3. Commercial Law

Insurance Business Law

Promulgated on June 7, 1995. Ch. 105. Effective as of April 1, 1996.

[Background]

Regulations concerning the insurance business were first enacted and incorporated into the Japanese Commercial Code in 1898. In 1900, the Insurance Business Law was enacted separately from the Commercial Code. In 1939, the law was amended drastically, followed by 22 reforms. The basic structure of the Insurance Business Law was established by the 1939 Reform Act. Recently, the Japanese insurance business has changed dramatically with the aging of population and liberalization and internationalization of finance. To respond to these recent changes, major reform of the Insurance Business Law was instituted for the first time in 56 years.

This reform has great significance for Japan's economy and society. Each insurance company is required to promote business efficiency, maintain sound operations to contribute to the stability and improvement of Japanese people's lives and the development of the Japanese economy. By allowing mutual entry between life insurance and property and casualty insurance industries, this reform is expected to foster competition, to enlarge the insurance business market and to promote the efficiency of the insurance industry as a whole.

[Main Points of the 1995 Reform Act]

The major objectives of the reform are (1) to promote deregulation, (2) to maintain the fiscal soundness of the insurance industry, and (3) to ensure fair business practices.

1. Promotion of Deregulation

The reform Act clearly defines insurance business as business aimed at unspecified people which includes (1) insurance which provide a fixed amount upon death of a person, (2) insurance which

indemnifies the damage caused by an accident, and (3) insurance which provides indemnity, sickness and some health care for the elderly. Although article 3 (3) prohibits the same insurance company from providing both the first and second types of insurance, article 3 (4) and (5) of the reform Act allow both life insurance companies and property and casualty insurance companies to provide the third type of insurance. In other words, the reform Act lets life insurance companies and property and casualty insurance companies enter into each other's markets. Both life insurance companies and property and casualty insurance companies can also engage in the first and second types of insurance business through the use of subsidiaries (article 106).

With regard to insurance products and insurance rates, the reform Act introduces a reporting system, as opposed to the prior licensing system. Under the reform Act, a reporting system is used for insurance products and insurance rates, specified by Ministry of Finance ordinance, making it less likely that the insured will be subject to a lack of protection (article 123).

The Insurance Business Law prohibits one life insurance company from delegating the issuance of insurance coverage to another life insurance company, however, the reform Act allows such delegation in a case in which a Cabinet Order determines that the insured would be sufficiently protected. (article 282 (3)) Moreover, new regulations with regard to insurance brokers were added to the reform Act (article 291 (1) and article 299).

2. Maintenance of the Fiscal Soundness of the Insurance Industry

First, the reform Act introduced a solvency margin standard which indicates the amount of excess that insurance companies must have over the liability reserve saved for the future payment of insurance benefits. The purpose of this requirement is to monitor the management of insurance companies in advance by using the solvency margin standard as an index of the health of the business operation. The reform Act stipulates that the Minister of Finance should judge the health of management, based primarily on the solvency margin and, if necessary, require the insurance company to submit a plan for the improvement of management (article 130).

Second, the reform Act allows the Minister of Finance to get actively involved with and to promptly deal with the insurance companies in case of a financial crisis. For example, the Minister of Finance has the authority to order insurance companies to consider transfer of all insurance contracts to other companies or to merge. The reform Act also gives the Minister of Finance the authority to appoint an insurance administrator who supervises management (chapter 10, section 1). In addition, a fund for protection of the insured was established to make transfer of insurance contracts and merger easier.

Third, the reform Act expanded the provisions concerning actuaries, who are in charge of matters involving mathematical principles of insurance such as calculation methods for insurance premiums and liability reserves. Prior to the reform, only life insurance companies were required to have an actuary. The reform Act makes use of an actuary a mandatory requirement for indemnity insurance companies which meet certain requirements and stipulates that the actuary should be appointed by the board of directors. Further, the eligibility of the actuary was specified by the Insurance Business Enforcement Regulations. Prior to the reform Act, the duty of an actuary was to confirm the legitimacy of the accounting of insurance premiums and liability reserves. Under the reform Act, the actuary's duty is extended to the evaluation of accounting, such as the evaluation of the liability reserve requirement ratio. As a result, the role of the actuary has become more significant than before.

Finally, article 6 (2) of the reform Act raised the minimum capital of insurance companies to one billion yen, thirty million yen more than the prior minimum capital requirement. The reform Act introduced a standardized liability reserve system in which the Minister of Finance determines the standards or the method of reserve, ratio of expected death for certain insurance contracts, etc. (article 116, (2)).

3. Ensuring Fair Business Practices

First, the reform strengthened oversight functions of the management of mutual insurance companies. It clarifies provisions concerning the *sodaikai*, the de facto decision-making agency for mutual insurance companies. It also lessened the requirements for the exer-

cise of minority rights, such as the lights of *sodaikai* and rights of membership. Prior to the reform, the requirement for exercising the right to bring a derivative suit was ownership three percent of the ownership. Under the Reform Act, there is no such ownership requirement (article 51 (2)).

Second, the reform Act also strengthened the disclosure requirements. It requires insurance companies to issue documents explaining companies' performance and assets, every accounting period, and to place them at the head office for disclosure to the public (article 111).

Third, the reform Act partially allows companies to provide information on expected dividends and to make comparison of their companies products with those of others, which was strictly prohibited prior to the reform (article 300 (6) and (7)). The provisions or cooling off were added to the reform Act in order to protect consumers (article (1) (i)).

4. Other Provisions

The reform Act incorporates the Law concerning Foreing Insurers, which was originally established separately from the Insurance Business Law. The reform Act requires the treatment of foreign insurers in the same manner as domestic insurance companies to the greatest extent possible, based on the idea of no discrimination against foreign insurers, however, foreign insurers whose head offices are located in foreign countries and which are not subject to the oversight of Japan's supervisory agencies will be treated differently from domestic insurance companies. The reform Act also allows mutual insurance companies to become stock companies through change of organization (article 85).

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