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The Current Japanese Law Situation after 2006

- The Amendment of Maritime Transport Law (Marine Insurance) -

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Japanese Insurance Law

- Commercial Code 1899

Part II Chapter 6 (Art.629-683)

General Insurance → Insurance Law 2010

Part III Chapter 10(Art.814-841)

Marine Insurance

Assured's Disclosure under Commercial Code



- The Commercial Code Article 644

If the assured fails to disclose **material facts** or tell false facts about material matter **intentionally or by gross- negligence** at the time of the insurance contract, the insurer may **terminate the insurance contract**.

Assured's Disclosure under Insurance Law



- The Insurance Law Article 4

The assured shall **disclose the facts material** to the possibility of the occurrence of the damage covered by the insurance contract **which are requested to disclose by the insurer.**

Disclosure in Japan

Voluntary Disclosure (Commercial Code)

Amended to

Disclosure upon Request (Insurance Law)

which applies to Marine Insurance

Marine Insurance Act in U.K.

- Marine Insurance Act 1906
disclosure by assured
“18(1) Subject to the provision of this section, the **assured must disclose to the insurer**, before the contract is concluded, **every material circumstances**, which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, **the insurer may avoid the contract.**”

Disclosure under Insurance Act



- The Insurance Act 2015

“Non-consumer insurance
(including marine)

3. The duty of fair presentation

(1) Before a contract of insurance is entered into, **the insured must make to the insurer a fair presentation of risk.”**

Remedies under Insurance Act

- “The remedies to non-consumer insurance contracts:
 2. If a qualifying **breach was deliberate or reckless**, the **insurer a) may avoid the contract** and refuse all claims and b) need not return of the premium.
 3. If, in the absence of qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims but must in that event return the premium paid.”Other Remedies; more premium or other terms

Voluntary Disclosure in UK

- English law provides the assured's voluntary disclosure to the insurer and if the assured fails to make to the insurer a fair presentation of risk deliberately or recklessly, the insurer may avoid the contract but The Insurance Act provided more complicated remedies.

Applicable Law of ICC

- The Old Policy 1963

“This insurance understood and agreed to be subject to **English law and usage as to liability for and settlement** of any and all claims”

Applicable Law of ICC

- ICC 2009 Article 19

“This insurance is subject to English law and practice.”

Applicable Law of ICC



- The court may not allow the insurer by the English governing law clause to avoid the consumer protection principle if the marine insurance contract is placed in Japan or between Japanese interests.
- No precedent
- Uncertain
- Law difference between Japan and UK

The Amendment of Japanese Marine Insurance Law



- Disclosure
- Draft Commercial Code Article 820
- “**The assured** and or the insurance contractor **should disclose the facts material** to the possibility of the occurring loss covered by the marine insurance **(the risk)** at the time of the marine insurance contract”

The remedy of the failure of the voluntary disclosure

- The Draft Commercial Code Article 829 provides
“If the assured and or the insurance contractor **fails to disclose the material fact** or discloses false facts related to the risk **intentionally or by gross negligence**, the insurer shall be entitled to **terminate the insurance** contract.”

After Amendment

- The difference between Japanese law and English Law about the disclosure will be smaller.

Insurance Law Chronicle



Japan	England	ICC
1899 Commercial Code General Insurance Marine Insurance Voluntary Disclosure		
	1906 Marine Insurance Act Voluntary Disclosure	
		1963 ICC liability settlement English Law
		1982 ICC not used in Japan
2006 IUMI Tokyo		

Insurance Law Chronicle



Japan	England	ICC
		2009 ICC English Law
2010 Insurance Law General Insurance Disclosure upon Request		
	2015 Insurance Act 2016 non-consumer insurance Voluntary Disclosure	
2018? New Commercial Code Marine Insurance Voluntary Disclosure		

Conclusion

- The Marine Insurance provisions in Commercial Code will be amended very soon as follows:
 - 1 The **assureds' Voluntary Disclosure** of the facts material to the risk
 - 2 The Insurer will be **entitled to terminated the marine insurance contract** in case of the assureds' **intestinal or gross-negligent non-disclosure.**
- BUT MAYBE DELAYED

Thank you.

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