

International **Comparative** Legal Guides



Consumer Protection **2021**

A practical cross-border insight into consumer protection law

Second Edition

Featuring contributions from:

ALRUD

Ashurst LLP

Banwo & Ighodalo

Bányaiová Vožehová, s.r.o.
advokátní kancelář

Blake, Cassels & Graydon LLP

Bojorge & Associates

Cozen O'Connor

Gonzalez Calvillo

Hassan Radhi & Associates

MinterEllison

Nagashima Ohno &
Tsunematsu

Pérez Alati, Grondona, Benites
& Arntsen (PAGBAM)

ICLG.com

Expert Analysis Chapter

1

The Relationship Between Consumer Protection and Competition Law
Nigel Parr, Danica Barley & Christopher Eberhardt, Ashurst LLP

Q&A Chapters

7

Argentina
Pérez Alati, Grondona, Benites & Arntsen (PAGBAM):
Luis Diego Barry, María Carolina Abdelnabe Vila, María
Clara Rodríguez Llanos & Sonia Alejandra Del Regno

14

Australia
MinterEllison: Miranda Noble & Geoff Carter

24

Bahrain
Hassan Radhi & Associates: Fatima AIAli &
Mohamed Ali Shaban

31

Canada
Blake, Cassels & Graydon LLP: Jill Lawrie & Emily
Hazlett

38

Czech Republic
Bányaiová Vožehová, s.r.o. advokátní kancelář:
JUDr. Lucie Dolanská Bányaiová, Ph.D. & Mgr.
Zuzana Kulhánková

46

France
Ashurst LLP: Michaël Cousin & Marie Florent

58

Germany
Ashurst LLP: Dr. Fabian Klein & Dr. Michael
Holzhäuser

66

Italy
Ashurst LLP: Denis Fosselard, Gabriele Accardo &
Giulia Carnazza

75

Japan
Nagashima Ohno & Tsunematsu: Oki Mori & Mai
Umezawa

85

Mexico
Gonzalez Calvillo: Edgar Grajeda, Jorge Mondragón,
Enrique Muñoz & Lucía Fernández

94

Nigeria
Banwo & Ighodalo: Azeezah Muse-Sadiq & Mavis
Abada

103

Russia
ALRUD: Ksenia Erokhina

114

Spain
Bojorge & Associates: Marla Vanessa Bojorge Zúñiga

122

United Kingdom
Ashurst LLP: Nigel Parr & Christopher Eberhardt

131

USA
Cozen O'Connor: Michael W. McTigue Jr., Meredith
C. Slawe & Marie Bussey-Garza

Japan

Nagashima Ohno & Tsunematsu



Oki Mori



Mai Umezawa

1 General

1.1 What legislation, regulations and guidelines are relevant to consumer protection in your jurisdiction?

There is no uniform code of consumer law in Japan. The most fundamental law for consumer protection is the Basic Act on Consumer Policies (*shobisha-kibon-hou*). The act stipulates the fundamental principles of consumer policy and responsibilities of businesses; however, it merely stipulates non-binding targets and political policies to be followed by the national government and does not stipulate the legal rights and obligations of citizens to receive relief through court procedure. Specific rules on consumer protection are set out in a number of individual laws. For instance, there are laws that regulate businesses in specific industry sectors (e.g., the Act on Specified Commercial Transactions (*tokutei-shotoribiki-hou*) (the “ASCT”) and the Installment Sales Act (*kappu-hanbai-hou*)), as well as special laws of the Civil Code (e.g., the Consumer Contract Act (*shobisha-keiyaku-hou*) and the Product Liability Act (*seizobutsu-sekinin-hou*)). Among these, with regard to the laws regulating businesses in specific industry sectors, detailed regulations are stipulated in subordinate norms such as Cabinet Orders and Ministerial Ordinances, and in many cases, interpretations of these regulations are indicated in guidelines issued by supervisory authorities. Therefore, it is necessary to understand these interpretations in order to correctly understand the contents of the laws and regulations.

1.2 What is the definition of “consumer” (i.e., who does consumer protection law protect)?

There is no unified definition of “consumer” that is common to all consumer protection laws, and consumers or similar targets to be protected are often defined in individual laws. For example, the Consumer Contract Act, which broadly regulates contractual relationships between consumers and businesses, defines “consumers” as “an individual, excluding those who become a party to a contract as a business or for business purposes”. As described above, individuals, excluding those who act as sole proprietors, in principle, are the targets to be protected.

1.3 Who is/which entities are required to comply with consumer protection law?

There is no unified definition of entities regulated by consumer protection laws, and the definition is based on individual laws.

For example, the Consumer Contract Act defines a “trader” as “a corporation or association, or an individual who becomes a party to a contract as a business or for business purposes”. However, we use the term “business” in this chapter, unless otherwise noted, to refer to entities which are required to comply with consumer laws.

1.4 Which agency/agencies is/are responsible for enforcing consumer protection law (i.e., who is the investigator and who is the adjudicator)?

The Consumer Affairs Agency (the “CAA”) is responsible for investigating and enforcing many consumer protection laws, but such responsibility may differ depending on individual laws.

1.5 Are there any specific bodies that regulate/enforce consumer protection law in specific sectors?

Other specific agencies, which regulate/enforce consumer protection laws, are described in the table below.

Regulatory/ Enforcement Agency	Law
Ministry of Health, Labour and Welfare	Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (<i>yakki-hou</i>) (the “APMD”) (which covers pharmaceuticals and cosmetics, etc.).
Ministry of Economy, Trade and Industry (the “METI”)	Installment Sales Act (which covers credit transactions, etc.).
Financial Services Agency	Financial Instruments and Exchange Act (<i>kinyu-sobin-toribiki-hou</i>). Money Lending Business Act (<i>kashiking-yo-hou</i>).
Ministry of Land, Infrastructure, Transport and Tourism	Real Estate Brokerage Act (<i>takkekeng-yo-hou</i>).
Ministry of Internal Affairs and Communications/CAA	Act on Regulation of Transmission of Specified Electronic Mail (<i>tokutei-denshimail-hou</i>) (which regulates spam mail and direct marketing).

2 Protections in Relation to the Quality and Function of Goods and Services

2.1 Please describe any protections regarding the quality and function of goods and services acquired by consumers.

In relation to laws that regulate labelling related to quality and function, which are necessary for consumers to select products and services, there are laws such as the Act against Unjustifiable Premiums and Misleading Representations (*keihin-hyoji-hou*) (the “AUPMR”), the Household Goods Quality Labeling Act (*katei-yohin-hinshitsu-hyoji-hou*) (the “HGQLA”), the Food Labeling Act, and the Health Promotion Act (*kenko-zoshin-hou*).

2.2 Please outline the substantive tests for these protections.

The AUPMR regulates misleading representations and the offering of excessive premiums in connection with a transaction. Among them, the following three types of regulations are stipulated for misleading representations:

- I. Representation relating to the content of goods or services portrayed as being better than the actual content (unjust misrepresentation of the content of goods or services).
- II. Representation of trade terms of goods or services portrayed as being more advantageous than the actual terms (unjust misrepresentation concerning trade terms of goods or services).
- III. Other unjust misrepresentations (misrepresentations designated by the Prime Minister).

Regulations I. and II. prohibit any representation that (i) misleads general consumers into believing that the content or trade terms of goods or services are significantly better or more advantageous than the actual/competitive businesses' goods or services, (ii) induces customers unjustly, and (iii) is likely to interfere with general consumers' voluntary and rational choice-making.

Regulation III. governs the labelling of goods' country of origin. For example, labelling using a country name or a national flag, etc. other than the country of origin is prohibited, as this makes it difficult for general consumers to discern whether a product was produced in the country of origin.

The HGQLA specifically stipulates what must be displayed concerning the quality of household goods used by consumers on a daily basis and how they should be displayed for each product, etc. For example, regarding textile goods such as sweaters, it is stipulated that the composition of fibres, home washing, etc., care labelling, and the name and address or phone number of the labeller shall be displayed.

The Food Labeling Act stipulates labelling standards for food for sale (matters to be labelled (e.g., name, allergen, preservation method, expiration date, ingredients, additives, nutritional value and caloric value, country of origin, etc.), and matters to be complied with by businesses when labelling), etc. The concrete standards are stipulated by the Food Labeling Standards (Cabinet Office Order), which are subsidiary standards of the Food Labeling Act, for each category of processed foods, perishable foods, and additives.

2.3 What types of goods and services are covered by the protections relating to the quality of goods and services?

The AUPMR broadly covers representations concerning the content and trade terms of goods or services supplied by businesses.

The HGQLA only covers some specific goods, including “textile goods”, “plastic goods”, “electrical appliances and apparatus”, and “miscellaneous manufactured goods” used by general consumers in their daily lives, which are designated by a Cabinet Order as those whose quality is difficult for general consumers to discern at the time of purchase, where there is a particular necessity to discern their quality.

The Food Labeling Act covers all food and drinks. The Food Labeling Standards, which specifically stipulate labelling information, requires the labelling of nutrients in processed foods, etc.

2.4 Are there any exceptions to these protections?

“Food” covered by the Food Labeling Act includes additives but excludes pharmaceuticals, etc. which are covered by the APMD.

2.5 What remedies are available for a breach of the protections in relation to the quality and function of goods and services?

Since these laws are fundamentally administrative laws, when there are violations of these laws, the Commissioner of the CAA, etc. takes administrative actions provided, however, that no administrative actions shall order regulated entities to help victims recover from any damage suffered. In the case of violation of the AUPMR, the Commissioner of the CAA may order the violating business to pay a surcharge; however, the paid surcharge must not be appropriated for consumer recovery. If consumers seek relief from businesses, they must make a claim for compensation based on tort liability, etc. However, in cases where a considerable number of consumers have incurred financial damage according to a contract between the consumer and the business, and where certain requirements are satisfied, a business certified by the Prime Minister (a “Specified Qualified Consumer Organization”) may file a special lawsuit, “Court Proceedings for Redress for Damage”, against a business. If a request by a Specified Qualified Consumer Organization is granted in the Court Proceedings for Redress for Damage, the damages can be recovered by paying a certain amount of money to each consumer. This system came into effect in 2016; however, there have been only four lawsuits filed as of the end of December 2020.

Though it is not a remedy, in order to protect the interests of many unspecified consumers, Qualified Consumer Organizations certified as satisfying the requirements set by the Prime Minister are granted the right to demand an injunction against certain unjust acts of business. In addition to certain acts stipulated in the AUPMR and the Food Labeling Act, the object of a demand for an injunction is limited to certain acts stipulated in the Consumer Contract Act and the ASCT. A Qualified Consumer Organization may file an action in order to exercise its right to demand an injunction.

2.6 Who has or which agencies have standing to initiate proceedings for a breach?

Essentially, the Commissioner of the CAA holds the authority of investigation and execution on the AUPMR. However, since the CAA does not have offices nationwide, some authorities are delegated to local offices of the Japan Fair Trade Commission (and, in very exceptional cases, the ministry in charge of the business), and the prefectures have the authority to conduct investigation and execution. Consequently, each of these organizations may initiate an investigation for a breach.

The HGQLA stipulates the administrative agencies holding authority according to the type of business and the scale of business to be investigated and enforced. The Commissioner of the CAA has the authority to receive a report submitted by a consumer and to investigate them, regardless of the type and scale of the business. In addition, the Minister of Economy, Trade and Industry has the authority for: nationwide manufacturers, labelling contractors and wholesale sellers; the Director-General of Economy, Trade and Industry for manufacturers, labelling contractors and wholesale sellers at the level of only one jurisdiction of Economy, Trade and Industry; the prefectural governor for retail sellers at the level of only one prefecture; and the mayor for retail sellers at the level of only one city.

The Food Labeling Act grants: the Commissioner of the CAA; the Minister of Agriculture, Forestry and Fisheries (excluding Liquor); the Minister of Finance (only Liquor); and the prefectural governors the authority to investigate.

2.7 Describe at least two examples of public or private enforcement of these protections in the last five years, including the conduct/alleged conduct, result and penalties imposed.

The following are examples of the aforementioned protections being enforced:

- I. In August 2017, the Minister of Agriculture, Forestry and Fisheries instructed a business which sold two imported processed food stuffs in subdivided packages without labelling the country of origin, as required by the Food Labeling Act, that it should inspect the labelling of all food sold in retail stores affiliated to the business immediately, and should sell food after promptly correcting the labelling to be in accordance with the Food Labeling Standards.
- II. In June 2020, the CAA ordered a cigarette manufacturer to pay a surcharge of approximately JPY 552 million under the AUPMR, because although the manufacturer had made representations in advertisements displayed at convenience stores, etc. about a limited-period promotion to receive discounts, etc., the manufacturer conducted the limited-period promotion repeatedly, changing advertisements after the limited period had passed. This is the highest surcharge under the AUPMR so far.



3 Protections/Prohibitions in Relation to the Safety of Goods and Services

3.1 Please describe any protections regarding the safety of goods and services acquired by consumers.

As administrative regulations, there are the Consumer Product Safety Act (*shohiseikatsuyo-seihin-anzen-hou*), the Act on Control of Household Products Containing Harmful Substances, (*yugaibusshitsu-kateiyohin-kisei-hou*) and the Food Sanitation Act, amongst others. As a civil regulation, the Product Liability Act is of particular importance. Despite not being under the jurisdiction of the CAA, the Electrical Appliance and Material Safety Act (*denkiyohin-anzen-hou*), the Road Transport Vehicle Act (*doro-unso-sharyo-hou*) which regulates the safety of cars, and the APMD are nonetheless important.

3.2 Please outline the substantive tests for these protections.

The Consumer Product Safety Act stipulates regulations below on “Consumer Products” (i.e., any product supplied mainly for use by general consumers in their everyday lives):

- I. “Specified Products” (Consumer Products which are found to be highly likely to cause harm, particularly to the lives or health of general consumers, as specified by a Cabinet Order. There are 10 in-scope products, including pressure cookers for household use, riding helmets for two-wheeled motor vehicles or motorised bicycles, and oil heaters, amongst others). Technical standards have been established in order to prevent the occurrence of harm as a result of these products. Manufacturers and importers, etc. of Specified Products are required to inspect the Specified Products; they cannot sell such products without labelling them with the PSC mark –  – which indicates that the products meet the technical standards.
- II. “Special Specified Products” (i.e., Specified Products for which the manufacturers or importers thereof have not sufficiently ensured the level of quality necessary to prevent the endangering of the lives or health of general consumers, as specified by a Cabinet Order. There are four in-scope products, including baby beds and lighters, amongst others). Manufacturers and importers, etc. of Special Specified Products shall have their products inspected by a Registered Conformity Inspection Body and may display a PSC mark –  – in order to confirm that the Special Specified Products meet the technical standards.
- III. “Specified Products Requiring Maintenance” (i.e., Consumer Products that are found to be highly likely to cause particularly serious harm to the lives or health of general consumers arising from safety troubles, due to deterioration caused by long-term use making the product unsafe, and which are specified by a Cabinet Order. There are nine in-scope products, including bathtub water heating units, indoor installations, and built-in dishwashers, amongst others). For these products, there are two systems that have been established: (i) the Long-term Use Consumer Product Safety Inspection System; and (ii) the Long-term Use Consumer Product Safety Indication System.
 - (i) The Long-term Use Consumer Product Safety Inspection System stipulates obligations on manufacturers or importers of Specified Products Requiring Maintenance to set the design standard use period (the standard period of use without any safety trouble), inspection periods, and indication of such periods, etc. on the product. This system also requires the owners of Specified Products Requiring Maintenance to provide the owners’ information with manufacturers or importers, and to conduct maintenance such as inspections.
 - (ii) The Long-term Use Consumer Product Safety Indication System requires manufacturers or importers to display warnings about the design standard period of use and deterioration, etc., and is applied to products with no high risks of serious accidents due to deterioration over time but with a large number of accident reports (there are six in-scope products: fans; ventilators; air conditioners; CRT TVs; automatic washing machines; and double-drum washing machines).

The Food Sanitation Act prohibits the sale of food and additives that (i) have deteriorated, (ii) contain or are suspected to contain toxic or harmful substances, (iii) are contaminated or suspected to be contaminated with pathogens, or (iv) involve a risk to human health due to contamination by foreign substances, or on other grounds. The Minister of Health, Labour and Welfare can establish the criteria for the methods of producing, processing, using, cooking, or preserving food or additives and establish standards for the ingredients.

The Product Liability Act shall cause the manufacturer or importer, etc. to be liable for damages arising from the infringement on life, body or property which is caused by a defect in the “Product” (a movable property which is manufactured or processed). “Defect” refers to a lack of safety that the Product ordinarily should provide, taking into account the nature of the Product, the ordinarily foreseeable manner of use, the time of delivery, and other circumstances concerning the Product. Product liability is a responsibility without fault of the manufacturers, etc.

3.3 What types of goods and services are covered by the protections relating to the safety of goods and services?

The Consumer Product Safety Act covers “Consumer Products”; namely, any product to be supplied mainly for use by general consumers in their everyday lives.

The Food Sanitation Act covers all food and drinks as well as additives, except pharmaceutical products, etc. In addition, there are also restrictions on (i) apparatus such as tableware, (ii) containers and packaging, and (iii) toys that may harm the health of infants when they touch them.

The Product Liability Act covers “products”; namely, a movable property which is manufactured or processed.

3.4 Are there any exceptions to these protections?

Under the Consumer Products Safety Act, the following products have their safety regulated by other individual laws and are subject to such regulations, thus are excluded from Consumer Products (regulatory laws are in brackets below):

- ships (Ship Safety Act);
- food, additives and detergents (Food Sanitation Act);
- machines or tools, etc. subject to inspection, and machines or tools, etc. subject to self-labelling (i.e., machines or tools, etc. used for fire defence as specified by a Cabinet Order) (Fire Service Act);
- poisonous substances and deleterious substances (Poisonous and Deleterious Substances Control Act);
- road transport vehicles (Road Transport Vehicle Act);
- containers for filling high-pressure gas (High Pressure Gas Safety Act);
- hunting guns (Ordnance Manufacturing Act); and
- medicines, quasi-medicines, cosmetics, medical devices and regenerative medicine products (APMD).

The Product Liability Act exempts the manufacturer or importer, etc. from liability on the grounds that: (i) the defect of such product could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer, etc. delivered the product; and (ii) in cases where the product is used as a component or raw material of another product, the defect occurred primarily as a result of the compliance with the instructions given by the manufacturer of the

other product, concerning the other product’s design, and where the manufacturer, etc. is not negligent with respect to the occurrence of such defect.

3.5 What remedies are available for a breach of the protections in relation to the safety of goods and services?

Since the Consumer Product Safety Act and the Food Sanitation Act are fundamentally administrative laws and regulations, if there are cases that violate these laws, the Minister of Economic, Trade and Industry takes administrative measures based on the former, and the Minister of Health, Labour and Welfare takes on the latter, provided, however, that no administrative disposition shall help the victims recover from the damage. In order for a consumer to seek remedies from a business, it is necessary for the consumer to make a claim for damages on the basis of tort liability or product liability. Additionally, the system Court Proceedings for Redress for Damage described in question 2.5 is not available in cases in which the safety of goods or services is problematic, since it is restricted to contract-related disputes and, furthermore, excludes life and bodily injury.

3.6 Are there mandatory reporting requirements with respect to the safety of goods or services?

The Consumer Products Safety Act stipulates that a manufacturer or importer who comes to know that “Serious Product Accidents” (i.e., a fatal accident, accident in which an injury or disease which requires no less than 30 days for medical treatment has been caused, accident in which a physical disability specified by a Cabinet Office Order has been caused, carbon monoxide poisoning accident, or fire (recognised by the fire authority)) have occurred with any Consumer Products must report to the Commissioner of the CAA the name and type of the Consumer Products, a detailed account of the incidents, and the quantity of the Consumer Product that the person manufactured or imported, within 10 days of becoming aware of the Serious Product Accidents with regard to the Consumer Products.

Product Accidents that do not amount to Serious Product Accidents are not subject to reporting obligations under laws and regulations. However, according to the guidelines, manufacturers, importers, retailers, and repair businesses of products are required to submit reports to the National Institute of Technology and Evaluation (“NITE”) in the prescribed format.

3.7 Describe any voluntary or mandatory product safety recall regimes.

The Food Sanitation Act, the Food Labeling Act, the Consumer Products Safety Act, the Road Transport Vehicle Act, etc. stipulate the recall order based on the law. However, the administrative agency has discretion to decide whether or not to issue the recall order. In practice, manufacturers, etc. voluntarily recall in many cases and the recall order is rarely issued. Even if manufacturers, etc. voluntarily recall the Consumer Products, the business submits a notice of starting product recall and a periodic report on the progress of the recall, etc. to the METI. However, this is not a legal obligation which is required by the guideline.

In addition, the Food Sanitation Act and the Food Labeling Act, which was amended and will be enforced on June 1 2021, have introduced a new regulation that requires businesses to report information on voluntary recalls to administrative organs.

3.8 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

The following are examples of the aforementioned protections being enforced:

- I. In response to a fatal accident that was suspected to be caused by an abnormality in the components of an air bag mounted in a vehicle, in December 2019, the Ministry of Land, Infrastructure, Transport and Tourism instructed seven manufacturers of vehicles with air bags suspected to be the cause of the accident to report the results of investigations on the cause of the accident and the necessity of recall, based on the Road Transport Vehicle Act.
- II. In February 2018, the Kyoto District Court gave the first decision on a case where many consumers filed lawsuits nationwide based on the Product Liability Act, insisting that they had allergic reactions to wheat by using facial soaps shipped and sold between 2004 and 2010. The court approved the liability of a soap manufacturer and ordered payment of a total of JPY 9.2 million. Since then, several court decisions have approved the liability of the soap manufacturer; however, as for the liability of the raw material manufacturer, the decisions of the court vary, i.e., some decisions approved liability while others dismissed it.

4 Prohibitions Relating to “Conduct” Against Consumers

4.1 Please describe any protections/prohibitions relating to the conduct of persons or businesses (e.g., manufacturers/retailers) which sell or supply goods and services to consumers (“Conduct”). For example, misleading and deceptive conduct, unconscionable conduct, etc.

The Consumer Contract Act regulates unjust solicitations (misleading, overwhelming) and unjust contractual provisions for consumers.

The ASCT prohibits unjust solicitation, obligates delivery of documents, and prohibits false or misleading advertisement for specific commercial transactions such as Door-to-Door Sales, Mail Order Sales, and Multilevel Marketing Transactions, in accordance with the characteristics of each transaction type.

4.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

The Consumer Contract Act regulates unjust solicitations and unjust contractual provisions for consumers. As for the undue solicitations, it regulates two categories below:

I. Misleading

Causing a consumer to be under a mistaken belief and, as a result of such belief, to manifest the intention to be bound by the offer of that consumer contract or by the acceptance of the offer for such contract, through the actions below, in which the business engages when soliciting the consumer to enter into the consumer contract:

- (i) conveying something that diverges from the truth with regard to a piece of material information;
- (ii) providing a conclusive assessment of something whose behaviour in the future is uncertain; or
- (iii) conveying to the consumer that a piece of

material information, or information related to a piece of material information, would be advantageous to the consumer, and intentionally failing to convey a fact regarding that piece of material information that would be disadvantageous to the consumer.

II. Overwhelming

Causing a consumer to manifest an intention to be bound by the offer of a consumer contract, or by the acceptance of an offer for such contract, as a result of being overwhelmed due to the business. This refers to engaging in an action when soliciting the consumer to enter into the consumer contract such as:

- (i) failing to leave the consumer’s residence, etc. in defiance of the consumer’s request that the business leave such place;
- (ii) inflaming a consumer’s anxiety and telling the consumer that it would be difficult to maintain his/her lifestyle without a contract, knowing that a consumer is excessively anxious about maintaining their current lifestyle due to declining judgment by ageing or physical disorder; or
- (iii) making it extremely difficult to restore the original state, prior to performing the obligations of the contract, by performing all or part of the obligations that must be assumed if the contract were concluded, *before* the contract is concluded.

The ASCT regulates the specific transactions below which are likely to cause consumer issues:

- (1) Door-to-Door Sales (transactions such as the sale of goods or the provision of services at a consumer’s residence, etc., or unscrupulous sales on the street).
- (2) Mail Order Sales (transactions for which a business has received a consumer’s offer by postal mail or internet, etc.).
- (3) Telemarketing Sales (transactions for which a business telephones a consumer and solicits him/her during the phone call and receives an offer by the consumer).
- (4) Multilevel Marketing Transactions (transactions of goods or services, wherein a person is induced to sell such goods or services by the possible receipt of a profit, and transactions that involve burden being carried out with such a person).
- (5) Provision of Specified Continuous Services (transactions in which continuous services which will increase the recipient’s physical beauty, or increase the recipient’s knowledge or skills, etc. exceeding a certain amount, are provided).
- (6) Business Opportunity Sales Transactions (transactions in which a consumer is solicited on the grounds that the consumer will receive income through engaging in business activities and causes the consumer to buy and bear the cost of goods, etc. said to be necessary for such business activities).
- (7) Door-to-Door Purchases (transactions in which a business visits a consumer’s residence, and purchases goods, etc.).
- (8) Goods Sent in Absence of Sales Contract Therefor (transactions in which a seller sends goods to a consumer who has not applied for such goods, deeming that he/she is willing to purchase the goods and charges for them unless he/she returns the goods).

In (1), (3), (4), (5), (6) and (7), delivery of a sales contract is obliged and unjust actions (conveying false information, intentionally failing to disclose facts, etc.) are prohibited. In (2), what is to be indicated is stipulated, and misleading advertising and sending email advertising to a person who has not given his/her consent is prohibited.

4.3 Are there any exceptions/exemptions to the protections/prohibitions relating to Conduct?

The regulations of Door-to-Door Sales, Mail Order Sales, Telemarketing Sales, Provision of Specified Continuous Services, and Door-to-Door Purchases do not apply to cases in which the person offering the service concludes a contract for business purposes or as a part of business, or to cases in which goods or rights are sold, or services are provided, to persons residing outside Japan, etc.

The Consumer Contract Act does not apply to labour contracts.

4.4 What remedies are available for a breach of the protections/prohibitions relating to Conduct?

The Consumer Contract Act provides two remedies. Firstly, with regard to contracts induced by solicitations that mislead or overwhelm consumers, the right to rescind a contract is granted. It also stipulates that provisions which unjustly harm the interests of consumers shall be null and void. By exercising the right of rescission, consumers are entitled to receive a refund of the amount already paid due to the restoration duty, and as a result, they are able to recover from the damage. Consumers can be relieved from their obligation to make payments, etc., by invalidation of a contractual clause.

Since the ASCT legislation is administrative in nature, the Commissioner of the CAA imposes administrative dispositions on businesses that violate the ASCT; however, administrative dispositions shall not order businesses to help victims recover from damages. In addition, the ASCT stipulates a cooling-off system, which allows the consumer to cancel the contract unconditionally, within a certain period of time, from the delivery of a contract document describing the matters stipulated by laws and regulations as effective in civil affairs (name of business, date of conclusion of contract, etc.). If the contract document is not delivered, or if there is a defect in the document, the cooling-off period does not commence; thus, the cooling-off period can be set at any time, and the consumer can recover from the damage as a result. Additionally, if a business conveys false information or intentionally fails to disclose facts and the consumer misapprehends and concludes a contract, the consumer may rescind the contract. Furthermore, if the business has concluded a contract for Door-to-Door Sales or Telemarketing Sales of a quantity that considerably exceeds what is normally required in daily life, and the seller has been aware of the excessive amount, the consumer may rescind the contract within one year from the time of the conclusion.

In addition, the Court Proceedings for Redress for Damage conducted by a Specified Qualified Consumer Organization, as described in question 2.5, may be available.

While it is not a remedy, a demand of injunction by a Qualified Consumer Organization is stipulated for specific acts indicated by the Consumer Contract Act and the ASCT.

4.5 List at least two examples of public or private enforcement of the protections relating to Conduct in the last five years, including the breach/alleged breach, result and penalties imposed.

The following are examples of these protections being enforced:

- I. In November 2020, the Tokyo High Court upheld a claim seeking an injunction on the conclusion of consumer contracts including a provision which was in violation

of the Consumer Contract Act, indicating that a business stipulated in membership terms and conditions that the business could revoke membership “if the Company reasonably determines that [a member] causes nuisance to other members” and “if the Company reasonably determines that [a member] is not suitable as a member”. In addition, the business stipulated that “even if a member suffers damage as a result of the Company’s action, the Company shall not be liable for any damages whatsoever”. These provisions were significantly vague, and the Court held the provision which stipulated that the business would not be liable for damages to be an unjust provision completely exempting a business from liability to compensate a consumer for damage arising from default or a tort by the business.

- II. Between December 2019 and January 2021, the CAA ordered administrative dispositions such as business suspension under the ASCT against six business companies as a result of these companies engaging in fraudulent conduct in relation to periodic purchases, such as labelling in a manner that made it impossible for consumers to easily recognise that such purchases were periodic purchases; this fell under conduct through which a business sought to cause a consumer to offer a contract against the consumer’s will regarding Mail Order Sales regulated by the ASCT.

5 Other Protections/Prohibitions

5.1 Does consumer law in your jurisdiction have any other prohibitions/protections not covered by the questions above? If so, please describe these prohibitions/protections.

The Act on Sales, etc. of Financial Instruments obligates financial instrument providers, etc. to explain a risk of loss of principal and important portions of the transaction structure when selling financial instruments, such as savings and insurances, and prohibits the provision of conclusive evaluations on uncertain matters.

The Installment Sales Act obligates the business to indicate terms and conditions of instalment sales, etc. and prohibits credit sales exceeding the credit limit.

The Money Lending Business Act regulates moneylenders offering products such as consumer loans, and prohibits malicious collection and loans exceeding the amount of one-third of annual income.

Additionally, in the revised Civil Code which came into effect on April 1 2020, new rules have been established regarding pre-formulated terms and conditions such as the terms of service of email order services and insurance contracts: “the standard terms of contract” (*teikei-yakkan*).

5.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

The Act on Sales, etc. of Financial Instruments: (i) obligates financial instruments providers, etc. to explain the important facts such as a risk of incurring a loss of principal or exceeding the initial principal, or restrictions on the exercising of rights; and (ii) prohibits the provision of conclusive evaluations on uncertain matters.

The Installment Sales Act stipulates the obligations of the business for each type of contract category. For example, with respect to a contract that uses a credit card – in which the credit

card is used to purchase goods by presenting the card to a seller after predetermining the usage limit amount and payment terms, etc. – the obligation to deliver a document stating the transaction terms and to investigate the payable amount are stipulated.

The Civil Code stipulates that in order to conclude contracts by the standard terms of contract, it must be agreed that the standard terms of contract as the terms of contract will be applied. Alternatively, the intention to apply the standard terms of contract as the terms of the contract must be made apparent to consumers in advance. If a business amends the standard terms of contract in a manner that is disadvantageous to consumers, the amendment must not run afoul of the purpose of the contract and must be reasonable considering the circumstances concerning the amendment, etc.

5.3 Are there any exceptions/exemptions?

The provisions of explaining the duty of the Act on Sales, etc. of Financial Instruments do not apply when a customer is a person specified by a Cabinet Order as having expert knowledge and experiences on sales, etc. of financial instruments.

Many provisions of the Installment Sales Act do not apply in cases where a person concludes contracts for business purposes or as a part of its business.

The regulations under the Civil Code in respect of the standard terms of contract only apply to cases where terms and conditions fall under “the standard terms of contract” (*teikei-yakkan*). The Civil Code sets forth that “the standard terms of contract” are a collection of provisions prepared by a specific person with the purpose of applying them as the terms of a contract for a standard transaction. A “standard transaction” as defined here refers to a transaction conducted by a specified person with an unspecified and large number of persons as the counterparties, in which the uniformity of the whole or part of the transaction is reasonable to both parties. Therefore, in cases where terms and conditions do not fall under this definition, the regulations in respect of the standard terms of contract will not apply.

5.4 What remedies are available for a breach of these protections?

Under the Act on Sales, etc. of Financial Instruments, a customer may claim damages from the providers, etc., of the financial instruments in the event of a violation of the provisions concerning the obligation of explanation and provision of conclusive evaluations. In this case, the providers, etc. are liable without fault, and the loss of principal is presumed to be the amount of damage incurred to the customer.

The Installment Sales Act stipulates the cooling-off of individual credit agreements used for Door-to-Door Sales, etc. Furthermore, the act stipulates: the right to rescind the case of conveying false information; that the right to terminate the individual credit contract will be granted in the case of excessive sales; and that consumers are entitled to receive a refund of the advance payment by exercising these rights.

As for the regulations regarding the standard terms of contract under the Civil Code, if a business fails to agree to apply the standard terms of contract as the terms of contract, or fails to make the intention to apply the standard terms of contract as the terms of the contract apparent to consumers in advance, the provisions of the standard terms of contract will not be applied as the terms of a contract. In addition, if a business amends the standard terms of contract in a manner that

is disadvantageous to consumers, and if this amendment does not satisfy the conditions that the amendment runs afoul of the purpose of the contract and is reasonable in light of the circumstances concerning the amendment, etc., the amendment will not bind the counterparty.

5.5 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

Recent examples of these protections being imposed include:

- I. In January 2020, the Tokyo Metropolitan Government issued to a corporation an order for business improvement, on the ground that the corporation which provided loan services for individuals provided loans which exceeded one-third of the annual income regulated by the Money Lending Business Act.
- II. In February 2019, the METI ordered a registered individual credit purchase intermediary to take necessary measures to improve their business operations according to the Installment Sales Act because it did not properly investigate the cause of complaints from purchasers regarding unjust solicitation, etc.

6 Investigation of Potential Breaches

6.1 What powers does/do the consumer authority/ authorities in your jurisdiction have to investigate potential breaches of consumer law? Describe the key steps in a typical investigation.

Each law stipulates the investigative authority of each administrative organ. For example, the ASCT gives the competent minister the authority to: (i) order businesses to submit reports and to submit books and documents; (ii) conduct on-site inspections of places of business such as stores; and (iii) question workers. Similar authority is often given to administrative organs under other consumer laws. In practice, however, it is often the case that businesses are asked to cooperate in investigations (so-called “voluntary investigations”) before exercising such right to investigate.

6.2 How is an investigation triggered (e.g., *ex officio*, whistleblower or complaint)?

There are various ways in which investigations are triggered, such as the provision of information from related businesses or organisations and general consumers, *ex officio* detection, and whistleblowing.

In order to collect and compile records of complaints regarding consumer affairs, the “PIO-NET” system has been established for the purpose of connecting the National Consumer Affairs Center with Consumer Affairs Centers nationwide. Through the information collected on PIO-NET, Consumer Affairs Centers are able to inform the CAA of matters worthy of attention/investigation.

The Consumer Product Safety Act and the ASCT, etc. stipulate that if any person finds it to be likely that the interests of consumers will be prejudiced, the person may notify the competent minister to that effect and request that appropriate measures be taken, and, if the minister finds the report compelling, he/she is obligated to conduct the necessary investigations and take measures.

6.3 Describe any complaints procedure for (i) consumers, and (ii) businesses.

The procedures for filing a complaint are stipulated in the Administrative Procedure Act, which specifies common rules for administrative activities. Where an administrative agency renders adverse dispositions under laws and regulations to a designated specified person (business), the administrative agency shall take procedures for statements of opinions. There are two types of procedures for a statement of opinions: (i) procedures for hearings; and (ii) grants of opportunity for explanation. This is, however, provided that there are no specific consumer complaint procedures for investigation into the business.

6.4 What is the timeline for a typical investigation?

In general, the authority to investigate under laws and regulations is rarely exercised; voluntary investigations are carried out first, and the authority to investigate laws and regulations may be exercised as necessary. Under the ASCT, the Commissioner of the CAA initially requests consumers and businesses to submit materials voluntarily and to explain their circumstances. If it is deemed necessary to enforce the ASCT, the orders are issued to businesses, etc. for the collection of reports, the submission of materials, etc., and on-site inspections. The period of investigation varies depending on the laws and regulations or cases; however, in recent years it is not uncommon for investigations to last for over a year.

6.5 Are there criminal penalties for non-compliance with a consumer law investigation? If so, provide examples where such penalties have been imposed.

Individual laws by jurisdiction may stipulate criminal punishment in the event of refusal to cooperate with investigations, false reports, obstruction, or evasion of on-site inspections, etc. For example, under the ASCT, if a seller, etc. fails to submit a requested report, provides a false report, or avoids an on-site inspection, the seller, etc. is subject to imprisonment for not more than six months or a fine of not more than JPY 1 million.

6.6 Can investigations be resolved by way of commitments or undertakings?

There is no such system in Japan.

7 Enforcement

7.1 How does/do the consumer authority/authorities seek to enforce consumer law (for example, by administrative decision or by commencing proceedings in court)?

In Japan, there is no system of filing to enforce consumer laws; however, the competent minister may enforce consumer law by administrative decision.

7.2 Is/are the consumer protection authority/authorities bound by a time limit to commence proceedings on breaches?

There is no time limit for the commencement of procedures by the competent minister.

7.3 Describe the enforcement powers/tools available to these bodies (civil, administrative, criminal).

It depends on individual laws. Many laws that regulate businesses in specific industry sectors, such as the Installment Sales Act and the Money Lending Business Act, stipulate criminal penalties in addition to administrative guidance and dispositions. The Consumer Contracts Act, which is a civil law, provides only for civil remedies, such as the right to rescind or the invalidation of contract provisions (except for the procedures for the certification of Qualified Consumer Organizations and Specified Qualified Consumer Organizations). The ASCT provides, in addition to civil remedies such as cooling-off and cancellation rights, for administrative measures in case of violation, as well as criminal penalties.

7.4 Where regulators/enforcement bodies have a choice of enforcement tools/powers, what considerations do they take into account in determining which tools/powers to use?

Essentially, administrative agencies have the discretion to decide whether to impose administrative dispositions, to limit them to administrative guidance, or to decide what kind of measures should be taken in the case of administrative dispositions. However, with regard to the payment order for surcharge under the AUPMR, the Commissioner of the CAA has no discretion and must issue the surcharge order when the case meets the requirements of the law.

7.5 Describe the relevant rules and procedures that must be followed by such bodies (e.g., administrative, judicial).

In general, when the competent minister imposes administrative dispositions stipulated in the consumer laws, the competent minister must comply with the Administrative Procedure Act, which provides that in the case of adverse disposition, such as an order for business suspension, the minister shall provide the person to whom the adverse disposition is to be designated with the reasons for the disposition and provide an opportunity for explanation.

7.6 Is there a right to a stand-alone action and follow on right of action within consumer law? Who has standing to bring these actions?

There are no follow-on actions in Japan. However, under the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers, the “Court Proceedings for Redress for Damage” system has been established in order to address lawsuits. Under the proceedings, in order to collectively recover the damage suffered by a considerable number of consumers, a Specified Qualified Consumer Organization (a Qualified Consumer Organization that meets additional requirements) seeks declaratory judgment on common obligations to consumers at the first stage, and, if a judgment upholds the obligation of a business to pay money, at the second stage, the amount of the claim is determined through Simple Determination Proceedings in which the consumer participates, and the amount of the claim is finally determined. The amount is then paid to the consumers through the Specified Qualified Consumer Organization.

7.7 Is there a statute of limitations for bringing stand-alone or follow on actions?

Claims subject to Court Proceedings for Redress for Damage are limited to certain monetary payment obligations borne by a business against a consumer concerning consumer contracts, and claims such as those for consolation money, medical expenses, and lost profits are excluded from the scope of claims.

7.8 Describe any international or regional cooperative mechanisms (e.g., MOUs) in which your jurisdiction is involved in the enforcement of consumer protection.

Japan is a member of the Organisation for Economic Co-operation and Development (“OECD”) Committee on Consumer Policy (“CCP”) and the International Consumer Protection and Enforcement Network (“ICPEN”). Four consumer organisations, including Consumers Japan, are members of Consumers International (“CI”). In addition, the Cross-border Consumer center Japan (“CCJ”) has been established as a consulting service for consumers who encounter troubles in trading with overseas businesses. The CCJ works in collaboration with organisations such as the Better Business Bureaus (the United States, Canada and Mexico), the Chartered Trading Standards Institute (the United Kingdom), and the Korea Consumer Agency (the Republic of Korea).

8 Appeals

8.1 Describe any appeal processes.

In order to challenge the legality of administrative dispositions undertaken by administrative agencies, there are appeal processes concerning such dispositions, including complaints under the Administrative Complaint Review Act and actions for revocation under the Administrative Case Litigation Act.

8.2 Can consumers or retailers/manufacturers appeal decisions made by the consumer authority/authorities or by a court?

When a business subject to an administrative disposition wishes to seek revocation or modification of a disposition by an administrative agency, it may file a complaint under the Administrative Complaint Review Act. Such request for review of a disposition is not a lawsuit and does not involve the court. Within three months from the day following the day on which the business comes to know of the disposition, the business files a request for review with the administrative agency that made the disposition, and, thereafter, review officers review the disposition and determines, based on the documents provided, as to whether the agency should review it or not. In addition, if a business wishes to seek the revocation of a disposition, it may file a lawsuit for revocation under the Administrative Case Litigation Act. In principle, a business can choose freely whether to file a request for review or a lawsuit for revocation. If a business wants to file a lawsuit for revocation, the business must file a lawsuit with the court within six months from the date when the business became aware of the disposition.

Consumers are not entitled to appeal administrative dispositions.

8.3 Does an appeal suspend the effect of any penalty/ the requirement to pay any fine (if applicable)?

The filing of a request for review or an administrative lawsuit does not automatically suspend the liability to pay penalties, etc. In order to prevent the entry into force of an administrative disposition, it is necessary to file a provisional disposition with the court requesting a stay of execution, based on which the court has the authority to uphold the claim and issue an order of suspension of execution.

9 Current Trends and Anticipated Reforms

9.1 What are the recent enforcement trends in your jurisdiction?

With the spread of COVID-19, the CAA called consumers’ attention three times to health foods claiming prevention of COVID-19, and to disinfectant or antibacterial sprays. The CAA also gave administrative guidance actively and issued administrative guidance in relation to five businesses which sold portable air disinfection goods and six businesses which sold antibody detection kits because they could be in violation of the AUPMR.

9.2 Are there any proposed reforms to consumer law or policy within the next 12 months?

The Act on Sales, etc. of Financial Instruments will be revised drastically and the name of the Act will be changed to “the Act on Provision of Financial Services”. The revised Act will establish a new category of business of “Financial Services Intermediation”, which will be subject to the regulations of the Act. In addition, the Act on Sales, etc. of Financial Instruments is a law comprising solely 10 articles, while the revised Act will comprise over 100 articles and establish detailed regulations for businesses. The revised Act will come into effect in the Autumn or Winter of 2021.

The CAA plans to submit bills in respect of the revised Act on the Deposit, etc., Transaction Agreements of Specified Commodities, etc., and the revised ASCT to the Diet in 2021 in order to prohibit, in principle, deposit, etc., transaction agreements which have caused widespread damage to consumers, as well as to reinforce regulations in respect of fraudulent periodic purchases. The deposit, etc. transaction agreements which have caused widespread damage to consumers concerns transaction agreements where businesses sell goods, etc.; at the same time, the business accepts deposits of such goods, runs a business to operate the goods by themselves or rents the goods to third parties, etc., thereby returning profits to consumers through dividends, etc., or purchasing goods, etc., at a certain price at the expiration of the contract period. Additionally, the CAA is considering making a new law in order to ensure an environment wherein consumers can make transactions on digital platforms safely and securely. The new law will include a definition of “digital platform regarding transactions” and will provide for development of a framework for resolving problems. The bill for this new law is planned to be submitted to the Diet in 2021.



Oki Mori is a partner at Nagashima Ohno & Tsunematsu. He practises in a wide variety of civil litigation and other dispute resolution procedures including, but not limited to, consumer litigation, corporate litigation, commercial litigation, real estate litigation, finance litigation, labour litigation and tax litigation. Moreover, he specialises in consumer law such as cases involving the Act against Unjustifiable Premiums and Misleading Representations, food labelling, product recalls/accident reports, the Product Liability Act, the Consumer Contract Act and the Act on the Protection of Personal Information. He has extensive experience in responding to emergency situations involving governmental authorities such as the Consumer Affairs Agency, mainly in consumer law. In addition, he has obtained many judgments/orders in his favour in administrative litigation and appeal procedures. Furthermore, he was awarded the honour of being named the Dispute Resolution Lawyer of the Year at the ALB Japan Law Awards 2019 hosted by *Asian Legal Business*.

Nagashima Ohno & Tsunematsu
JP Tower, 2-7-2 Marunouchi
Chiyoda-ku, Tokyo 100-7036
Japan

Tel: +81 3 6889 7000
Email: oki_mori@noandt.com
URL: www.noandt.com



Mai Umezawa is an associate at Nagashima Ohno & Tsunematsu. Since joining the firm, she has engaged in a wide variety of civil litigation and other dispute resolution matters, including commercial litigation, matters regarding trading by consumers and businesses, intellectual property matters, labour disputes, and international arbitration. In addition, she has experience in matters involving governmental authorities in Japan, such as the Consumer Affairs Agency and the Personal Information Protection Commission.

She graduated with an LL.B. from the faculty of law of Waseda University in 2013, and a J.D. from Waseda Law School in 2016, and was subsequently admitted to the Bar of Japan in 2018.

Nagashima Ohno & Tsunematsu
JP Tower, 2-7-2 Marunouchi
Chiyoda-ku, Tokyo 100-7036
Japan

Tel: +81 3 6889 7000
Email: mai_umezawa@noandt.com
URL: www.noandt.com

Nagashima Ohno & Tsunematsu is the first integrated full-service law firm in Japan and one of the foremost providers of international and commercial legal services based in Tokyo. The firm's overseas network includes offices in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi and Shanghai, and collaborative relationships with prominent local law firms. In representing our leading domestic and international clients, we have successfully structured and negotiated many of the largest and most significant corporate, finance and real estate transactions related to Japan. In addition to our capabilities spanning key commercial areas, the firm is known for path-breaking domestic and cross-border risk management/corporate governance cases and large-scale corporate reorganisations. Over 500 lawyers of the firm work together in customised teams to provide clients with the expertise and experience specifically required for each client matter.

www.noandt.com

NAGASHIMA OHNO & TSUNEMATSU

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business

Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation

Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms