



Viewpoint

在日米国商工会議所意見書

共済と金融庁規制下の保険会社の
間に平等な競争環境の確立を
Ensure a Level Playing Field
between *Kyosai* and FSA-
Regulated Insurance Companies

保険委員会
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ACCJ Viewpoint

RECOMMENDATION

The American Chamber of Commerce in Japan (ACCJ) calls on the Government of Japan (GOJ) to create a level regulatory playing field between licensed insurance companies regulated by the Financial Services Agency (FSA) and *kyosai* (mutual aid cooperatives that provide insurance products). Under Japan's international trade commitments, the GOJ has a responsibility to ensure that *kyosai* are subject to rules and regulations equivalent to those applied to foreign insurance companies. Until FSA-regulated foreign and other insurance companies and *kyosai* receive equivalent treatment under Japan's laws and regulations, the GOJ should prohibit any insurance business expansion by *kyosai* (including, for example, offering new or modified products).

To ensure a level playing field, all *kyosai* that compete with FSA-regulated insurance companies should be brought under identical FSA supervision under the Insurance Business Law (IBL). Doing so would help ensure equivalent conditions of competition between *kyosai* and FSA-regulated insurance companies and would enhance the welfare of Japanese consumers by requiring *kyosai* to, for example: 1) contribute to a safety net system to protect policyholders from potential failures; 2) follow the same rules and regulations as FSA-regulated insurance companies, including the same solvency margin-related regulations; 3) submit to FSA supervision consistent with globally accepted standards in accordance with the International Association of Insurance Supervisors' "Insurance Core Principles and Methodology;" and 4) be subject to the same taxes as their FSA-regulated competitors.

As a first step toward achieving equivalent conditions of competition, the ACCJ urges the GOJ to conduct a thorough review of the rules and regulations governing the supervision and inspection of all *kyosai* to determine their conformity with FSA standards of supervision for FSA-regulated insurance companies.

ISSUES

I. "Regulated" *kyosai*: Benefiting from regulation by ministries or agencies other than the FSA

"Regulated" *kyosai* are established under laws other than the IBL and regulated by agencies with jurisdiction over defined industry sectors outside of financial services. For example, the

提言

在日米商工会議所(ACCJ)は日本政府に対し、共済(相互扶助組織であり、保険商品を提供する協同組合)と、金融庁規制下にあり免許を付与されている保険会社との間に規制面で平等な競争環境を確立するよう要請する。日本政府は国際通商上の日本の責務に従い、共済を外資系保険会社と同等の規制下に置くべきである。外資系を含む競合民間保険会社と共済が日本の法制下で平等な扱いを受けるようになるまで、共済による新商品や既存商品の改定といった保険事業拡大を一切禁止すべきである。

平等な競争環境を確立するために、金融庁の規制下にある保険会社と競合するすべての共済は、金融庁の同一規制下に置かれ、保険業法が適用されるべきである。例えば、以下のような措置を共済に義務づけることにより、共済と金融庁規制下にある保険会社との平等な競争条件の確保および日本の消費者の福利促進がもたらされるだろう。1) 破綻が起きた際に契約者を保護するため、セーフティネットへ資金を拠出すること、2) 準備金積立規制や市場行動ルール等、金融庁規制下の保険会社に適用されるものと同じルール・規制が適用されること、3) 国際的に受け入れられている保険監督者国際機構(IAIS)の「保険コア・プリンシプル(保険監督基本原則)」に則った金融庁の監督下に置かれること、4) 金融庁規制下の競合者と同じ水準の税金を負担すること。

平等な競争条件の確立に向けた第一歩として、ACCJは日本政府に対し、共済に対して行われている監督・検査が準拠する法規制が、民間保険会社に対する金融庁の監督基準と適合しているかを、すべての共済について徹底的に見直すことを要請する。

問題点

I. 「制度共済」は金融庁以外の省庁の規制下で優位な立場にある

「制度共済」は、保険業法以外の法律の下に設立され、金融サービス以外の特定業界を管轄する省庁によって規制されている。例えば農林水産省は農業者を対象としたJA共済連等を、経済産業省は中小企業とその従業員を対象とした共済(事業協同組合等の共済事業)を規制している。同様に厚生労働省は、労働組合員等を対象とした全労済、県民共済グループの元受団体である全国生協連、さらに生協組合員を対象としたコープ共済連等を管轄している。

制度共済は構成員の範囲があまりにも広いものが多く(消費者、労働者、県民等)、僅かな出資金を支払って構成員

Ministry of Agriculture, Forestry and Fisheries (MAFF) regulates the agricultural *kyosai*, JA Kyosai, while the Ministry of Economy, Trade and Industry (METI) regulates certain *kyosai* aimed at small to medium-sized companies and their employees. Similarly, the Ministry of Health, Labor and Welfare (MHLW) regulates the Seikyo Group of Cooperatives. These regulated *kyosai* include the labor cooperative, Zenrosai, the prefectural cooperative, Zenkoku Seikyoren, and the consumer cooperative, the Japanese Consumer's Cooperative Union (CO-OP Kyosai).

Because many regulated *kyosai* membership categories are so broad (for example, consumers, laborers or residents of a prefecture), and virtually any consumer can purchase an insurance product from these regulated *kyosai* after paying a nominal fee, products offered by regulated *kyosai* are, in effect, being sold to the general public. For example, within the Tokyo area, a membership in the prefectural cooperative (Kenmin Kyosai) can be purchased for a one-time fee of only 200 yen, and an associate membership in a JA branch that carries JA Kyosai products can be purchased for just 1,000 yen. Out of JA Kyosai's approximately 9.69 million policyholders, 4.97 million are such associate members.

In addition, JA Kyosai has long been allowed by law to sell up to 20 percent of its policies to the general public (i.e., without requiring even the modest fee discussed above). Because FSA-regulated insurance companies are now able to provide a full range of products to consumers in rural areas, there is no reason for JA Kyosai to continue to enjoy this special treatment. Moreover, other regulated *kyosai* now enjoy the same 20 percent privilege enjoyed by JA Kyosai. For example, in 2006, METI amended the law that governs its small to medium-sized company *kyosai*, allowing 20 percent of their sales to be made to the general public.

Agencies such as the MAFF, MHLW and METI, which supervise JA Kyosai, Zenrosai, major regulated *kyosai*, and other cooperatives, are not expert financial regulators. Their inspection standards are not as rigorous, transparent, or as stringently enforced as those of the FSA. Unfortunately, the FSA is currently not authorized to oversee the fiscal soundness or risk management systems of such regulated *kyosai*, and does not have the authority to

になれば、実質的に誰でもこうした制度共済から保険商品を購入することができることから、制度共済は商品を実質的に不特定多数に販売していると言える。例えば東京都では、出資金200円を一度払えば都民共済の組合員になることができ、またJA共済連の商品を取り扱う各地のJAへは、出資金1000円を払えば農業者でなくても准組合員になることができる。なお、約969万人の組合員のうち、約497万人を准組合員が占めている。

さらに、JA共済連については、農業協同組合法によって、組合員の利用高の2割までは、上述の割安な出資金さえ払う必要のない員外利用が認められている。今日、金融庁規制下の保険会社はいかなる地域においても十分な範囲の保険商品を提供することが可能であり、JA共済連がこのような特別待遇を享受し続ける理由はない。また一方で他の制度共済もJA共済連と同様の優遇措置を享受している。例えば2006年に経済産業省は、販売高の2割まで員外利用を認めるといった[JA共済連と同様の]ルールを、中小企業共済を規制する法律に盛り込む改正を行った。

JA共済連、全労済をはじめとした大手制度共済や他の共済を監督している農林水産省、厚生労働省、経済産業省といった省庁は、金融監督の専門家ではない。こうした省庁の検査基準は金融庁のそれに比較すると緩く、透明性が低く、運用においても厳格性に劣る。残念なことに、金融庁は制度共済の財務の健全性、リスク管理を監督する権限を現在持っておらず、また、共済の販売員について市場行動検査を行う権限も持っていない。制度共済を金融庁の透明でルールに基づいた規制体系から除外することは国際通商上の日本の義務に反し、日本の保険消費者の保護を弱めることになる。

このような緩い規制環境に置かれた制度共済は、すでに日本の保険市場において大きなシェアを占めている。例えば[日本共済協会の]最新の公表資料によると、金融庁以外の省庁に規制されている制度共済は、保有契約件数で見ると日本全体の生損保・共済契約の約33%を占めており、また生命保険・生命共済契約の個人保険分野(年金保険を除く)でのシェアは約32%にもおよび。

II. 異なる規制基準は規制ギャップを生み出し、金融庁のベターレギュレーションに向けての努力に反する

2006年4月、金融庁は保険業法改正を行い、少額短期保険業者制度(少短制度)を創設した。この少短制度の創設により、改正前まで無認可であった共済は2009年3月末までに以下のいずれかの手続きをとることを求められた。1) 保険業法下で保険会社の免許を申請する、2) 保険業法下で少額短期保険業者としての登録を申請する、3) 廃

engage in market conduct inspections of *kyosai* sales agents. Exempting regulated *kyosai* from the FSA's transparent and rules-based system of regulation is inconsistent with Japan's international trade commitments and provides less protection for Japan's insurance consumers.

This lax regulatory environment has allowed regulated *kyosai* to command a substantial share of the Japanese insurance market. For example, according to the most recent data available, *kyosai* regulated by ministries or agencies other than the FSA hold approximately 33 percent of all insurance policies (excluding fixed and variable annuities) in force in Japan, including a 32 percent share of the market for individual life insurance products.

II. Different regulatory standards create gaps and are inconsistent with FSA's own efforts toward better regulation

In April 2006, the FSA created the small amount, short-term insurance provider (SASTIP) program through amendment of the IBL. The SASTIP system required previously unregulated *kyosai*, by the end of March 2009, to: (1) become licensed under the IBL as an insurance company; (2) register under the IBL as a "SASTIP insurance company"; or (3) close down operations. *Kyosai* businesses operated by public interest corporations were required to meet the requirements of the SASTIP system by November 30, 2013, in line with the Public Interest Corporation Reform Law.

The FSA's stated goal for the SASTIP program was to "protect policyholders by making unregulated *kyosai* subject to regulation under the Insurance Business Law. "The ACCJ welcomed creation of the SASTIP program as a step in the right direction and urged the GOJ to take additional measures to bring all *kyosai* under FSA supervision identical to that for foreign and other FSA-regulated insurance companies.

On April 21, 2010, however, the government released for public comment a proposal to place (a) public interest corporation *kyosai* and (b) the *kyosai* that were unregulated at the time of the SASTIP program's implementation in a new category, "authorized specified insurance providers" under the regulation of the FSA or the *kyosai*'s respective supervising ministry or agency. The April 26 closing date of the public

comment period. The public interest corporation *kyosai* was to be regulated by the FSA, while the *kyosai* that were unregulated at the time of the SASTIP program's implementation were to be regulated by the relevant ministry or agency. The public interest corporation *kyosai* was to be regulated by the FSA, while the *kyosai* that were unregulated at the time of the SASTIP program's implementation were to be regulated by the relevant ministry or agency.

Financial Services Agency (FSA) is the purpose of the "from now, specific persons as counterparties and as the legal basis of insurance acceptance to be carried out in the future without recognition of mutual aid. Insurance Business Law of insurance companies, including regulation of the target of insurance policyholders and protection of insurance policyholders" as the first step. [At the time of the establishment of the system,] ACCJ is the direction to be taken as the first step. The establishment of the system of mutual aid is welcomed at the same time, the FSA regulation of the foreign capital system including mutual insurance companies and similarly, all the system of mutual aid is supervised by the FSA, the Japanese government is requested to take measures to ensure that.

However, on April 21, 2010, the Japanese government is the mutual aid business regulation of the existence of the examination. (a) public interest corporation is the mutual aid, and (b) mutual aid system implementation without recognition of mutual aid. The mutual aid, the new introduction of the "recognized specific insurance companies" category. On the classification, the FSA or the main supervisory agency regulation of the placement of the policy of the public comment. Regrettably, the opinion submission deadline, the 4th day after the 26th day of April.

In addition, the government is continuing the same content of the Insurance Business Law amendment bill, the government's policy meeting with sufficient discussion to the end of the session to the Diet. The bill (on November 12, 2010 when the bill was passed). Under the bill, the small amount short-term insurance companies are different from the recognized specific insurance companies. The small amount, the short-term is not a commodity that can be handled, and in addition, a certain scale exceeded as the insurance company's license is not obtained without the business being able to be carried out. In addition, public interest corporations are mutual aid business is supervised by the FSA, not the main supervisory agency of the supervision of the target.

The same service providers for different regulatory standards is set. This is the gap of the regulation, the government is the market of the winner to be selected. ACCJ is the FSA and the Japanese government as a whole, the mutual aid system purpose of the origin of the insurance policyholders protection of the achievement of the maximum effort, the recognized specific insurance companies and the exceptional regulatory category is created so as not to be requested. In short, all the mutual aid is the insurance business law, the FSA regulation of the foreign capital system including mutual insurance companies and the same regulation of the placement of the policy of the public comment.

III. Mutual aid's relaxed supervision system is consumer protection and contradiction

Mutual aid is the sale of insurance products in the FSA regulation of the insurance companies and direct competition. For consumer protection, the mutual insurance companies are requested to be carried out. However, the mutual aid and mutual insurance companies are the same [consumer] protection regulation is not applied. For example, mutual aid is life

comment process was unfortunately only three business days after the release.

The government subsequently submitted to the Diet a bill that would amend the Insurance Business Law as proposed in the public comment process without having a thorough discussion at the government's policy conference (the bill was later passed on November 12, 2010). Under this legislation, "authorized specified insurance providers" – unlike SASTIP insurance providers – would not be limited to selling only small amount, short-term products, and would not be required to become a licensed insurance company if they exceeded a certain size. Furthermore, *kyosai* businesses operated by public interest corporations will be supervised by the ministry or agency that currently supervises them, not by the FSA.

Having different standards of regulation for providers of the same services creates regulatory gaps and allows the government to pick winners in the market. The ACCJ respectfully urges the FSA and the broader GOJ to do its utmost to achieve the original policyholder protection goal of the SASTIP system and refrain from creating additional carve-outs such as the "authorized specified insurance providers" regulatory category. Indeed, all *kyosai* should be brought under the IBL and subjected to FSA regulation that is identical to that applied to foreign and other FSA-regulated insurance companies.

III. Lax oversight of *kyosai* inconsistent with consumer protection

Because *kyosai* sell insurance products to the public in direct competition with FSA-regulated insurance companies, the same consumer protection concerns that apply to private insurers should logically apply to *kyosai* as well. Nevertheless, *kyosai* are not subject to the same safeguards. For example, *kyosai* do not contribute to the Life Insurance Policyholder Protection Corporation or maintain the same high levels of reserves. In the case of regulated *kyosai*, they are not subject to FSA supervision consistent with globally-accepted standards in accordance with the International Association of Insurance Supervisors' "Insurance Core Principles and Methodology" and are not required to receive FSA inspections or file regular, detailed reports with the FSA.

保険契約者保護機構への資金拠出や民間保険会社と同等水準の責任準備金等の積立てを求められていない。さらに制度共済においては、金融庁の規制下に置かれていないことから、国際的に受け入れられているIAISの保険監督基本原則に則った金融庁の検査を受けたり、金融庁へ定期的な報告を行ったりすることも求められない。

こうした厳格性に劣る監督の下では、消費者保護が弱められてしまう。消費者保護のために金融庁規制下の保険業者に厳しい規制を課す必要があるのであれば、同様の商品を販売するすべての競合者にも同じく厳しい基準の規制を課すべきであり、共済も例外ではない。

IV. 日本政府による制度共済の優遇措置は、日本政府に課されているGATS上の義務に反している

日本政府は世界貿易機関(WTO)の「サービス貿易に関する一般協定(GATS)」の下で保険・保険関連サービスを含む金融サービスに関して具体的な合意事項をいくつか採択した。これらの合意事項は共済を例外とすることを認めていないにもかかわらず、政府はGATS上の日本の義務に反し共済に対して競争上の優遇措置を取り続け、金融庁規制下の外資系保険会社に不利な待遇を与える結果となっている。政府はGATS上の日本の義務に従い、共済を金融庁規制下の外資系保険会社と同じ規制下に置く義務がある。

制度共済への優遇措置は政府が日本の金融・資本市場の健全な育成を促進する能力を損ない、金融改革の下でこれまでに達成した成果を脅かすこととなる。さらにはGATS上の日本の国際通商上の義務に関する問題を提起している。

結論

共済は元来、相互扶助の目的を共有する個人が集まって形成される協同組合であった。しかしいまや共済は数千万人もの顧客を抱え、最大手の共済にいたっては多くの金融庁規制下の保険会社よりも大量の共済保険を引き受け、より多額の資産を保有し、民間の金融サービス提供会社のネットワークをも活用して商品を販売しており、共済が保険会社として[他の保険会社と]直接競合していることは明らかである。したがって、平等な競争条件が確立されるまで、共済の事業拡大および新市場への参入は許されるべきではない。

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Such lax oversight means less protection for consumers. If robust regulation of FSA-regulated insurers is necessary for consumer protection, the same standards should apply to all competitors selling similar products, including *kyosai*.

IV. Government of Japan's favorable treatment of regulated *kyosai* inconsistent with its GATS commitments

The GOJ made specific commitments under the WTO General Agreement on Trade in Services (GATS) with respect to financial services, including insurance and insurance-related services. Those commitments do not allow any exemptions for *kyosai*, yet the GOJ continues to provide *kyosai* with competitive advantages and accord FSA-regulated foreign insurance companies less favorable treatment inconsistent with Japan's GATS obligations. The GOJ has a responsibility to adhere to its GATS commitments by ensuring that *kyosai* are subject to rules and regulations that are equivalent to those for FSA-regulated foreign insurance companies.

The favorable treatment accorded to regulated *kyosai* undermines the GOJ's ability to promote the sound development of Japan's financial markets and threatens the progress made to date under its financial reforms. Further, it raises concerns with regard to Japan's international trade commitments under the GATS.

CONCLUSION

Kyosai were originally conceived as cooperatives formed by groups of individuals with the common purpose of mutual aid, or "*sougo fujo*." But with customers numbering in the tens of millions, with the largest *kyosai* writing more policies, holding more assets than many FSA-regulated insurance companies and distributing their products through networks of private sector financial services companies, it is clear that *kyosai* are directly competing as insurance companies. Therefore, until a level playing field is established, *kyosai* should not be allowed to expand their businesses or enter new markets.