultation and Mediation Services Provided by Consumer Centers

Paragraphs 2 of Article 15 of the Consumer Protection Fundamental Act state that "*Cities, towns, and villages (including the wards of Metropolitan Tokyo) must endeavor to use their offices in the disposition of complaints that may arise from transactions between businesses and consumers.*" And Paragraph 3 of the same Article states that "*The state and the local governments must endeavor to take the necessary measures to dispose properly and speedily of complaints that may arise from transactions between businesses and consumers.*"

The national government established a special corporation, the National Center for Consumer Affairs, NCCA, formerly known as the Japan Consumer Information Center, JCIC, in Tokyo in 1970. In addition, local governments throughout Japan have also established Consumer Centers. These centers provide the public with a place to go with questions and problems, provide mediation services when disputes arise between consumers and businesses, and organize seminars and product tests geared to the needs of consumers. These centers provide an avenue for disputes to be handled outside the judicial system. This last point is one of the more notable strengths of Japan's consumer policy.

In addition to providing consultation services directly to the public, NCCA also runs the Practical Living Information Online Network (PIO-NET), a national consumer information network designed to make information concerning consumer consultation and complaints throughout the country readily available to the advisors working for local consumer centers and officials responsible for consumer policies. The local Consumer Centers can thus be likened to sensors that collect consumer information to be analyzed by NCCA. The output of this system then serves as an important basis for policy decisions at all levels of government.

3. Consumer Lawsuits

The Japanese people are generally very averse to becoming involved in lawsuits. In addition, it has long been difficult for consumers to avail themselves of the legal system due to the fact that it is so expensive, time-consuming, and bound with red tape. For these reasons, few consumer dispute cases have actually been heard by the courts, although there have been a few major cases which involved large numbers of victims throughout Japan. Examples include the SMON disease case, in which large numbers of people fell victim to the side-effects of a drug, and the Toyota Shoji case, in which the company had engaged in particularly

egregious misconduct to aged people. In these cases, however, the main emphasis was not so much to arrive at a final resolution in court, but to raise the level of public awareness, expedite an out-of-court settlement, spur new legislation, and urge the government to adopt new policies.

The Code of Civil Procedure that consumers had found so difficult to make use of was completely revised in 1996. As a result, businesses can now be required to produce a wider range of case-related documents, and the new Code includes small claims procedures. We are indeed seeing businesses being required to produce more documentation than before, but consumers have yet to make use of the small claims procedures.

VII. *Privatization of Consumer Law in Japan*

The main thrust of the government's consumer protection policy until recently has been to protect consumer interests by regulating businesses through various means. In other words, the government relied on administrative rules to protect consumer interests. There were several reasons why this approach was taken. First, the most effective way to prevent consumers from being harmed was to use a priori regulations to nip problems in the bud. Second, the traditional legal procedures that would have had to be applied to allow disputes between consumers and businesses to be resolved in court would not necessarily have done a very good job of protecting consumer interests. Because private law was of little use for protecting consumer interests, active government was considered necessary.

The 1990s, however, have been a time of administrative reform and deregulation. The government has been working to: (1) pare down its role to setting and monitoring rules while supporting the ability of consumers to play the principal role in protecting their own interests; and (2) setting rules so as to level the playing field between businesses and consumers, by allowing consumers, who cannot match the negotiating position and access to information that businesses enjoy to sue businesses that violate the aforementioned rules.

This trend was set in motion by the passage of the Products Liability Law in 1994. This law marked a departure from the government's conventional reliance upon administrative rules — in this case, the approval of manufacturing operations — to ensure product safety. Instead, the Products Liability Law made it easier for consumers to seek compensation from manufacturers for defective products, i.e., the law sought to force manufacturers to strengthen safety measures in order to lower their compensation costs. The Consumer Contract Law and most of other laws recently legislated are expected to have a similar effect.

The plan, then, is to make a transition from a system of consumer protection legislation that relies primarily on government regulation, to a system in which consumers and businesses rely primarily on a clear set of ground rules to work out their relationship without administrative intervention.

Those civil remedies are exercised through the litigation or alternative dispute settlement mechanisms. In order to make the latter workable, consumers need better access to the judicial system so that they can more easily make use of lawsuits to press their demands. In June 2001, the Judicial Reform Council submitted its report to the Prime Minister, which pointed the way slightly towards a "Bigger Justice", including increasing the number of lawyers by establishing "law schools". However, it is feared that one of its recommendations, namely, that the losing

party pay the winning party's legal costs, will have the effect of shutting the door to the court for consumers, unless there are statutory laws and case laws adequate enough to protect the consumer interest.

We need to keep monitoring the development of consumer laws as well as the progress towards gaining better access to the courts.

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