

The Financial Consumer Protection Act

ABSTRACT

With the Financial Consumer Protection Act, which recently passed the National Assembly, set to take effect in March 2021, the financial authorities are preparing subordinate statutes such as the enforcement decree to implement the law. Insurance companies should prepare for changes caused by the implementation of the law, extending the scope of the six major sales regulations application, and introducing financial advisory business and the right to terminate illegal contracts. On the other hand, financial authorities need to prepare reasonable implementation measures considering the characteristics of the insurance industry and products through extensive consultations.

1. Enactment of the Act

The Financial Consumer Protection bill was passed by the National Assembly in March and the Financial Consumer Protection Act (hereafter the Act) is scheduled to take effect from the end of March 2021. Many features proposed by the government bill, such as extending the scope of the six major sales regulations application, and introducing financial advisory business and new rights to terminate illegal contracts, have been included. However, the sales commission disclosure obligation has been omitted from the final draft. Financial authorities are currently working on subordinate statutes (e.g., the enforcement decree of the Act), which include scopes, judgment criteria, and procedures for each regulation application, and planning to complete them within this year.

2. Major Contents

(The Same Regulation for the Same Function) The Act reorganizes and systematizes financial products, which are currently regulated by each financial sector, into protection,

investment, savings, and loan categories. Insurance products belong to protection type products, and other services or products similar to insurance products (e.g., mutual aid, DCDS) may be regulated as protection type products as prescribed by the Enforcement Decree. Further, mortgage loans or credit loans provided by insurance companies are likely to be regulated as loan type products.

(Financial Advisory Business) The Act introduces the financial advisory business based on the principle of independence which does not allow concurrent management of business, affiliation, or dual-hatting of directors and employees, with other financial product distributors. Therefore, insurance agencies or solicitors cannot concurrently serve as advisors.

(Six Major Sales Regulations) The major sales regulations are ❶ suitability principle, ❷ appropriateness principle, ❸ duty to explain, ❹ prohibition of unfair business practices, ❺ prohibition of unfair solicitation, and ❻ advertising regulation. The application of the regulations varies depending on the types of financial products. The scope of insurance products to which the suitability and appropriateness principles apply will be prescribed by the Enforcement Decree. In contrast, as suitability principle applies to loan products without any exception, this may lead to regulatory difficulties in case an insurance policy loan is to be included in the scope of loan type products by the Enforcement Decree.

(Right to Terminate Illegal Contracts) The Act newly introduces the right of a consumer to terminate a contract executed in violation of the major sales regulations, excluding advertising regulation, within a certain period not exceeding five years without incurring any expenses related thereto. The Act does not specifically define 'expenses related to termination' of each product, which may lead to problems in the future, as the amount of insurance companies' refund to consumers is unclear.

(Dispute and Litigation) If a consumer pursues a lawsuit for damage due to the violation of a financial company's duty to explain, the Act switches the burden of proof for the existence or absence of intention or negligence in failing to meet the duty to the financial company from the consumer. Also, a financial company shall be prohibited from bringing the case to the court during the dispute settlement procedure for certain cases of small value (less than KRW 20 million). Further, if a consumer requests the records held

by the financial company to prepare for a dispute settlement or litigation procedure, the request shall be accepted.

(Others) The Act expressly states the financial companies' responsibilities for managing sales intermediaries, such as insurance agents including GAs or insurance solicitors, and mandates that financial companies prepare internal control standards for such purpose. It also stipulates the authority of the Financial Services Commission to exert necessary corrective measures for consumer protection, including an order to restrict the sale of financial products.

3. Implications

Insurance companies should scrutinize the newly-introduced or substantially changed regulations by the enforcement of the Act and prepare for the change in selling products and handling consumer complaints. It is necessary to pay more attention to the changes in application scopes or procedural requirements of the existing regulation under the Insurance Business Act, such as suitability principle and duty to explain; and the newly introduced measures, such as the right to terminate illegal contracts.

The additional regulatory burden to be borne by the insurance industry due to the enforcement of the Act may vary depending on the specific details of the subordinate statutes currently being prepared by the financial authorities. The financial authorities should prepare reasonable measures by taking into account the characteristics of the insurance industry and products through extensive consultations.

Seunghyun Yang, Research Fellow
shyang@kiri.or.kr