

**Editorial Notes:**

Traditional criminal trials leave laymen and victims out in the cold, while today the participation of both in criminal trials leads to the reinforcement of democratic requests of trial and the expansion of victims' rights. This law contributes to the latter. Of course, since such participation is at the experimental stage, now it is worth reviewing. In connection with this, finding means for lawyers' activities is necessary. In other words, the opinion should be noted concerning the restriction of victims' participation itself and the expansion of lawyers' activities outside the court.

## 7. Commercial Law

**Insurance Law**

Law No. 56, June 6, 2008 (Effective on April, 1, 2010)

**Background:**

In Japan, general provisions concerning insurance contracts belonged to the Part 2 - "commercial transaction", Chapter 10 - "insurance" of the Commercial Law (Art. 629–683 of the commercial law). These provisions were first enacted in 1889 and have not been changed until today except for the amendments of a few provisions from the "*Meiji-era*" to the "*Taisho-era*". The insurance markets in Japan have remarkably developed and the contents of insurance contracts have greatly changed. The provisions regarding insurance in the commercial law, however, have remained unchanged. As a part of the modernization of some basic laws, corporation law was separated from commercial law and became an independent law, while the Legislative Council of the Ministry of Justice undertook to modernize the provisions for insurance.

The 150th Legislative Council of the Ministry of Justice held in June 2006 focused on the following aspects in order to review the provisions regarding insurance contracts: (1) the review of the types of insurance stipulated by the commercial law and the creation of regulations for typical

contracts concerning accidents and health insurance; (2) as to the contract against the loss, the review of the regulations of property insurance and the arrangement of the rules of liability insurance; (3) as to contracts for life insurance, the review of regulations to meet various demands in light of the aging society; (4) the review of the regulations for the completion, alternation and expiration of insurance contracts, paying attention to the protection of insurance contractors.

On January 16, 2008, the committee for insurance law approved “the draft of an outline concerning the review of insurance law”. Finally, the 155th Legislative Council of the Ministry of Justice also approved it on February 13, 2008, and then “the outline concerning the review of insurance law” was decided.

The bill for the insurance law, which had been prepared by the Ministry of Justice on the basis of the outline, was presented to the Diet. After the bill was discussed by both the House of Representatives and the House of Councilors, the insurance law was enacted on May 30, 2008, and was promulgated on June 6, 2008. The law will be effective on April, 1, 2010.

In the insurance law, the notation of the provisions is modernized, while the contents of the regulations are also modernized as follows: (1) the expansion of the scope of the insurance contracts to which the insurance law is applied; (2) the reflection of practical insurance; (3) the enhanced protection of insurance contractors; (4) the arrangement of the regulations concerning the legal relations of insurance contractors with the third parties outside the contract.

First, the commercial law stipulated only two types of insurance contracts in the past: accident insurance and life insurance. The insurance law added accident and health insurance to these two types. The insurance law shall be also applied to the mutual relief in which each kind of cooperative is engaged, as far as the substantial contents of its contracts are similar to those of insurance contracts.

Second, as I mentioned above, the provisions for insurance in the commercial law have not been adapted to practical insurance, because they have hardly changed since they were first enacted. Therefore, the insurance law was enacted in order to bridge the gap between the provisions of insurance and the practical insurance.

Third, the insurance law includes more provisions to enhance the protection of insurance contractors than those of the commercial law, such as the duty of disclosure. The provisions for insurance in the commercial law were default provisions, except for the provisions which were viewed as absolutely compulsory in light of the nature of an insurance contract. To the contrary, the provisions in the insurance law which are much more necessary to protect those who are involved with policyholders, such as insurance contractors, shall be one-sided compulsory provisions, and thus, the special provisions which are disadvantageous to insurance contractors shall be prohibited.

Fourth, the protection of insurance contractors between the parties of insurance contracts is better achieved by the governmental regulations, such as authorizations based on the insurance business law in Japan, or the self regulations of underwriters. However, the legislation was essential to regulate rationally the legal relations between insurance contractors and third parties. For example, through the liens against the claims of insurance in the liability insurance, the insurance law solved such a problem.

In this article, we focus on the expansion of the insurance contracts to which the insurance law is applied and the types of insurance contracts, paying attention to the reason why the types of insurance contracts were increased by the insurance law.

### **Main Provisions:**

(1) Insurance contracts (Art. 2 (i) of the insurance law)

Art. 2 (i) of the insurance law stipulates that, irrespective of what the contracts are called, such as insurance contracts, or mutual relief contracts, the insurance contracts to which this law is applied are contracts in which a party promises to provide properties (the “insurance payment”) on the condition that a certain event occurs, while another party pays insurance (including the premium of mutual relief). In contracts for life insurance and accident fixed amount insurance, the property provided by insurers shall be limited to money.

(2) Contracts for accident insurance (Art. 2 (vi) of the insurance law)

The contract for accident insurance is the contract where an insurer promises to compensate for the damages that are caused by a certain

accidental event.

- (3) Contracts for life insurance (Art. 2 (viii) of the insurance law)

The contract for life insurance is the contract where an insurer promises to pay a certain insurance on the condition for a person's life and death (unless the contract for life insurance is the contract for life insurance and accident fixed amount insurance).

- (4) Contracts for life insurance and accident fixed amount insurance (Art. 2 (ix) of the insurance law)

The contract for life insurance and accident fixed amount insurance is the contract where an insurer promises to pay certain insurances on the condition of a person's accident and sickness.

**Editorial Note:**

- (1) The expansion of the scope of the insurance contracts to which the insurance law is applied

Art. 2 (i) of the insurance law clarifies that the insurance law is applied to not only insurance contracts but also contracts for mutual relief. The provisions of insurance in the commercial law were applied to the contracts by insurer corporations and applied *mutatis mutandis* to the contracts by mutual corporations. Generally, the provisions of an insurance contract were interpreted to be applied *mutatis mutandis* or analogically to the contract of mutual relief which the commercial law did not stipulate explicitly. Certainly, unifying the regulations for insurance contracts and mutual relief was regarded with caution. However, the insurance law declares that the insurance contracts include the contracts for mutual relief, because the contract for mutual relief is as necessary to protect insurance contractors as other insurance contracts, as far as the contents of these contracts are similar to each other.

- (2) Increased types of insurance contracts

The types of insurance contract in the insurance law consist of contracts for accident insurance (Chapter 2 of the insurance law), contracts for life insurance (Chapter 3 of the insurance law), and contracts for life insurance and accident fixed amount insurance (Chapter 4 of the insurance law).

The insurance law newly established the contract for life insurance

and accident fixed amount insurance, because the provisions of accident insurance can be applied to the contract for life insurance and accident insurance in the form of compensation for damages but not to the fixed amount insurance that is neither accident insurance nor life insurance.

As I mentioned above, the contract of life insurance and accident fixed amount insurance is a contract where an insurer promises to pay a certain insurance on the condition of a person's accident and sickness (Art. 2(ix) of the insurance law). This contract has in common with the contract for life insurance; both of them are the contracts in which the insurances stipulated by the contracts are paid if a certain insured accident has occurred. The contract for life insurance and accident fixed amount insurance is critically different from the contract for life insurance in that the insured event of the former is accident and sickness. However, it is common to both of these two contracts that insurances can be paid if a person died of accident or sickness.

In the life insurance, the causes of mortality are not limited to accident or sickness and the insurances can be paid if the consequence of a person's death has occurred. To the contrary, in the contract for life insurance and accident fixed amount insurance, the insurances can be paid only if a person died of accident or sickness. To clarify this, Art. 2(viii) of the insurance law stipulates that the contract for life insurance and accident fixed amount insurance is eliminated from the life insurance.

As in the life insurance, the insured person in the contract for life insurance and accident fixed amount insurance is a person to whom the insurers pay the insurances on the condition of accident or sickness and does not mean the insurance beneficiary.

## **8. Labor Law**

### **Partial amendment to the Law Concerning the Improvement of Employment Management, etc. of Part-Time Workers**

Law No. 72, June 1, 2007 (Effective on April 1, 2008)