

Expectations for the Consumer Contracts Law

By Hamano Takayoshi

It is no exaggeration to say that Japanese are generally weak in contracts, as testified by the frequent occurrence of troubles involving consumers over contracts. Consumers in Western countries are legally protected against unfavorable contracts. Laws nullifying contract provisions unilaterally unfavorable to consumers were enacted one after another in West European countries in the 1970s. It has been also established in court rulings in the United States that consumers can refuse the application of unconscientious contracts. Consumers in Japan enjoy no such legal protection in regard to contracts. Recently, however, a move for enacting a consumer contract law aimed at preventing and quickly settling troubles involving consumers over contracts on goods or services has been gathering momentum.

It is not correct to say there is no Japanese law that protects consumers in regard to contracts. The Civil Code sets a general framework for the protection of consumers from unreasonable contracts. However, Civil Code provisions are not friendly to consumers, so whenever new types of services or transactions emerge, the government is forced to enact laws in response. Such laws are designed to restrict services and commodity dealings on a sector-by-sector or type-by-type basis. Among such laws are the Call Sales Law, the Installment Sales Law, the Building Lots and Buildings Transaction Business Law, the Insurance Law, and the Golf Course Membership Law.



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However, such an approach results in a vicious cycle. For each time a new law is enacted, new types of unfair sales methods taking advantage of legal loopholes are developed, and the government enacts still more laws to counter such moves.

According to a survey by the National Consumer Information Center, 80% of consultations and complaints received by the center from consumers concern contracts in a broad sense, such as dishonest sales methods and cancellation of contracts.

The National Consumer Information Center is connected to regional consumer information centers that provide consultation services to consumers all over the country. As of

mid-January, complaints and consultations, most of which are related to contracts, topped 3 million cases, but that number is believed to be only the tip of the iceberg.

At a time when the government is trying to ease official restrictions on commercial activities to give consumers a wider choice for the improvement of their quality of life, consumers themselves are increasingly required to choose commodities and services at their own risk.

The proposed Consumer Contracts Law was conceived against such a background. It is aimed at making adequate common rules on contracts between consumers and businesses to prevent troubles in advance. The

Social Policy Council, an advisory body of the Prime Minister, compiled a final report on the outline of the proposed Consumer Contract Law in late January on the basis of hearings with representatives of various walks of life. It will take some time before the details are boiled down, with a bill probably being submitted to the Diet for approval next year. Opposition parties are complaining about the slow pace of the proceedings and plan to submit their own version at an earlier date.

Outline of the Consumer Contracts Law

Let us consider the law on the assumption that it will be based on what was incorporated in the Social Policy Council's final report.

The Council envisages two basic rules for contracts.

One will enable consumers to nullify a contract concluded under the following conditions:

1) The contract did not provide enough information to consumers on important provisions needed for consumers in deciding to sign up,

2) The business institution involved gave the consumer false or misleading information,

3) The salesperson involved forced the consumer to sign up under threat or under similar circumstances.

The high-risk, high-return equity insurance policies sold in Japan in the 1980s at the peak of the asset-inflated bubble economy made news after a considerable number of consumers suffered losses as they were not informed of risks at the time of signing the contract. The proposed law will nullify such contracts.

In addition to the Consumer Contracts Law, enactment of a financial service law is also being considered to protect consumers in financial dealings in view of the ongoing "Big Bang" financial reforms. Such legislation has already been enacted in Britain and other Western countries.

The second point of the law is aimed at nullifying contract provisions that are unreasonably unfavorable to

consumers such as the clause in fitness club membership contracts releasing the club from any responsibility for injuries the contractor suffers in club facilities. A directive adopted by the European Union in 1993 says that any contract absolving the company from payment of indemnity for accidents resulting in injury or death is invalid.

The proposed law will also ban business institutions from demanding an unreasonable amount of cancellation money when the contractor cancels the contract for a certain reason.

Furthermore, the law will provide for 1) simple legal proceedings friendly to consumers so that these rules are strictly observed by business institutions, 2) reinforcement of the out-of-court settlement system, 3) need to educate consumers, and 4) the requirement of offering information on the contracts.

Even after legal procedures become more consumer-friendly, they will still find it still awkward to go to court under the present circumstances. As an alternative to legal procedures through a lawyer, some legal experts are conceiving a new system under which consumers will be able to have a judicial scrivener prepare documents and bring them to court themselves.

Unlike existing laws concerning the protection of consumers, the new law is aimed at empowering consumers to settle problems themselves instead of depending on administrative authorities' intervention.

In this context, the Consumer Contracts Law will usher in a new era of consumer protection. Practically, however, it will take some time before consumers, most of whom are unfamiliar with legal procedures, are able to take advantage of the law. Cooperation on the part of judiciary authorities will be essential in this regard.

Unreasonable contract provisions, as mentioned in connection with the second rule, have not been defined yet. Legal experts are expected to study the list of unfair provisions incorporated in the EU directive as

well as examples of unfair dealings and troubles in Japan for several months before deciding on a definition.

Once specific discussions on the law commence, the corporate sector is likely to intensify its objections. At the time the provisional report was adopted by the Social Policy Council last year, the bill was supposed to be submitted to the 1999 regular session of the Diet. However, it is now likely presentation of the bill will be delayed for a year because the discussion of specific points will take time. Objections from the corporate sector could further delay the legalization.

Another issue is how to adjust the new law with the existing sector-by-sector consumer protection laws in defining the "important provisions" in connection with the first basic rules. Here too, adjustment of opinions with the business sector could set back the enactment of the new law.

As already seen, there is a mountain of problems that must first be cleared before the bill is drafted in its final form.

In summary, the Consumer Contracts Law will be essential for the smooth functioning of the market mechanism, from the perspective of business establishments and consumers.

The Consumer Contracts Law is related to the Product Liability Law, which was enacted in 1997 and aims to help consumers who have physically suffered or whose property was lost or damaged by defective products. The PL Law, however, does not cover defective services, a legal loophole the Consumer Contracts Law will partly plug. The Consumer Contracts Law will also function in tandem in protecting the interests of consumers. In this sense, enactment of the Consumer Contracts Law will be a significant boon for consumers.

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