



# Investors Protection

- Legal Aspects and New Movement-



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# Rules on Financial Transactions: how to protect investors?

- Rules on risk transfer: when and under what conditions
- Rules on activities of financial institutions (do's and don'ts)
- Prohibiting some types of transactions
- Ensuring viability of financial institutions

# Rules on Risk Transfer

- Not eliminating risks: setting rules in advance and let investors decide
- Consumer Contracts Act
- Cooling – off (e.g. Act on Investment Advisors)

# Rules of Risk Transfer (cont'd)

- Pecuniary damages equivalent to the denial of risk transfer ex post
- Case law on “duty to explain” (tort under the Civil Code)
- Authority of servants and agents (eg Securities Exchange Act)

# Rules on do's and don'ts

- Prohibition of fraudulent acts or misrepresentations
- Duty to provide disclosure documents
- Duty of reporting
- Relied on in private disputes – workable as rules on risk transfer

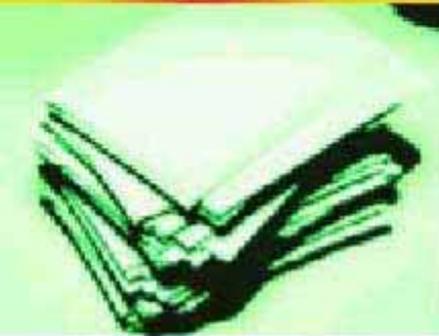
# Prohibition of some types of transactions

- Taking deposits by nonbanks
- Prohibition of black markets
- Prohibition of financial services without licenses



# Prudential Regulation of Financial Institutions

- Eliminating risks due to viability of financial intermediaries
- Total “protection” – deposit insurance
- Schemes for bank failure



# What has been done in Japan?

- Heavily regulated market until 1980's
- Many rules of “do's and don'ts”
- Only basic rules on risk transfer
- Case law arose from Commodities trade – least regulated industry (at that time)

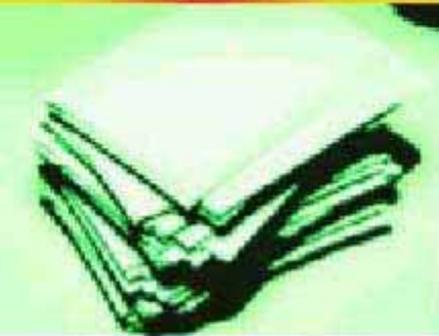


## What has been done in Japan? (cont'd)

- Increase of new financial products
- Rules on risk transfer has developed
- Case law on duty to explain
- Consumer Contracts Act (2000)
- Act on Sales of Financial Products (2000)
- Investment Services Act

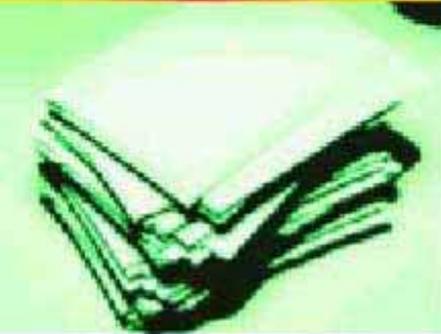
# What has been done in Japan? (cont'd)

- Failure of financial institutions come true
- Prudential regulation
- Rules in case of failure



# Conclusion and Remaining Issues

- Rules on financial transaction: infrastructure to enable decision of investors
- Various measures shall be combined
- Remaining issue: competition



# New Movement

-Investment Services Law (provisional title)(1)

## ■ Purpose and Objective

1)Enhancement of user protections

2)Enhancement of user's convenience

Promotion of financial innovation

3)Development of market infrastructure

bearing comparison with major countries  
and regions



## Investment Services Law (cont'd)



- 1) Cross-sectional protection of users  
= Establishing a comprehensive and cross-sectional framework
- 2) Flexible regulatory structure  
= introducing different rules depending on the condition of transaction, character of financial instrument, or knowledge and experience of investor



## Investment Services Law (cont'd)

- Coverage of the Investment Services Law

Criteria:

- 1) Contribution of money and possible return of money

- 2) In connection with assets or index

- 3) Taking risks with an expectation of higher returns

ex) Gov bonds, Corporate Bonds, Stocks ,  
Interests in trusts, derivatives

# Investment Services Law (cont'd)

- Overall framework of conduct of business regulations

- 1) Relationship with disclosure requirements
- 2) Requirement for suitability
- 3) Introducing regulatory duty for explaining based on the civil duty to explain under the Financial Instruments Sales Act as a duty in the business regulation
- 4) Restriction of unsolicited promotions



## Investment Services Law (cont'd)

6) Handling fee disclosure

7) Obligation of presentation of being a  
investment services player

8) other remaining issues (ex. Restriction of  
advertisement, etc)



Professional Investors or General Investors  
=Realization of both proper protection of  
users and facilitation of provision of risk  
capital



## Investment Services Law (cont'd)

### ■ Other subjects

- Collective Investment Scheme
- Disclosure requirement
- Stock Exchange
- Self Regulatory Organizations
- Enforcement
- Responding to globalization
- Financial and economic education



# Investment Services Law (cont'd)

## ■ New Challenge

Current: Sectional laws by business type

Future: Transaction Law

+ Institutional Law

(how to enter the business)

Key word: Cross Sectional

Does this new framework work?