

**International
Comparative
Legal Guides**



Consumer Protection

2024

Fifth Edition

Contributing Editors:

Christopher Eberhardt & Nigel Parr
Ashurst LLP

glg Global Legal Group

Expert Analysis Chapters

- 1** **Protecting the Online Consumer – An Overview of Recent Developments in UK Consumer Law**
Nigel Parr & Christopher Eberhardt, Ashurst LLP
- 7** **Direct Marketing of Goods and Services to Consumers in the EU – GDPR *et al.* at Work**
Dr. Dennis Voigt, MELCHERS Rechtsanwälte PartG mbB

Q&A Chapters

- 12** **Argentina**
Pérez Alati, Grondona, Benites & Arntsen (PAGBAM):
Luis Diego Barry, María Carolina Abdelnabe Vila, María
Clara Rodríguez Llanos & Sonia Alejandra Del Regno
- 19** **Australia**
Ashurst LLP: Melissa Fraser & Adelle Elhosni
- 30** **Austria**
Amann Partners: Dr. Alexander Amann &
Simone Wetzel
- 37** **Belgium**
Ashurst LLP: Irene Antypas & Maxime Narinx
- 48** **Canada**
Blake, Cassels & Graydon LLP: Emily Hazlett
- 55** **China**
Global Law Office: Tim Yimin Liu, Sybil Xueting Yuan &
Cassie Wenjing Li
- 65** **Cyprus**
Harris Kyriakides: Eleni Neoptolemou,
Munevver Kasif & Jomana Nayad
- 74** **France**
Ashurst LLP: Christophe Lemaire & Agathe Camus
- 88** **Hong Kong**
Deacons: Paul Kwan, Michelle Li & Mandy Pang
- 100** **Italy**
Ashurst LLP: Denis Fosselard, Gabriele Accardo &
Giulia Carnazza
- 111** **Japan**
Mori Hamada & Matsumoto: Masahiro Ueda,
Naoto Shimamura, Mizuho Yoshida &
Tetsushi Kamimura
- 120** **Liechtenstein**
Amann Partners: Dr. Alexander Amann &
Simone Wetzel
- 126** **Portugal**
CS'Associados: Miguel Madeira, João Carminho,
Mariana Proença Lobo & Inês Coré
- 137** **Romania**
SIMION & BACIU Law Firm: Ana-Maria Baciu &
Corina Roman
- 147** **Spain**
Monereo Meyer Abogados, SLP: Nadja Vietz
- 155** **Switzerland**
Amann Partners: Dr. Alexander Amann &
Simone Wetzel
- 161** **Turkey/Türkiye**
IAS Partners: Mertcan İpek, Deniz Onat Karagülle &
Begüm Sıla Burak
- 175** **United Kingdom**
Ashurst LLP: Nigel Parr & Christopher Eberhardt
- 185** **USA**
Clarkson: Ryan J. Clarkson, Timothy K. Giordano,
Lauren Anderson & Kelsey Jane Elling

Japan



Masahiro Ueda



Naoto Shimamura



Mori Hamada & Matsumoto

Mizuho Yoshida



Tetsushi Kamimura

1 General

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

In Japan, there is no unified law for consumer protection, however, specific regulations are set forth in individual laws such as the Consumer Contract Act (the “CCA”), the Act on Specified Commercial Transactions (the “ASCT”), the Installment Sales Act (the “ISA”), and the Product Liability Act (the “PL Act”). These are just a few examples, and there are laws with provisions for consumer protection in each industry, such as the Act on Securing Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (the “APMD”) and the Food Sanitation Act (the “FS Act”). For laws regulating businesses in specific industries, detailed regulations are set forth in subordinate norms such as government and ministerial ordinances, and in many cases the interpretations of these regulations are provided in guidelines from the regulatory authorities. Therefore, it is necessary to understand these interpretations in order to properly understand the laws and regulations.

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

There is no uniform definition of “consumer” in consumer protection law; the protected subject is often defined in individual laws. However, since the CCA, which broadly regulates the contractual relationship between consumers and businesses, defines “consumer” as “an individual (one who becomes a party to a contract as a business or for business purposes)”, it is generally understood that individuals who are not sole proprietors or corporations are consumers.

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

There is no uniform definition of the business entities that must comply with consumer protection law; they are defined in the individual laws. For example, the CCA defines “trader” as “a corporation or association, or an individual who becomes a party to a contract as a business or for business purposes”.

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 major consumer protection laws, such as the CCA, the ASCT and the PL Act, however, the regulators vary depending on the law, such as the Ministry of Economy, Trade and Industry (“METI”), which also has jurisdiction over recalls under the PL Act. The Ministry of Health, Labour and Welfare (the “MHLW”), the Ministry of Land, Infrastructure, Transport and Tourism (the “MLIT”) and the Financial Services Agency (the “FSA”) also serve as regulators, particularly for laws related to specific sectors.

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

The main supervisory authorities, with the exception of the CAA, in each sector include the following:

- MHLW: APMD.
- METI: ISA (covering credit transactions), PL Act (relating to recalls).
- FSA: Financial Instruments and Exchange Act (the “FIEA”), Money Lending Business Act.
- MLIT: Real Estate Brokerage Act (the “REBA”), Road Trucking Vehicle Act (the “RTVA”).
- Ministry of Internal Affairs and Communications (“MIC”): Telecommunications Business Act (the “TBA”), Act on Regulation of Transmission of Specified Electronic Mail (the “ARTSEM”).

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.

The Act against Unjustifiable Premiums and Misleading Representations (the “AUPMR”) is a law that restricts representations in business-to-consumer transactions. It prevents misleading representations of goods and services from being made regarding their quality, functions and other transactional factors by regulating premiums and representations in connection with those transactions to ensure fair competition and thereby protect the interests of general consumers.

In addition, fair competition codes that are the voluntary rules of industry groups have been seen across numerous industries.

The AUPMR in general restricts basic categories of misleading representations, and there are other individual laws and regulations that apply to each category. For example, the Health Promotion Act restricts misleading representations of

foods that are made available for sale in Japan and also restricts such representations of functional claims about food, and the APMD restricts false or deceptive advertising regarding pharmaceuticals, quasi-pharmaceutical products, cosmetics, medical devices and regenerative medicine products, while the FIEA protects financial merchandise and the REBA real estate sales and agents.

2.2 Please outline the substantive tests for these protections.

The AUPMR prohibits businesses from making representations that fall under either of the following criteria in connection with transactions of goods or services supplied by those businesses:

- Representations that the quality, standards or any other particular characteristics of goods or services are, contrary to fact, significantly superior to or more advantageous than those of the actual goods or services or the same or similar goods or services offered by other businesses, thereby tending to unjustly induce customers and interfere with general consumers' voluntary and rational choice-making.
- Representations about pricing or any other trade terms for goods or services that could be misunderstood by general consumers as being significantly more favourable than the value of the actual goods or services or the same or similar goods or services offered by other businesses, thereby tending to unjustly induce customers and interfere with general consumers' voluntary and rational choice-making.
- Beyond what is listed in the preceding two items, any representations by which any particulars relating to transactions of goods or services are likely to be misunderstood by general consumers and which are designated by the Prime Minister as such, and considered likely to unjustly induce customers and interfere with general consumers' voluntary and rational choice-making.

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

The AUPMR applies to all goods and services when entering into transactions with Japanese consumers.

2.4 Are there any exceptions to these protections?

The AUPMR applies to overseas sellers without branch offices or representatives in Japan if they make any representations to enter into transactions with Japanese consumers, as well as domestic sellers.

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 are administrative laws when the protections are breached, only administrative actions will be taken and no remedies to consumers are contemplated in the administrative process. Consumer remedies will be achieved in civil litigation.

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

Mainly the CAA will conduct administrative actions for breaches of the AUPMR.

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.

Under the AUPMR, sanctions for violating the law are: (1)(a) compliance with administrative orders to rectify the violation; (b) taking preventive measures; or (c) both; and (2) payment of administrative penalties that equal 3% of the sales of the misleadingly represented goods or services. The CAA recently sanctioned many disinfectant manufacturers (including in February, April, May, November and December 2023) for making representations in advertisements that their products have the function of "space disinfection" even though there is no supporting evidence.

The administrative penalty for one of the manufacturers in April 2023 was approximately 600 million yen, and approximately 7 million yen for another in November 2023.

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.

The major administrative laws and regulations that the CAA has authority over regarding product safety in Japan include the Consumer Product Safety Act (the "CPSA"), the Act on Control of Household Products Containing Hazardous Substances, and the FS Act. As for civil laws and regulations, the PL Act, which protects consumers as a special law under the Civil Code, is of particular importance. Other important regulatory laws that are not under the CAA's authority include the Electrical Appliances and Materials Safety Act (the "EAMSA"), the Road Transport Vehicle Act (the "RTVA") and the APMD, among other laws related to various industrial sectors.

3.2 Please outline the substantive tests for these protections.

The CPSA classifies "consumer products" (products supplied mainly for use by general consumers in their daily lives) into three categories (Specified Products, Special Specified Products, and Specified Products Requiring Maintenance) and regulates them individually.

"Specified Products" are consumer products that are deemed to be particularly dangerous to the lives or health of general consumers and include 10 that are designated by Cabinet Order (e.g., pressure cookers for household use, motorcycle helmets, oil heaters). For these products, technical standards have been established to prevent the occurrence of hazards, and manufacturers, importers and sellers cannot sell them unless they display the Product Safety of Consumer Products ("PSC") mark to indicate that the products have been inspected for conformity to the technical standards.

"Special Specified Products" are those whose quality is not sufficiently ensured by the manufacturer or importer to prevent them from endangering the lives or health of general consumers, with four products, including cribs and lighters, designated by Cabinet Order. Similar to Specified Products, Special Specified Products must be inspected and bear the PSC mark before being sold, however, in addition to undergoing voluntary inspections, they must be inspected by a registered inspection agency.

“Specified Products Requiring Maintenance” are consumer products that are recognised as having a high risk of causing serious harm to the lives or health of general consumers due to safety hazards resulting from deterioration caused by long-term use and other factors. Nine products are designated by Cabinet Order (e.g., bathtub water heaters, built-in dishwashers and dryers). These products are subject to two safety systems: the Long-life Product Safety Inspection System; and the Long-life Product Safety Labeling System. Under these systems, manufacturers or importers of Specified Products Requiring Maintenance must set the design standard use period (standard use period without safety hazard), inspection period, labelling, etc. for their products, and certain products (fans, ventilation fans, air conditioners, CRT televisions, fully automatic washing machines, and drum-type washing machines) must indicate the design standard use period and warnings regarding deterioration, among other information.

Under the FS Act, business operators are required to comply with the standards established by the MHLW for the methods of production, processing, use, preparation or preservation of foods or additives, as well as the standards for specifications of raw materials. The law also prohibits the sale of foods or additives that (i) have deteriorated, (ii) contain or are suspected to contain toxic or harmful substances, (iii) contain or are suspected to contain pathogens, or (iv) may pose a risk to human health due to the inclusion of foreign substances.

The PL Act holds manufacturers, importers and sellers liable for damages arising from infringement on life, body or property caused by “defects” in “products” (manufactured or processed movable property). The term “defect” means that the product lacks the safety that it should normally have, taking into account the nature of the product itself, its normally foreseeable use, the time of delivery, and other circumstances pertaining. If a product has a “defect”, the manufacturer, importer and seller must be held liable for product liability even if they are not negligent.

Other product-specific laws exist, such as the EAMSA for electrical goods and the RTVA for motor vehicles.

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

The CPSA mainly covers products supplied to general consumers for use in their daily lives (consumer products).

The FS Act covers all foods, beverages and additives, excluding pharmaceuticals and certain other products. It also regulates (i) utensils such as tableware, (ii) containers and packaging, and (iii) toys that may be hazardous to the health of infants and young children if they come into contact with them. Pharmaceuticals, quasi-drugs, cosmetics, medical devices and regenerative medicine products are covered by the APMD.

The PL Act covers “products”, i.e., movable property that has been manufactured or processed.

Other product-specific laws exist, such as the EAMSA for electrical goods and the RTVA for motor vehicles.

3.4 Are there any exceptions to these protections?

The CPSA exempts certain products that are subject to safety regulations under other laws, such as ships, marine engines and equipment, fire extinguishers, food, cleaning agents, poisonous and deleterious substances, quasi-drugs, cosmetics, medical equipment, vehicles, and high-pressure gas containers.

The PL Act provides an exception that exempts manufacturers, importers or sellers from product liability in the following cases:

- (i) the defect in the product could not have been discovered in light of the state of scientific or technical knowledge at the time the manufacturer, importer or seller took delivery of the product; or
- (ii) where the item is used as a component or raw material of another product, the defect is mainly the result of following the instructions given by the manufacturer of the other product with respect to its design, and the manufacturer, importer or seller of the item was not negligent in causing the defect.

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

In the case of violation of administrative regulations such as the CPSA or the FS Act, the relevant minister may issue an administrative penalty against the business operator or a court may impose a criminal penalty, but these actions do not directly contribute to the consumer’s recovery of damages.

Therefore, in order for consumers to seek financial recovery, they must file a claim for damages based on breach of contract, tort liability, or product liability against the business operator.

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

Under the CPSA, a manufacturer or importer that becomes aware of a Serious Product Accident involving a consumer product shall, within 10 days of becoming aware of the accident, report the name, model and quantity of the product involved and details of the accident to the CAA director-general. A “Serious Product Accident” is defined as an accident resulting in death, injury or illness requiring medical treatment for 30 days or more, disability as defined by Cabinet Order, carbon monoxide poisoning, or fire as recognised by the fire department.

Although product accidents that do not fall under Serious Product Accidents are not subject to reporting requirements under the CPSA, according to the recall guidelines, product manufacturers, importers, retailers and repairers are required to report such accidents in the prescribed form to the National Institute of Technology and Evaluation (“NITE”).

3.7 Describe any voluntary or mandatory product safety recall regimes.

The CPSA, the FS Act, the Food Labeling Act (the “FLA”), the RTVA and other laws stipulate recall orders based on the respective laws. In practice, however, it is unusual for recall orders to be issued, since manufacturers, importers and sellers often voluntarily recall their products before the administrative agency issues an order. When a product is voluntarily recalled, the business operator submits a notification of commencement of product recall and a periodic report on the progress of the recall to METI in practice, although it is not a legal obligation.

On the other hand, the FS Act and the FLA require business operators to report information on voluntary recalls to administrative agencies.

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:

- In January 2024, the MLIT issued a corrective order in accordance with the RTVA against fraudulent activities in the application for vehicle type designation, requiring automobile manufacturers to correct the violations and report on measures to prevent recurrence, as well as to promptly report any vehicle models that may be in non-compliance with the standards if a recall is necessary.
- In October 2021, the Supreme Court affirmed the decision of the Fukuoka High Court and the liability of a soap ingredient manufacturer in a case where many consumers sought damages from the manufacturer under the PL Act for causing allergic reactions from wheat used in facial soap that was shipped and sold between 2004 and 2010.

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 ASCT prohibits such Conduct while protecting consumer benefits. Specifically, it includes rules that business operators should obey for certain types of transactions that tend to cause problems for consumers such as Door-to-Door Sales, Mail Order Sales, Telemarketing Sales, and Multilevel Marketing Transactions.

The CCA prohibits solicitation by using intimidation or other improper means to mislead or overwhelm consumers. In addition, individual clauses of contracts may be held to be null and void in some cases by the CAA.

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

For example, under the ASCT, if a seller or service provider advertises terms and conditions under which it sells a good or provides a service via Mail Order Sales (including e-commerce), the seller or service provider must indicate the following information concerning such goods or services in any advertising:

- (i) the price of the good or consideration for the service;
- (ii) the timing and means of payment of charges for the good or consideration for the service;
- (iii) the timing of delivery of the good or provision of the service;
- (iv) information concerning the ability of consumers or customers to withdraw any offers for sales contracts for the good or cancel such contracts; and
- (v) any other information specified by the relevant METI Ordinance (e.g., the name of the seller or service provider).

It is fairly common in Japanese practice to provide the foregoing information as “advertisement based on the ASCT” to which a link is placed separately from the terms of use on the websites of businesses.

In accordance with the CCA, for example, clauses are null and void if they seek to totally discharge the business entity from liability to compensate consumers for damages attributable to default, tortious acts, defects, etc. Furthermore, clauses seeking to partially discharge the business entity from, or to partially limit, liability arising from intentional acts or gross negligence, clauses seeking to profit from cancellation fees paid by consumers, and clauses restricting the rights of consumers or creating additional obligations on the part of consumers contrary to public policy, which unilaterally impair the interests of consumers contrary to fair and equitable principles, are null and void.

In addition, since the CCA prohibits solicitation by using intimidation or other improper means and entering into contracts induced by solicitation to mislead or overwhelm consumers, they are granted the right to rescind contracts.

4.3 What types of goods and services are covered by these protections/prohibitions? Is the payment of a price for these goods/services always required for their enforceability?

The ASCT applies to specific commercial transactions, as described in question 4.1 above. The CCA applies to all goods and services when entering into transactions with Japanese consumers.

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

As the ASCT is intended to protect consumers, certain provisions of the ASCT do not apply when an individual enters into certain commercial transactions for business purposes or as part of a business.

The CCA does not apply to labour contracts.

4.5 Are there any specific rules which apply in relation to online marketplaces?

Transactions between business entities and users in online marketplaces fall under Mail Order Sales in the ASCT and thus the applicable provision shall apply.

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

Since the ASCT is an administrative law, when the protections are breached, only administrative actions will be taken and no remedies to consumers are contemplated in the administrative process. The ASCT allows for a “cooling-off” system for certain specific commercial transactions (excluding Mail Order Sales). “Cooling-off” means the unconditional cancellation of a contract after making an offer for or concluding that contract within a certain period after receiving certain legally required documents.

The remedies (voidable clauses and revocable acts) for breaching the CCA are as described in question 4.2 above.

4.7 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.

In June 2023, the CAA ordered a provider of Mail Order Sales to suspend its related business activities for six months. While the

initial special price for regular purchases was displayed in large red letters for emphasis, the subsequent sales prices, payment periods, cancellation conditions, etc. were displayed in a manner that was difficult to understand.

In February 2020, the Tokyo District Court held that a lease contract was not a “consumer contract” because it was concluded by a corporation, and rejected the plaintiff’s claim to rescind the contract.

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 Civil Code provides various protections for all transactions, not limited to those with consumers. For example, persons under 18 years of age have the right to cancel contracts. It also provides the right to cancel contracts for those who enter into them by mistake, meaning the actual judicial act of unintentionally concluding the contract does not correspond to the person’s true intention. Another key rule is provided for standard transactions that are to be agreed upon with unspecified, large numbers of people and to be executed with pre-formulated terms and conditions (“**Standard Contract Terms**”).

The Act on the Protection of Consumers Who Use Digital Platforms for Shopping (the “**DPF Act**”) provides protections for users regarding transactions on digital shopping platforms.

The ARTSEM prohibits the sending of advertising e-mails and SMS messages without opt-in consent from the recipients.

The Payment Services Act prohibits certain payment service businesses such as the issuance of prepaid payment instruments (e.g., digital points issued in exchange for payments) and the exchange of crypto assets without registration.

The AUPMR also prohibits bait-and-switch advertisements, which refer to luring customers by advertising products that are not available for purchase. Further, it prohibits stealth marketing, meaning representations that are difficult for consumers to discern as advertising. In addition, the law prohibits excessive premiums for goods or services.

The ISA regulates instalment sales and intermediation of credit purchases including credit card payments.

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

Under the Civil Code, persons under the age of 18 have the right to cancel contracts unless their legal representative consents to the execution of the contract. A person who enters into a contract by mistake has the right to cancel it if the mistake is significant in light of the purpose of the contract and the commercial practice of the transaction. Individual terms in the Standard Contract Terms are deemed to be agreed to if either the parties agree to apply the Standard Contract Terms as the terms of the contract or the preparer of the Standard Contract Terms expresses its intention to apply those terms as the terms of the contract in advance. Further, the preparer may update individual terms in the Standard Contract Terms unilaterally if the updates are reasonable and made public in advance.

Under the DPF Act, users on digital shopping platforms have the right to request the platform to disclose the contact information of the business seller with whom they have concluded transactions on the platform so that they can exercise their claims against the seller. In addition, if the platform receives requests from the CAA to take down unsafe or deceptive

products or services sold on the platform, the platform may remove them without incurring any liability to the sellers.

The ISA imposes various obligations on businesses providing instalment sales and intermediation of credit purchases, such as the requirement that credit card acquirers must register to conduct their business. Further, the acquirers are required to screen their credit card merchants to protect consumers from problematic transactions using credit cards.

Under the AUPMR, for example, if an influencer is compensated by a company for publicly recommending its product on social media, the recommendation must also indicate that it is an advertisement by displaying, for instance, “PR” or “Ad”; otherwise, it would be stealth marketing. The law provides detailed calculation rules for determining excessive premiums for goods or services. The maximum values are calculated based on two categories: premiums for everyone; and premiums for lottery winners.

5.3 Are there any exceptions/exemptions?

Under the Civil Code, there are two key exceptions to a minor’s cancellation right. Cancellation is not permitted for transactions in which a minor uses the allowance that his/her legal representative authorises his/her to use. Also, if a minor pretends to be an adult (18 years of age or older at the time of concluding an agreement), he/she loses her cancellation right.

There are a few important exceptions to the right of cancellation based on mistakes. The first exception is when a mistake arises from a misunderstanding of the factual background on which the person relied on entering into the contract, but said background is not disclosed to the counterparty. The second exception is that a person makes a mistake due to gross negligence; provided, however, this exception is not available for e-commerce consumer transactions with businesses unless the businesses display a confirmation screen in accordance with the Act on Special Measures of the Civil Code Concerning Electronic Consumer Contracts and Electronic Acceptance Notice.

If Standard Contract Terms unilaterally prejudice the interests of the counterparty in violation of the fundamental principle, the individual terms in the Standard Contract Terms are not deemed to have been agreed upon.

Under the DPF Act, the user’s right to request disclosure is not available if the person’s claim is 10,000 yen or less.

The ISA does not apply to business-to-business transactions.

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

Under the Civil Code, even when a person under 18 years old exercises their cancellation right, and they are not obliged to return all the benefits that they have already received as performance of the contract, they must only return the benefits to the extent that they have been enriched by the contract.

The Installment Sales Act gives a right to cancel individual credit purchases if the seller gives false information or in the case of excessive sales and a right of cooling off in the case of Door-to-Door sales, Telemarketing, and other similar types of sales.

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.

On June 9, 2022, the CAA issued an administrative order to a sushi restaurant chain for displaying bait-and-switch

advertisements of sea urchins. The order requested the company to make a public announcement to explain that the advertised products are not available for purchase and to take corrective measures to prevent recurrence.

On May 12, 2023, the Kanto Local Finance Bureau (“**KLFB**”) issued a business improvement order against a company that exchanged crypto assets. In this case, the background is that the KLFB previously requested the company to report on the status of the management of the user property, the return of user property, and the plans for the return of user property, but the company failed to report these matters. The order requested the company to properly manage users’ assets and to report the status of performance of its liabilities.

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.

As for administrative actions, each individual law has its own investigation processes, although the processes are on the whole similar to each other. Taking the ASCT as an example, it vests in the competent minister the power to order companies to submit reports, books and documents, to conduct on-site inspections of the business and to interrogate business personnel.

In terms of criminal sanctions, police and prosecutors have compulsory investigation power including search and seizure and arrest of personnel with a warrant.

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

Investigation triggers are not expressly set out in laws, and authorities have the discretion to initiate an investigation. Authorities typically realise consumer issues through receipts of complaints, whistleblowing, or *ex officio* monitoring of websites and coverage of mass media.

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

There are no uniform laws governing complaint handling procedures. In some sectors, especially in the financial industry sector, the regulations require the business to publish contact information to receive complaints and to handle customer complaints properly. Typically, each administrative authority publishes contact information to receive complaints and information about the potential violation of laws.

In criminal procedures, anyone can file a request to prosecute violators with police and prosecutors.

6.4 What is the timeline for a typical investigation?

The timeline of these investigations is not specified in the laws, and thus, it varies depending on the laws and regulations and the individual cases.

While the specific investigation procedures also vary depending on multiple factors including the severity of the suspected violation, the authority usually first contacts a business to ask for explanations and relevant materials. In many

cases, the authority will request meetings to discuss and gain a better understanding of the situation.

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

Each statute provides criminal penalties for failure to comply with a statutory investigation. For example, under the ASCT, if a business fails to submit a requested report, submits a false report, refuses or circumvents an on-site inspection, the relevant personnel are subject to imprisonment for no more than six months and/or a fine of no more than JPY 1 million.

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

Currently, there is no such system in Japan. However, the AUPMR will have a commitment procedure added in autumn 2024. Under this procedure, the CAA first may inform a company that is alleged to have displayed misleading representations regarding the content or the trade terms of goods or services of the suspected violation. If the company applies for a corrective action plan to prevent the misleading representations and the application is approved by the authority, it will be exempted from an administrative order and a surcharge penalty. This procedure is supposed to be used only for non-serious violations.

7 Enforcement

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

The consumer authority enforces consumer law by administrative decision without the involvement of the courts.

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

There are no time limits to commence administrative proceedings on breaches.

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

Enforcement methods vary from one law to another. For example, the CCA provides only civil remedies of cancellation and invalidation of contracts and injunctive relief for Qualified Consumer Organizations. The ASCT stipulates not only civil remedies such as cooling-off and cancellation but also administrative measures (e.g., an instruction, an order suspending the business, and an order prohibiting executives from conducting a business) and criminal penalties. Currently, the AUPMR prepares only administrative measures (e.g., an order to prevent recurrence, payment of surcharges, guidance, advice and recommendations) against misleading representations, but the amendment to the AUPMR will introduce criminal fines of no more than JPY 1 million for the misleading representations regarding the content or the trade terms of goods or services from autumn 2024.

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?

In general, the administrative authorities have broad discretion in deciding which administrative measure to take. From a practical standpoint, key factors include the number of affected consumers, the economic impact of the violation, the seriousness of the violation, the scale of the company involved, and the intentional or malicious nature of the violation.

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

When a consumer authority takes an administrative action, it must comply with the Administrative Procedure Act. For example, if the authority wants to issue an administrative order, the business must first be given an opportunity to be heard.

If a criminal authority commences an investigation, it must follow the Criminal Procedure Act. Among others, the authority generally must obtain a warrant from a judge if they want to conduct a compulsory search and seizure and/or make an arrest.

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?

Civil, administrative, and criminal actions are all separate. Therefore, there are no follow-on rights that allow consumers to join administrative or criminal investigations and/or enforcement measures.

Civil actions can be brought by affected consumers, Qualified Consumer Organizations, or Specified Qualified Consumer Organizations. More specifically, Qualified Consumer Organizations may bring a civil action for injunctive relief against businesses. Specified Qualified Consumer Organizations may file a class action lawsuit under the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers. This class action has two stages. In the first stage, a Specified Qualified Consumer Organization may seek a declaratory judgment on common obligations to pay compensation to consumers, and, if the judgment acknowledges the obligation, in the second stage, the consumers can join the proceedings and an individual amount for each of their claims is decided.

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

Private actions seeking damages are subject to statutes of limitations. In general, a damage claim based on a breach of a contract is subject to a limitation period of the earlier of: (i) five years from the time when the creditor became aware that she can exercise the right; or (ii) 10 years from the time when the right can be exercised. A damage claim based on a tort will expire on the earlier of: (i) three years from the time when an injured party becomes aware of the damage and the tortfeasor; or (ii) 20 years from the time of the tort.

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 and the International Consumer Protection and Enforcement Network (“ICPEN”).

8 Appeals

8.1 Describe any appeal processes.

With respect to administrative decisions made by administrative agencies, there are appeal procedures available to challenge their legality, such as appeals under the Administrative Appeals Act and revocation actions under the Administrative Case Litigation Act.

As for appeals under the Administrative Appeals Act, an operator must file a request for review with the administrative agency that made the disposition within three months of the date of knowledge of the disposition. The examiner then examines the disposition and, based on the materials submitted, determines whether or not there is any reason for the request for review.

When a business operator wishes to challenge the validity of an administrative disposition in court, it may file a lawsuit for the revocation of the administrative disposition with the court based on the Administrative Case Litigation Act. The suit must be filed with the court within six months from the date of becoming aware of the disposition.

In principle, the business operator is free to choose whether to file a request for examination or a lawsuit for revocation.

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

Consumers are not entitled to appeal administrative dispositions.

Retailers/manufacturers may appeal to the administrative agency or court that issued the order if they are the party against whom the administrative action was taken, but not if they are not a party to the action.

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

According to the principle of non-suspension of execution (Article 25 of the Administrative Appeals Act and Article 25(1) of the Administrative Case Litigation Act), the effect of an administrative disposition, including an order to pay a fine, is not automatically suspended by the filing of a petition for review or an action to set aside the administrative disposition. In order to suspend the effect of an administrative disposition, a petition for stay of execution must be filed and approved on the grounds of “urgent necessity to avoid serious damage caused by the disposition, the execution of the disposition, or the continuation of the proceedings” after filing a revocation action with the court.

9 Current Trends and Anticipated Reforms

9.1 What are the recent enforcement trends in your jurisdiction?

In recent years, the Consumer Affairs Agency has increased its efforts to detect so-called “No. 1 advertising” methods (e.g.,

“No. 1 in satisfaction” or “No. 1 in word-of-mouth popularity”). These claims, without sufficient evidence, constitute a violation of the AUPMR. However, cases where inappropriate research methods are used to reach conclusions that are favourable to the company have been raised as a concern. When making such representations, it is necessary to confirm sufficient evidence in case the CAA requests such evidence.

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

The law amending the AUPMR, which was passed and promulgated in May 2023, is expected to take effect in autumn 2024 as it is scheduled to come into force on a date to be determined by a Cabinet decree within a period not exceeding 18 months from the date of promulgation. The main changes are as follows:

- (i) **Introduction of a Commitment Procedure**
The new commitment procedure is designed to remedy the problem promptly by exempting companies that have made misleading or other illegal representations from the application of a measure order and a surcharge payment order if they apply for a corrective action plan and receive approval from the Prime Minister.

- (ii) **Revision of the Surcharge System**
The amount of sales that cannot be determined for the period on which the surcharge is to be calculated may be estimated.
The amount of the surcharge may be added (1.5 times) to the amount of the surcharge for the trader who has received a surcharge payment order within 10 years prior to the violation.
- (iii) **Extension of Penalties (Direct Penalties)**
Under the current AUPMR, penalties for misrepresentation of quality or condition are applied only when a violation occurs in response to an order for action by an administrative agency. After the revision of the AUPMR, these acts will be subject to direct penalties (fines of up to JPY 1 million).
- (iv) **Introduction of provisions for disclosure requests by Qualified Consumer Organizations**
Qualified Consumer Organizations may, in certain cases, request a business operator to disclose materials showing reasonable grounds to support the representations made by the business operator, and the business operator is required to make efforts to comply with the request.



Masahiro Ueda is a counsel of the firm and is admitted to practise in Japan and New York. He is engaged in general corporate legal affairs with a focus on litigation and dispute resolution related to employment & labour law and intellectual property, and he handles a wide range of general corporate matters, including business-to-consumer transactions and digital platforms involving the Act against Unjustifiable Premiums and Misleading Representations and the Consumer Contract Act. His extensive writing on consumer-related laws and IT laws include the *ICLG to: Class and Group Actions Laws and Regulations*, Japan chapter, (co-author for the 2023 and 2024 editions), *Introduction to Generative AI Law* (co-author, Asahi Shimbun Publications Inc., 2023), *Law and Practice for App Businesses* (Nihon Kajo Publishing Co., Ltd., 2022). and *Series on Practical Issues of Corporate Litigation: Internet Litigation* (co-author, Chuokeizai-sha, Inc., 2017).

Mori Hamada & Matsumoto
16th Floor, Marunouchi Park Building
2-6-1 Marunouchi, Chiyoda-ku, Tokyo 100-8222
Japan

Tel: +81 3 6266 8796
Email: masahiro.ueda@mhm-global.com
LinkedIn: www.linkedin.com/in/masahiro-ueda-42083



Naoto Shimamura is a senior associate at Mori Hamada & Matsumoto and is licensed in Japan, California and New York. He mainly engages in data protection, e-commerce, consumer protection, generative AI, fintech, intellectual property, litigation, and issues related to cyberspace and has assisted in numerous legal challenges with global clients. He also teaches consumer law at Ochanomizu University. He has a long list of publications, such as *Chambers Global Practice Guides Data Protection & Privacy 2023* (Japan Chapter) (co-author, *Chambers and Partners*, 2023) and *Q&A: Digital Health and Law [2nd ed.]* (co-author, Shojihomu Co., Ltd., 2022).

Mori Hamada & Matsumoto
16th Floor, Marunouchi Park Building
2-6-1 Marunouchi, Chiyoda-ku, Tokyo 100-8222
Japan

Tel: +81 3 6266 8977
Email: naoto.shimamura@mhm-global.com
LinkedIn: www.linkedin.com/in/naoto-shimamura



Mizuho Yoshida is a senior associate of the firm admitted to practise in Japan. She specialises in a wide array of practice areas, including litigation, transactions in the healthcare and pharmaceutical sectors, corporate law, corporate governance, and consumer law, including international disputes among other industries. In the course of her practice, she has received a variety of consultations regarding laws related to consumer-oriented businesses, such as the design of sales schemes for consumers and the handling of personal information, and has extensive knowledge of consumer-related acts, including the Consumer Contract Act and the Act on Specified Commercial Transactions.

Mori Hamada & Matsumoto
16th Floor, Marunouchi Park Building
2-6-1 Marunouchi, Chiyoda-ku, Tokyo 100-8222
Japan

Tel: +81 3 6266 8994
Email: mizuho.yoshida@mhm-global.com
URL: www.mhmjapan.com/en/people/staff/15370.html



Tetsushi Kamimura is a partner of the firm admitted to practise in Japan. He has comprehensive knowledge and experience in dispute resolution and transactions involving intellectual property in the fields of TV broadcasting, entertainment, contents business, software, and Internet-related technologies. He also has significant practice experience in consumer-related areas such as the Consumer Contract Act and the Act against Unjustifiable Premiums and Misleading Representations. He has written broadly on intellectual property issues and consumer issues, including the *ICLG to: Class and Group Actions Laws and Regulations*, Japan chapter, (co-author for the 2023 and 2024 editions), *Getting the Deal Through – Right of Publicity 2019* (Japan Chapter) (co-author, *Law Business Research Ltd*, 2019) and *Legal Practice of Consumer Trading* (co-author, Shojihomu Co., Ltd., 2015).

Mori Hamada & Matsumoto
16th Floor, Marunouchi Park Building
2-6-1 Marunouchi, Chiyoda-ku, Tokyo 100-8222
Japan

Tel: +81 3 6266 8508
Email: tetsushi.kamimura@mhm-global.com
URL: www.mhmjapan.com/en/people/staff/610.html

Mori Hamada & Matsumoto is a full-service law firm in Japan. Established in 2002, the firm operates from its main office in Tokyo, Japan. The firm also has branch offices in other major cities, including Nagoya, Beijing, Shanghai, Singapore, Bangkok and Yangon, allowing it to serve clients across Asia and beyond. Mori Hamada & Matsumoto is particularly renowned for its expertise in corporate law, mergers and acquisitions transactions, finance and securities, dispute resolution, intellectual property, tax law and competition law.

www.mhmjapan.com

MORI HAMADA & MATSUMOTO

International Comparative Legal Guides

The **International Comparative Legal Guide (ICLG)** series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Consumer Protection 2024 features two expert analysis chapters and 19 Q&A jurisdiction chapters covering key issues, including:

- Protections in Relation to the Quality and Function of Goods and Services
- Protections/Prohibitions in Relation to the Safety of Goods and Services
- Prohibitions Relating to “Conduct” Against Consumers
- Other Protections/Prohibitions
- Investigation of Potential Breaches
- Enforcement
- Appeals
- Current Trends and Anticipated Reforms