

Critical situation of Mutual organization in Japan

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We have advocated the necessity and existence of social economy sector in Japan.

We understand the family of social economy is mainly composed by cooperative, mutual organization, association /non profit organization, foundation. However, in Japan, we can say that we have vague definition to social economy, due to lack of proper legislation of each factor.

At this moment, we have special cooperative laws for different types of cooperatives and “Non Profit Activity Law (so called NPO Law) in 1998. But we lack a workers cooperative law, association law and mutual organization law in Japan. We are now facing a crisis of diminishing an independent mutual organization in relation with Insurance Business Law (IBL). It is a crisis of not only mutual aid organizations but also cooperatives, namely social economy movement in Japan.

1. Brief history of Mutual organizations in Japan.

Big transformation of the structure of Japan’s society occurred at the restoration of Meiji in 1868. It was same phenomenon in the Western countries such like Spain’s revolution in 1868, the Civil War in the United State in 1865, Italy’s Risorgimento in 1861.

Then Japan must become a member of modern industrial states and introduced many social tools from western countries in the field of industries and social systems. Mainly learning from Germany, because Meiji government felt intimacy to German system and situation such as same group that departed relatively later the industrialization, Japan established Tiered Agricultural Cooperative Law (so called “Industry Union” in Japan) in 1900, imitated a Raiffeisen Model in Germany. This law was for a general agricultural cooperative which only exclude a character of a producer cooperative. Industry Union engaged in finance or credit, distribution, processing, buying and mutual aid among farmers and its families.

However the concept of mutual organization was not built but included in agricultural cooperative’s activities. On the other hand, Insurance Business Law (IBL) was promulgated in 1920, partly to cope with mutual aid and credit services by agricultural cooperatives. Group of agricultural cooperatives, then “Industry Union” established a mutual insurance company in 1940s under IBL.

After World War Second, So called the process of democratization of Japan make flourishing a big wave of consumer and farmer cooperatives movement, including finance and mutual aid service for their members. Consumer’s cooperative law established newly. However an idea of workers cooperative did not spread in the Japan’s society. Now, most of all farmers are a member of agricultural cooperatives. They are big pressure group in politics. Agricultural bank has reached about 90 billion euros of active property. Agricultural cooperative insurance company also has reached big total sales. Consumer’s cooperatives have over 16 million user members in nationwide. They run also a big business of cooperative insurance (they call it Kyosai, namely mutual organization).

Theoretically “mutual” was recognized as “cooperative insurance” through the discussion among cooperative scholars since 1960s in accordance with the situation of cooperative sector in Japan. There was no clear definition of mutual organization in both theory and legislation.

2. Two types of Mutuals

We can classify mutual organization in two types; first is registered mutual. They are cooperative insurance. Second, unregistered mutual. Unfortunately they can not identify who they are as legislative aspect in relation with their mutual aid service.

Table. 1 Registered Mutuals (cooperative insurance)

Cooperative	Legislation	Name of Mutual organization
(i) Federation-Union Agricultural Cooperative Union (JA)	Agricultural cooperative Law	JA mutual insurance
(ii) Fishery Cooperative Union (JF)	Fishery Cooperative Law	JF mutual insurance
(iii) Workers and Consumers insurance Cooperative Union (Zenrosai)	Living hood Cooperative (Consumers Cooperative) Law (LCL)	Zen.RohSai(Workers and consumers insurance)
(iv) Japan Consumer Cooperative Union (JCCU)	LCL	COOP Kyosai(Insurance)
(v) Federation of Japanese Consumer Cooperative (FJCC)	LC L	Kenmin Kyosai(Insurance Citizens in a prefecture)
(vi) Each corporation cooperative	Medium-small enterprises Cooperative Law	Automobile insurance, mutual industry, fire insurance, etc

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Table 2..Unregisterd Mutual

Body	Legislation	Type of organization
(i) School	-	PTA, mutual aid organization
(ii) Labour Union (Trade Union)	Labor Union Act	--
(iii) Public Interest organization	Insurance Business Law(2008bis)	LU mutual
(iv)Association	..	Governmental (public) mutual Professional mutual, sport mutual
(v) NPO	NPO Act	Domestic care mutual, etc.

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According to JCIA (Japan Cooperative Insurance Association), total sum of cooperative insurance business by its 59 members business has reached 153.9 million policies, JPY1145 trillion at the end of 2007.

Table 3. Cooperative Insurance in 2007

Number of organizations	7,176
Number of Members	7,035(thousand)
Number of Policies	153.9(thousand)
Amount Insured	JPY1,145(trillion)
Premiums Income	JPY6,946(million)
Claims Paid	JPY4,787(million)
Total Assets	JPY50(billion)

JCIA.2009

3. False mutual scandal

Japanese Government, taking advantage of fraud scandal of pseudo mutual insurance organization, called themselves “mutual”, would modify Insurance business Act. For example, Orange Mutual, a pseudo mutual insurance, gathered much money from people as investment fund to mutual aid business (such like care services) to swindle money. Orange Mutual gathered 9.3 billion yen from people, promising high return. The president of Orange Mutual, T.Tomobe was then a Member of Parliament. In 1996 Orange Mutual bankrupted and there was no return money for about 2,700 members. The president did not be arrested because of a privilege of MP. In 2001, Supreme Court judged guilty to Tomobe and he loosed MP. It was a big scandal. Government promised to checkup this type of pseudo Mutual. However government intended to control other independent mutual which run very well under the principle of mutual aid. The reason why government wished to control to independent mutual which government calls the “unregistered mutual” has two motives. First, they thought that the principles and values of insurance must be applied for a mutual organization. Second, the claim from US chamber of Commerce in Japan (ACCJ) is to be obeying. The pretext of this change of insurance policy was “protection of consumers or policies”.

We believe false mutual scandal is a scandal of bad private insurance company. So it must and can restrict by current legislation such as commercial code, civil code and old insurance law. It is not a problem of Kyosai(mutual) but insurance company.

Table 4. Life insurance for individuals (2006) trillion yen

New contract amount	67,046
Amount Insured	1,026,336
Premium income	277,66
Total asset	220,217

Osio.2009

4. Claim of ACCJ to Japanese Government (Financial Service Agency, FSA)

Insurance Committee in ACCJ issued their viewpoint on Kyosai (mutual or cooperative insurance) problem to Japanese government. It is said the demands of ACCJ have reflected the demand of American Insurance Industry which wish to enter Japanese insurance market.

(1) The First Viewpoint (valid through September 2007) of the insurance committee

First viewpoint titled “Ensure a level playing field between kyosai (cooperative insurance, mutual) and their private sector insurance competitors”, claimed such as follows:

“ACCJ calls the Government of Japan to create a level regulatory playing field between kyosai(mutual aid cooperatives that provide insurance products) and private insurance supplies”., “Until kyosai and private insurance suppliers receive equal treatment, the government of Japan should prohibit any expansion of kyosai products, especially products in the third sector, where foreign companies have traditionally been successful. In particular, there should be no amendments to the Consumer Livelihood Cooperative Society Law that would allow the group of kyosai under the cooperative Law to expand prior to the establishment of a level playing field. If there is expansion, all kyosai ought to be brought under Financial Service Agency (FSA) regulation as the insurance companies that they are”,

Also, ACCJ understands kyosai (mutual) such as follows:

“Kyosai are akin to cooperatives and are traditionally formed by group individuals—doctors or agricultural workers, for example- who have a common interest or profession. Kyosai collect premiums from their members and reimburse members facing economic loss resulting from predicted risks such as death, injury, accident, and fire. Some kyosai, known as “regulated” kyosai, are established under laws other than the Insurance Business Law (IBL) and regulated by agencies with jurisdiction over defined industry sectors other than financial services. “

“The Ministry of Agriculture (MAFF) regulated the agricultural kyosai, JA Kyosai, the Ministry of Economics, Trade and Industry (METI) regulates small-medium Company’s kyosai, Ministry of Health, Labor and Welfare (MHLW) regulated Consumer Cooperative Insurance (kyosai).

In the endnote, ACCJ said about “unregulated kyosai”:

“Other categories of kyosai are not subject to any regulation. Recently enacted legislation, effective April 2006, calls for certain larger unregulated kyosai to be subject to the same regulations as private insurance companies, and creates an entirely new category of insurer called “small-amount, short-term businesses.”

(2) The Second Viewpoint of ACCJ (valid through May 2009)

ACCJ was seemed to recognize that their demand to the so called “unregulated kyosai (mutual aid organization, or mutual” accepted. That unregulated kyosai will disappear or change to small private insurance company by the Insurance Business Law (IBL) which Japanese government ‘autonomously’ changed. For a part of independent mutual in Japan, however, it is a big problem to survive and still now to struggle to resolve legislative

problem.

ACCJ targeted in their second Viewpoint to dissolve regulated kyosai, such as JA Kyosai (agricultural cooperative insurance), Zenrosai (consumer cooperative insurance), CO-OP Kyosai (consumer cooperative insurance) and other major cooperative insurances.

The second Viewpoint of ACCJ again demands that regulated kyosai are subject to the same regulation for private insurance company". Because of:

"The consumer does not distinguish between regulated kyosai (cooperative insurance) and private insurance companies when selecting insurance products".

It may be some of ACCJ claims have appropriate reasons, such as a problem of equivalent condition for regulated insurance suppliers. But problem is there is no proper rule or legislation for Kyosai (mutual, cooperative insurance) in Japan.

(3) The Third Viewpoint of ACCJ (valid through June 2010)

ACCJ continued to claim to Japanese Government to control regulated kyosai and noted: "Regulated kyosai are not regulated by the FSA (Finance Service Agency), and benefit from this unique regulatory environment".

One of the causes of ACCJ is "protection for consumers. One example is the case of Norinchukin Bank, central agricultural cooperative bank. Norinchukin Bank lost 572 billion yen in global financial market in 2008.

ACCJ repeated to keep GATS commitment for finance and insurance business "by ensuring that regulated kyosai are subject to the same rules and regulations as FSA-regulated foreign insurance suppliers."

The prime object of ACCJ is to make American insurance companies enter in Japan's insurance market more easily. There is a great field as "terra incognita" in Japan. It is kyosai or cooperative insurance and public post insurance service. ACCJ claims that promoting liberalization will contribute to an increase in consumer benefits through acceleration of competition by oversea companies.

However, GATS commitment, that it can be determined under to which services sectors and under what conditions the basic principles of the GATS apply within that country's jurisdiction.

5. Modification of Insurance Business Law (IBL)

In 2007, Insurance business Law(LBL) was modified. With relation of the concept of mutual organization, the essential change of definition of the Law is to abolish a concept of a mutual and exemption of apply to mutual, and introduce same rule to an insurance company. The old IBL defined that the concept of insurance is for "not for specific persons", on the other hand, mutual is for "specific persons", namely members. So Old IBL was not covered or controlled mutual. Then mutual were regulated by other legislation or there were no regulation for unregistered moral person's organizations which do mutual aid activities.

Modified IBL defines newly the concept of a small business insurance company which is composed only maximum thousand policies or persons. Still at this moment there are only 20 small insurance companies registered.

At least old IBL defined difference between insurance and mutual. New IBL forges to mutual to become profit insurance company or disappear.
By the extension of 5 years for changing mutual to insurance company, unregistered or independent mutual still can live till then.

Table 5. Definition in Insurance Business Law (IBL)

	Old insurance Business Law	New Insurance Business Law
Definition	Insurance- for not specific person Risk principle Mutual- for specific person or members mutual aid principle	Insurance- both specific and not specific person Risk principle Mutual- Delete. There is no mutual Act
Type of company	Insurance- Stock company /mutual insurance company Mutual – mutual organisation	Insurance- Stock company/mutual insurance company / small sized insurance company Mutual – five year extension, then change to insurance or disappear

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New IBL defines new rules for both an insurance company and a cooperative insurance. We show some rules as follows.

- (i) prohibit a side job: an insurance company can not run both life and nonlife business, but can run the third sector. Using holding company, an insurance company can run both business.
- (ii) Insurance company must be stock company or mutual insurance company.
- (iii) obligation of reserve fund.
- (iv) election of insurance accountant
- (v) obligation of solvency margin ratio.

6. Measures by cooperative insurance

Parallel with the modification of IBL, in April 2005 Agricultural Cooperative Law and Consumers Cooperative Law are modified especially in the definition of insurance activity in accordance with the modification of IBL. Some critics claim that both agricultural cooperative sector and consumer's cooperative sector lost the principle of cooperative and did demutualization to become an ordinary insurance company. Cooperative insurance sector has accepted to obey similar rule to a private insurance company. They call it "equal fitting".

Cooperative insurance sector believe that they can survive as themselves in insurance market. Because they measured to insurance problem consulting with ministry of

agriculture and ministry of welfare and labor. They believe they can receive a support and help by their jurisdiction ministry, even though IBL will review in 2011 and then FSA plan to abolish registered kyosai (cooperative insurance) in the context of the principle of insurance. ACCJ also claims abolishment of cooperative insurance, but cooperative insurance sector believe they can survive under the protection of their ministry.

In April 2008, Consumer Cooperative Law modified to fit insurance activity. One of the national federation of consumer cooperatives, the Federation of Seikatsu Club Consumer Cooperatives worried about the loss of a principle of cooperative if cooperative insurance become equal as a private insurance company through the control of separation of mutual activities from other activities of a cooperative .

7. Crisis of Disappearing Independent Kyosai (mutual)

In Japan, Independent mutual movement has developed since 1960s. They are not a cooperative but an association. Regrettably enough, there are no legislation about association and mutual organization in Japan. So, they are called an unregistered legal person.

We define an independent mutual organization (IMO) such as follows:

- (i) a principle of mutual aid, and solidarity among members.
- (ii) mutual aid or mutual insurance and other service for members in order to promote their own purpose (professional or user).
- (iii) non profit activity.
- (iv) non capital

We classify an independent mutual organization in three categories;

(a) mutual activity by NPO:

For example the National School parent association runs mutual aid (insurance) for the risk of parent and pupil activities. This type is dissolving.

(b) mutual activity by association

Domestic care service, Workers Alpinist Association, etc. This type of mutual aid activity has almost stopped.

(c) mutual activity by disabled workshop:

Some disabled workshop has mutual aid service for disabled persons and employed staffs. This type of activity is not insurance but government regard them as a kind of insurance.

(d) mutual activity by professional organization:

For example, the National Social Insurance Doctors Federation (Hodanren) has organized 55 regional union and over 100 thousand medical practitioners. Hodanren has their own mutual insurance system for members. FSA said this must be under IBL.

8. Can independent mutuals survive in Japan?

Independent mutual organizations still have not proper legislation for them. So they are said to obey insurance business law. What is a cause of their sustainable activity? They assert that compulsion of abolishment of mutuals is violence of the article 23 on liberty of association and article 24 on right of welfare in the Constitution.

Tactically, they seek exemption from Insurance Business Law. However in long aspect

this tactic may be fragile because they could not gain their juridical identity by legislation and exemption is, in short, a temporary measure by the government..

In larger context, group of cooperative insurance also are facing critical situation of demutualization.

I think we should make draft of mutual organization act by the hand of social economy sector in Japan, referring to foreign mutual acts, in order to survive independent mutuals.

This is a responsibility of actors of social economy in Japan. They must help mutuals as a social sector. If we fail this challenge, social economy in Japan also will follow same way of perish.

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