

New Regulations and Guideline for
Supervision under the Insurance Business
Act of Japan that Became Effective in May
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1. Overview

The Insurance Business Act of Japan (Act no. 105 of 1995, as amended; the “**IBA**”) most recently was amended in 2014 and thereafter the Financial Services Agency of Japan (the “**FSA**”) sought public comment on its proposed implementing regulations and guideline for supervision based on those amendments. In May 2015, the FSA released the results of the public comment procedure and announced its final regulations and supervisory guideline which became effective on May 29, 2016. The IBA amendments and the recently effective implementing regulations and guideline for supervision are expected to have a considerable impact on insurance companies and insurance agents. In this article, we would like to explain the main points of these developments, including the duty to ascertain and comprehend customer intent that has been introduced in the IBA, the duty to provide information to customers that is explicitly stated in the IBA, and the duty now imposed on insurance agents to establish policies and procedures for the proper conduct of business related to insurance solicitation.

2. Introduction of the Duty to Ascertain and Comprehend Customer Intent

The 2014 IBA amendments introduced the duty to ascertain and comprehend customer intent when insurance contracts are executed or insurance solicitation is made.¹ Consequently, insurance

¹ In practice, it will be necessary to develop methods in which the appropriate acquisition and comprehension of customer

companies and insurance agents have to establish internal policies and procedures in order to ensure that they are able to perform this obligation and be in compliance with the law. In addition, as a part of these policies and procedures, documents (such as paper forms)² that have been used to record a customer’s intent and thus which manifest the insurance company’s or insurance agent’s acquisition and understanding of that customer’s intent must be retained and preserved by, as appropriate, the insurance company or the insurance agent.

3. Explicit Duty to Provide Information to Customers

Prior to the 2014 amendments, the IBA contained prohibitions on the making of false explanations regarding, as well as on the failing to provide explanations of the material terms of, an insurance contract to policyholders and insured persons. However, as a result of the 2014 amendments, the IBA now imposes an express affirmative obligation³ on insurance companies and insurance agents to provide information to their customers, either at the time of execution of the insurance contracts or during the insurance solicitation, in addition to retaining the aforementioned prohibited actions in connection with insurance solicitation.

Moreover, the amended IBA provides a series of rules regarding the comparison and recommendation

intent is effected where the insurance solicitation activity is conducted without meeting customers in a face-to-face process (*i.e.*, when using direct mail or through Internet solicitation activities).

² In preparation for the effectiveness of the amended IBA, each insurance company has developed its own form of documents utilized to obtain customer intent. Accordingly, it is expected that independent agents – those insurance agents selling insurance products of more than one insurance company (this term is used in this manner in this article) – will be using multiple forms.

³ After the amendment of the IBA, a breach of the duty to ascertain and comprehend customer intent or to provide information to customers is expressly stated as misconduct and must be reported upon discovery by the relevant insurance company to the FSA.

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of a specific insurance product to a customer from among multiple equivalent alternative products. Under those new rules, independent agents must present a product overview and provide an objective standard or reason⁴ for selecting a proposed particular product from among multiple alternatives which they believe is in accord with their customers' intent. On the other hand, if a specific product is proposed without regard to an objective standard or reason, independent agents must explain the basis on which the selection was made.⁵ Thus, independent agents now have to establish standards or reasons for selecting insurance products in connection with their comparison and recommendation of such products.

4. Rules on Solicitation for Participation in Group Insurance

Prior to the amendments of the IBA in 2014, the regulations on solicitation activities were applicable only to "insurance solicitation," and were not applicable to solicitations for participation in group insurance.⁶ As a result of the amendments, however, the duties described above to ascertain and comprehend customer intent and to provide information to customers also apply to solicitations for participation in group insurance, unless there are circumstances, as provided in the Cabinet ordinance,⁷ where the policyholder (that is, the group sponsor) is

⁴ Such as (i) a product feature, or (ii) the level of insurance premiums.

⁵ Such as (i) a capital tie with a specific insurance company, or (ii) the insurance agent's business strategy.

⁶ This is because the concept of "insurance solicitation" occurs when one is acting as an agent or intermediary for the execution of insurance contracts, such that the insurance agent induces a prospective policyholder to enter into the insurance contract. By contrast, in the case of solicitation for participation in group insurance, the overall insurance contract is in place between the insurance company and the policyholder, and the target of the solicitation activity is not directed at a policyholder, but rather at prospective insured persons.

⁷ For example, a group insurance arrangement where the policyholder is a company (or an organization composed of officers and employees of a company), and where the insured persons are limited to such officers, employees and their relatives.

expected to properly provide the information to the participants on behalf of the insurance company. The rationale behind this amendment is based on the idea that the insured persons in a group insurance arrangement should receive the similar consumer protections which policyholders in an individual (personal) insurance arrangement receive.

5. "Insurance Solicitation" and "Solicitation Related Activities"

The FSA's May 2016 guideline for supervision supplements the definition of the term "insurance solicitation" in the IBA. More specifically, the FSA's guideline states that "insurance solicitation" means: (i) solicitation for the execution of an insurance contract, (ii) explanation of an insurance contract for the purpose of soliciting the execution of an insurance contract, (iii) receipt of an application for an insurance contract, and (iv) other activities, such as serving as agents or intermediaries for the execution of an insurance contract. The FSA's guideline also mentions that whether any specific activities will be deemed to be "other activities" referenced in item (iv) above should be determined in a comprehensive manner taking into consideration two elements. The first element is whether there are any factors indicating unity and continuity with solicitation made by insurance companies or insurance agents.⁸ The second factor is whether the activity in question involves the recommendation or explanation of a specific insurance product.

Importantly, the FSA's guideline for supervision has been amended to provide for a new concept, "Solicitation Related Activities," and imposes on insurance companies and insurance agents the

⁸ Examples include (i) the receipt of compensation from insurance companies or insurance agents, or (ii) a relationship including a capital tie with insurance companies or insurance agents. In respect of (ii), the relationship with insurance companies or insurance agents can be of a non-financial nature (*i.e.*, seconding and dispatching officers or employees between the two firms), but does not include nominal shareholding made as a part of an equity investment.

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responsibility to monitor and supervise persons involved in these activities so long as they are engaged in by insurance companies or insurance agents. The policy reason behind the introduction of this new concept is to extend regulatory oversight to certain activities during the process of executing insurance contracts that do not, strictly speaking, constitute “insurance solicitation” and thus are outside the applicable scope of regulations on “insurance solicitation” in order to enhance and expand consumer protection. The guideline provides a distinction between “insurance solicitation” and “Solicitation Related Activities” as shown in the table below. In practice, it will be necessary for insurance companies and insurance agents to prohibit any persons who are not registered as insurance agents from conducting “insurance solicitation” on their behalf. It also will be necessary for insurance companies and insurance agents to prevent any unregistered persons involved in “Solicitation Related Activities” from conducting activities which circumvent regulations on “insurance solicitation,” such as offering special advantages (such as refunds or rebates of insurance premiums). Moreover, it will be necessary for insurance companies and insurance agents to keep in mind whether the compensation paid to persons involved in “Solicitation Related Activities” has been properly determined⁹ and does not motivate them to conduct “insurance solicitation.”

Activities likely to be considered “insurance solicitation”	Introducing only product(s) of specific insurance companies to prospective customers on a regular basis, and receiving compensation from insurance companies or insurance agents for such introductions.
	Providing affirmative recommendations

	and explanations of specific products by certain service providers, ¹⁰ and receiving compensation from insurance companies and insurance agents for such recommendations and explanations.
Activities considered “Solicitation Related Activities”	<p>Providing information concerning prospective customers to insurance companies or insurance agents without any recommendation or explanation to such prospective customers of insurance products.</p> <p>Providing a service that is primarily intended to present information on insurance products, such as, for example, a Web site comparing insurance products, that is limited to reproducing information received from insurance companies or insurance agents.</p>
Activities that are generally neither “insurance solicitation” nor “Solicitation Related Activities”	<p>Distributing product leaflets in accordance with instructions from insurance companies or insurance agents.</p> <p>Receiving administrative communications and explaining administrative procedures at call centers or by telephone operators.</p> <p>Explaining the general features, mechanics and use of insurance products in the course of financial products presentation meetings with prospective customers.</p> <p>Posting or placing advertisements of insurance companies or insurance agents.</p>

6. Duty of Insurance Agents to Establish Policies and Procedures

Before the IBA amendments in 2014, while

⁹ In this regard, the FSA’s guideline expresses concern to the effect that, depending on the compensation structure, persons involved in “Solicitation Related Activities” will be more likely to tend to recommend and explain specific insurance products without being registered as insurance agents.

¹⁰ This is an example of a service that is primarily intended to present information on products, such as a Web site comparing insurance products, providing affirmative recommendations and explanations of specific products. In contrast, see the next item in which such provision of information – if merely reproduced from insurance companies – is treated as a “Solicitation Related Activity.”

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insurance companies were obliged to establish policies and procedures for properly conducting their business, this requirement was not imposed on insurance agents. Instead, it was expected that the appropriate business operations of insurance agents would be accomplished indirectly through the supervision of such persons by insurance companies. As more and more registered insurance agents began operating independently, however, it came to be recognized that the traditional business model in which insurance companies closely supervise insurance agents would not always be relevant. With this background, the IBA was amended to include an explicit provision on the duty of insurance agents to establish policies and procedures for properly conducting their business operations related to insurance solicitation. As a result, insurance agents are now obligated, depending on their size and types of business engaged in, to have policies and procedures in place regarding (i) the explanation of material terms of insurance contracts to customers, (ii) the proper handling of customer information, (iii) the oversight of outside contractors, if utilized, to ensure the proper performance by such contractors of the agent's business, (iv) the provision of a comparison of multiple insurance products to customers (to be made by independent agents), and (v) the oversight of the operations of a franchise business in which the insurance agent provides instruction and guidance on the business operations of other insurance agents.

While this compliance obligation has been imposed on insurance agents, there are various types of insurance agents, such as employees of insurance companies or employees of an insurance agency firm. In this regard, with respect to such insurance agents who are officers or employees of any insurance company or of an insurance agency firm, the FSA's guideline states that the compliance obligation will be satisfied so long as these insurance agents participate in training sessions provided by their insurance company or insurance agency firm. Thus, it can be said that the regulator has shown some practical

consideration on the obligation for the duty of insurance agents to establish policies and procedures. On the other hand, if insurance agents conduct their business in connection with insurance solicitation that is not covered by the rules or manuals of insurance companies or industry organizations,¹¹ they should establish their own policies and procedures for properly conducting their business.

7. Maintenance of Books and Records and Submission of Annual Business Report

Under the amended IBA, insurance agents of a certain size are obliged (i) to maintain books and records and (ii) to prepare and submit an annual business report to the FSA. More specifically, insurance agents will be subject to these requirements (i) if they represent not less than 15 insurance companies at the end of their most recent business year or (ii) if the amount of fees (commissions, etc.) received from not less than two insurance companies within the same business year is one billion yen or more, in respect of any of three insurance categories (namely, life insurance, general insurance, and small amount and short-term insurance). The introduction of this record-keeping and reporting obligation is, similar to the obligation to have compliance policies and procedures, a response to the advent of large-scale insurance agency firms and independent agents.

8. Summary

In conclusion, the main points from the IBA amendments and the FSA's regulatory actions in response are (i) the enactment of fundamental rules with respect to insurance solicitation (by creating the express duties to ascertain and comprehend customer intent and to provide information to customers), (ii)

¹¹ Such as by making comparisons and recommendations of specific products to prospective customers or by operating a franchise business where the insurance agent provides instruction and guidance on the business operations of other insurance agents.

the increase of regulatory oversight on insurance agents having certain size and features (the duty to establish policies and procedures, the maintenance of books and records, the production and submission of an annual business report, and regulation on comparisons and recommendations of a specific product), and (iii) new regulation on conduct that does not constitute traditional “insurance solicitation” (solicitation for participation in group insurance as well as the concept of “Solicitation Related Activities”). Accordingly, insurance companies and insurance agents have to take various measures¹² in response, including establishing or, alternatively, updating their internal compliance policies and procedures, rules and manuals, preparing documentation forms designed to demonstrate the acquisition and understanding of their customers’ intentions, as well as other appropriate books and record, and creating or, alternatively, updating their record retention and handling policies with respect to these new forms and books and records, and the training and education of employees, both with respect to these latest developments as well as on an on-going basis as part of their general compliance and employee awareness programs.

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¹² Industry organizations, including The Life Insurance Association of Japan and The General Insurance Association of Japan, have released various guidelines in response to the IBA amendments.