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### Tasks Remaining for Revitalizing Japanese Legal Expenses Insurance (LEI): Toward Strengthening Victim Protection in Changing Circumstances

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#### ABSTRACT

This paper provides a comprehensive overview of the Legal Expenses Insurance (LEI) in Japan, including its historical background, development, and current prospects and tasks. The LEI market in Japan has grown significantly due to its incorporation as an add-on to voluntary automobile insurance and automobile mutual aid policies, which have high enrollment rates. One of the notable features of LEI in Japan is the establishment of a scheme by non-life insurance companies and mutual aid associations in collaboration with the Japan Federation of Bar Associations (JFBA) to refer attorneys to insureds. In addition to the cost risk-bearing function, LEI in Japan has a legal service access function, enabling insureds to access legal services through the JFBA Legal Access Center (JFBA LAC). This scheme was launched in October 2000 and is sometimes referred to as Right Protection Insurance System. From a victim relief perspective, it is crucial to broaden the scope of legal fields covered by LEI and diversify the forms and sales channels of LEI products. Additionally, it is important to increase awareness of LEI among the general consumer and to actively provide comprehensive information regarding LEI coverage to those who are already insured.

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*Keywords: legal expenses insurance, access to justice, victim protection, Japan*

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#### 1. Introduction

Legal Expenses insurance (LEI) provides coverage for an insured individual's expenses related to legal advice or legal representation in the event of an accident or incident, as specified in the policy terms. These expenses are considered as economic losses, and the insured person seeks damages against the responsible party for the losses suffered. Within the realm of non-life insurance, LEI is classified as an expense insurance (LAC Study Group, 2017). LEI has gained significant popularity in Japan, particularly as an add-on to voluntary automobile insurance and automobile mutual aid policies. The number

of policies sold has been consistently rising. Recently, LEI has also been extended to cover a broader range of legal disputes, including non-automobile-related accidents in daily life. This insurance product is anticipated to undergo further advancements and enhancements.

In addition to compensating consumers who fall victim to accidents or incidents for the costs and damages they incur, LEI also plays a crucial role in safeguarding the rights of victims by actively asserting their own rights. Nonetheless, there are unresolved issues that hinder the full realization of these roles. Addressing these issues is imperative for the comprehensive fulfillment of LEI's intended functions. In particular, given the significant changes in the LEI environment in recent years, it is crucial to raise awareness about the existence of this insurance and to promote and develop it in a sound manner in order to strengthen the protection of victims.

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This paper will begin by describing the functions and status of LEI in Japan, along with its historical background. Subsequently, it will outline three pivotal environmental changes impacting LEI and emphasize the necessity of strengthening victim protection considering these shifts. It will then identify the tasks for revitalizing LEI from the perspective of victim protection within LEI, while providing an overview of the prospects for this sector.

## II. Function and Status of LEI

### A. Functions of LEI

From an individual's risk management perspective, LEI serves as a means to transfer the financial risk associated with becoming a party to a legal dispute and bearing the various costs (such as lawyers' fees and litigation expenses) required to resolve said dispute to an insurance company. In this regard, LEI fulfills "cost risk-bearing function."

In Japan, the policyholder of LEI sold by non-life insurance companies and mutual aid associations that have signed contracts with the Japan Federation of Bar Associations (JFBA), can be referred to an attorney through a local bar association contracted by the JFBA Legal Access Center (JFBA LAC). This arrangement aims to address the issue of access to legal services (specifically, the challenge faced by consumers seeking legal advice but lacking knowledge of available attorneys) when confronted with a legal dispute. This aspect can be considered a "legal service access function" within the framework of LEI.

In the context of Japanese LEI, the combined insurance function covering legal expenses and related costs (cost risk-bearing function) and the attorney referral service provided by the bar association (legal service access function) are collectively referred to as "Right Protection Insurance" (Naito, 2016). For the purposes of this paper, the term LEI will specifically pertain to Right Protection Insurance.

### B. Status of LEI

The LEI in Japan exhibits four primary characteristics:

firstly, its widespread adoption as an add-on to voluntary automobile insurance policies; secondly, its nature as first-party insurance; thirdly, its contribution to enhancing the accessibility of justice for middle-income populations; and fourthly, its flexible contract forms and product design tailored to meet customer needs. Each of these characteristics is elaborated upon below.

#### *1. Widespread adoption as an add-on to voluntary automobile insurance policies*

LEI is distinguished by its extensive adoption as an add-on to voluntary automobile insurance policies and automobile mutual aid policies, both of which have high enrollment rates. Voluntary automobile insurance accounts for 48% of Japan's non-life insurance market based on net premium income (GIAJ, 2022). Insured individuals with voluntary automobile insurance receive compensation for legal costs and lawyers' fees under liability insurance policies when they are held liable for a car accident. Conversely, victims of car accidents are not entitled to receive compensation for lawyers' fees or other costs through their automobile insurance's liability coverage. The development and introduction of LEI for voluntary automobile insurance stemmed from the "imbalanced situation between culpable car accident perpetrators and victims" and the imperative to provide genuine relief to victims by ensuring they have access to legal consultation and the ability to assert their rights (Yamashita, 2011).

In recent years, however, LEI coverage has expanded beyond car accidents (no-fault car accidents), and policies have been introduced that encompass a broader range of legal fields. This coverage includes accidents causing bodily injury or property damage in daily life, violation of personal rights (such as bullying, harassment, molestation, stalking, and defamation), inheritance disputes (such as mediation on the division of estates), labor troubles (such as non-payment or reduction of wages, dismissal, overtime, workplace bullying, and harassment), and obstruction of business (such as unreasonable obstruction of business by customers).<sup>1</sup>

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<sup>1</sup> On its website, the JFBA publishes an overview of LEIs in Japan for consumers. It is available at <https://www.nichibenren.or.jp/activity/resolution/lac.html>

## 2. *First-party insurance*

LEI operates as "first-party insurance" since it covers the legal costs (e.g., legal consultation fees, lawyer' fees, and other costs) incurred by the insured individual who becomes a victim of a particular accident, and claims compensation for his or her damage. In contrast, liability insurance is referred to as "third-party insurance" as it covers legal costs associated with defending against a damages claim, as well as providing compensation for losses incurred by the defendant (perpetrator) facing a damages claim.

## 3. *Contribution to enhancing the accessibility of justice for middle-income populations*

In Japan, legal aid has evolved as a replacement system for covering legal costs for individuals who cannot afford lawyer fees and litigation expenses. However, this system tends to focus primarily on remedial measures for low-income populations. On the other hand, higher-income populations often have the means to bear legal costs without significant burden. Consequently, LEI has historically been developed as a means to finance access to justice for middle-income populations that may not qualify for legal aid schemes, allowing them to assert their rights effectively (Sase, 2013).

## 4. *Flexible contract forms and product design to meet customer needs*

LEI is currently offered as an add-on to individual non-life insurance policies such as voluntary automobile insurance, fire insurance, personal accident insurance, and medical insurance, as well as standalone insurance products. In 2015, a prominent non-life insurance company, in partnership with the JFBA, developed LEI as an add-on to group personal accident and health insurance, covering a broad spectrum of legal dispute risks encountered in daily life. This development aimed to provide policyholders with additional "safety and security" in their daily lives by offering comprehensive coverage for both accidents involving injury and damage by widely marketing a plan that includes LEI as well as a personal liability insurance rider in the personal insurance policy. Additionally, a small-amount short-term insurer introduced Japan's first standalone LEI in 2013, highlighting the advantage of purchasing standalone LEI without the obligation to obtain

the main policy (LEI Study Group, 2017).

Furthermore, alongside LEI for individuals, specific LEI products targeting small and medium-sized enterprises have also been developed and marketed, with further expansion and popularization anticipated in the future. Consequently, LEI as an insurance product enables flexible contract forms and product designs tailored to customer needs, with ongoing advancements expected to address emerging legal dispute risks and evolving customer demands.

## C. The Diffusion of LEI

The LEI scheme was launched in October 2000. Initially, the number of insurance companies that entered into agreements with the JFBA was limited, resulting in sluggish sales of LEI. However, in 2006, when a major non-life insurance company became an agreed insurance provider, the number of LEI sales surpassed one million cases. Subsequently, the sales of LEI steadily increased alongside the expansion of the network of agreed insurance companies. The widening coverage of legal disputes, encompassing a broad range of damage accidents in daily life rather than solely car accidents, has also contributed to the growth in policy sales.

However, one of the factors impeding early sales was the lack of awareness about LEI among the public and attorneys, compounded by the limited number of insurance companies participating in the scheme. Furthermore, even policyholders who obtained LEI often had inadequate understanding of the circumstances in which the insurance would be applicable. Consequently, there were numerous cases where policyholders, despite being victims of accidents covered by the insurance, refrained from taking legal action and either endured the consequences silently or had to bear the legal costs themselves (LAC Study Group, 2017).

To address these issues and promote the utilization of LEI, the JFBA LAC has undertaken efforts to raise awareness through symposiums and promotional activities conducted within bar associations. Informational leaflets have been distributed to the public to elucidate the importance of purchasing the insurance, and policyholders have been actively encouraged to avail themselves of the insurance coverage in the event of damage accidents (LAC Study Group, 2017). These endeavors underscore the significance of enhancing insurance literacy among

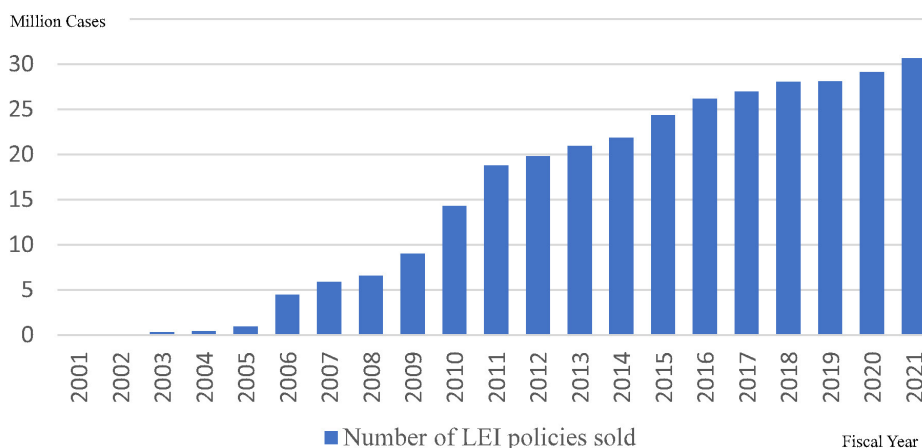


Figure 1. Trends in the Number of LEI Policies Sold

consumers and policyholders as a means of promoting LEI adoption in Japan.

As of FY2021, the number of LEI policies sold stands at approximately 30.6 million (see Graph1), and as of October 2022, a total of 20 insurance companies and mutual aid associations have concluded agreements with the JFBA (JFBA, 2022).

### III. Changes in the Environment Surrounding LEI

In recent years, three notable environmental changes related to LEI have been observed: the widespread use of new mobility services, advancements in Sustainable Development Goals (SDGs) and enhanced access to justice, and the digitalization and rise of online legal disputes.

#### A. The widespread use of new mobility services

The automotive industry is currently undergoing a transformative phase due to the influence of digitalization, commonly referred to as the “CASE Revolution”. This term encompasses four major trends: C = Connected, A = Autonomous, S = Shared & Services, and E = Electric. Among these trends, the S = Shared & Services category represents services offered within the sharing economy,

a new economic system characterized by a shift in consumer behavior from ownership to utilization. Sharing services encompass five categories: space, skills, mobility, money, and goods sharing.

In Japan, space sharing, facilitated by deregulation, has experienced growth in the market for parking and accommodation services. However, the mobility sharing market, including ride-sharing and shared bicycles, remains relatively small due to stringent regulations.<sup>2</sup> Conversely, the sharing economy within the mobility sector is expanding, particularly with the rise of Mobility as a Service (MaaS), a concept gaining international popularity (MIC, 2018). MaaS, as defined by the Ministry of Land, Infrastructure, Transport and Tourism, refers to a service that provides a seamless combination of multiple public and private transportation options, offering comprehensive trip planning, reservation, and payment functions. MaaS contributes to enhancing travel convenience, addressing regional challenges, and integrating non-transport services, such as tourism and healthcare. In Japan, MaaS is positioned as a key element of next-generation transportation, along with autonomous driving, and it is anticipated that sharing services in the mobility sector, including ridesharing, will expand through the implementation of MaaS (Hidaka et al., 2020).

<sup>2</sup> According to the "Sharing Economy Related Survey Results" by the Information and Communication Research Institute, the market size by category is the largest in the FY2030 forecast for space sharing, followed by goods sharing, and skills sharing, in that order.

With the wider adoption of MaaS, users will have access to a diverse range of transportation and mobility services, including railways, buses, taxis, on-demand ride-sharing, and bicycle-sharing. Consequently, MaaS users face various risks, such as liability risks, risk of damage or theft of vehicle and bicycle, risk of injury, risk of delays in public transport and ride distribution services, cyber risks associated with personal data breaches through apps, and risk of getting into legal troubles (such as false accusations of sexual harassment). Thus, it becomes necessary to provide MaaS users with dedicated insurance coverage (MaaS insurance) that comprehensively compensates for the multitude of risks associated with MaaS utilization.<sup>3</sup>

## B. Advancements in the SDGs and Enhanced Access to Justice

The SDGs serve as a comprehensive framework to address global challenges and strive for a more sustainable future for all individuals. These goals encompass various dimensions, including poverty and inequality, climate change, environmental degradation, prosperity, peace and justice. Consisting of 17 international goals, the SDGs are accompanied by 169 specific targets. Goal 16, titled "Peace and justice for all," emphasizes the need to foster peaceful and inclusive societies for sustainable development. This goal envisions the provision of universal access to justice and establishment of effective and accountable institutions at all levels. Target 16.3, a key component of Goal 16, underscores the importance of promoting the rule of law both nationally and internationally while ensuring equal access to justice for all individuals.<sup>4</sup>

In September 2021, the JFBA LAC issued a proposal to further promote the use of the LEI Scheme (LAC Scheme) to expand access to justice, as the further development and dissemination of LEI is crucial to the expansion

of access to justice envisaged in Target 16.3 of the SDGs. The proposal states that, to make the promotion of the rule of law and equal access to justice effective in terms of costs, research and studies should be conducted on policies to promote LEI, such as making the premiums for LEI tax deductible (JFBA, 2021).

Belgium has already implemented a premium tax deduction system to widely encourage the adoption of LEI among its population, indicating that the introduction of a similar tax deduction system in Japan to promote LEI on a broader scale is an important consideration for the future in the context of the SDGs (Yamashita, 2020). In addition to the implementation of a premium tax deduction system, the further popularization of LEI necessitates a careful examination and implementation of new policies based on the results of surveys and research conducted in other countries.

## C. Digitalization and the Rise of Online Legal Disputes

With the spread of Internet-connected devices (smartphones, PCs, etc.), the percentage of individual Internet users has experienced rapid growth, rising from around 50% in the early 2000s (46.3% in 2001) to a consistently high level (84.9% in 2022). In particular, the prevalence of social networking services (SNS) such as Facebook and LINE has witnessed a steady increase, with approximately 80% of Internet users (MIC, 2023).

As the number of individual Internet users continues to rise, so does the prevalence of personal information security threats, commonly referred to as cyber risks. These risks expose individuals to various forms of online harm, including identity fraud, slander, defamation, falsehoods, and financial fraud. The three most common personal cyber risks in 2023 were phishing attacks upon personal information, online defamation, libel, or dissemination of false information, as well as threats and scams employing email, SMS, and other means to extort money (IPA, 2023).

To gain insights into the prevailing extent of damage on the Internet, the Ministry of Justice publishes data on human rights violations cases related to online information (MOJ, 2023). Since reaching a record high in 2017 (2,217 cases), the number of human rights violation cases has persisted at notably elevated level. Invasion of privacy, defamation, and the revealing of identifying

<sup>3</sup> MaaS insurance is characterized by three points: (1) it is a comprehensive insurance policy that covers risks associated with the use of various means of transportation and mobility services; (2) the entity purchasing the insurance is the MaaS service provider, platform provider, or other business entity; and (3) close collaboration across industry boundaries is required in the development of MaaS insurance (Naito, 2022).

<sup>4</sup> The website of the United Nations Information Centre provides a description of each of the 17 SDGs targets. It is available at <https://www.un.org/news/press/features/backgrounders/31737/>.

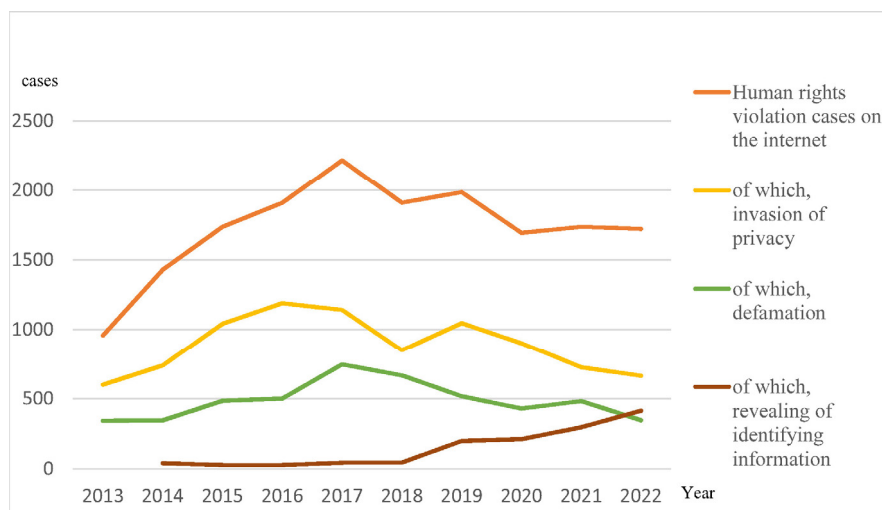


Figure 2. Cases concerning human rights violations on the internet (newly initiated)

information collectively account for approximately 83% of the total number of cases (see Graph 2).

Individuals whose rights have been violated due to online slander or defamation can pursue actions such as requesting the deletion of infringing information from service providers, seeking disclosure of information to identify the sender, and claiming damages against the identified sender (perpetrator). Legal provisions exist to address these issues (MIC, 2020). However, seeking legal consultation or initiating legal proceedings through court cases can entail significant costs. Therefore, obtaining a LEI in advance can provide a means to seek damages and avoid silently enduring online harm.

In Japan, a prominent non-life insurance company that has partnered with the JFBA has developed and introduced a rider-type LEI policy specifically covering disputes related to infringements of personal rights. This LEI policy includes coverage for damage caused by emotional distress resulting from online slander and defamation (LAC Study Group, 2017).

In recent years, with the widespread use of smartphones, the amount of time spent on social media platforms via mobile devices has substantially increased, with usage rates rising year by year. However, reports also indicate a surge in various rights infringements, particularly the escalating severity of slander on SNS (MIC, 2020). Hence, there is a pressing need to widely promote LEI, especially among young individuals who are frequent user of SNS, in order to mitigate the adverse impact of online harm

caused by slander and defamation.

#### IV. Tasks for revitalizing LEI (From the Viewpoint of Victim Protection)

Considering the three environmental changes surrounding LEI as delineated above, it becomes imperative to further activate the sale of LEI, particularly from the perspective of victim protection. This necessity arises since by proactively purchasing LEI, consumers can effectively delegate the resolution of various legal issues that may arise in their daily lives to attorneys, even in instances where they find themselves victimized by such predicaments. As elucidated earlier, Japanese LEI encompasses not only a cost risk-bearing function but also a legal access function, thereby making a significant contribution to safeguarding the interests of victims. It accomplishes this by alleviating financial anxieties associated with legal issue resolution and concurrently enhancing accessibility to justice. Furthermore, LEI also plays a pivotal role in motivating insured victims to actively assert and safeguard their rights, thereby advancing the cause of victim protection and aligning with the objectives outlined in Goal 16 of the SDGs. Hence, the future of LEI, which plays a pivotal role in enhancing victim protection, is underscored by three distinct tasks: expanding the legal fields covered

by LEI and diversifying the forms and sales channels of LEI products; promoting wider awareness of LEI among general consumers; and actively providing information on LEI coverage to insureds.

#### A. Expanding the Legal Fields Covered by LEI and Diversifying Forms and Sales Channels

In Japan, as consumer behavior gradually shifts from ownership to the utilization of new economic services like sharing services and MaaS, the need arises for insurance coverage that adequately addresses the risks associated with these services. Consequently, insurance requirements will transition from traditional goods-focused insurance products (such as car and fire insurance, commonly known as "goods insurance") to insurance products covering risks related to the provision and use of goods and sharing services, including liability risks (Naito, 2022). Expanding the legal fields covered by LEI to encompass sharing services could be a viable step, considering the potential benefit of inclusive coverage for various legal dispute risks that may arise from the utilization of such services. As mentioned above, it would also be useful to include the risk of legal disputes as one of the risks covered by MaaS insurance provided upon the use of MaaS services. Furthermore, LEI could be automatically included in general personal insurance products (e.g., fire and accident insurance) as a fundamental component. Notably, in Sweden, LEI is virtually compulsorily included as part of household contents insurance, held by approximately 96% of the population (JFBA, 2019).

Innovative approaches to LEI product development and sales channels could involve introducing digitally accessible, small-amount, short-term policies tailored to young individuals and low-income populations, who typically face obstacles in obtaining insurance coverage<sup>5</sup>. Alternatively, exploring the potential of peer-to-peer (P2P) insurance models<sup>6</sup> or "embedded insurance" (wherein non-financial businesses integrate insurance products into their

existing services) could effectively facilitate broader consumer adoption. Additionally, offering standalone LEI policies that cover online rights infringements through online platforms may encourage young individuals to consider LEI protection.

#### B. Promoting Wider Awareness of LEI Among General Consumers

Given the historical association of LEI with voluntary automobile insurance and automobile mutual aid policies in Japan, there exists a prevailing consumer perception that LEI primarily covers legal disputes related to car accidents. To change this perception, it is crucial to raise awareness among general consumers about the broader scope of LEI, extending beyond car accidents to encompass various legal disputes. Effective strategies for publicizing LEI involve collaborative efforts between insurance companies, attorneys, and bar associations. Specifically, it is important to disseminate information about LEI to young individuals, who tend to gather information through online platforms, using easily understandable language and leveraging social networking services.

#### C. Actively Providing Information on LEI Coverage to Insureds

LEI policy terms and conditions often employ legal terminology that may be challenging for insureds to comprehend. It is essential to provide clear information regarding the types of legal disputes covered, the legal costs included in the coverage, the limit of insurance payments, and potential coinsurance requirements. To facilitate insureds' understanding of the coverage, it would be beneficial to make specific disputes case available on the internet for each area of law, allowing insureds to access them at any time. This approach also enables the addition of new case examples in a timely manner.

Informing insureds about the legal costs covered by LEI, the limit of insurance payments, and the potential for coinsurance is essential. Notably, the inclusion of legal consultation fees, in addition to lawyers' fees and other costs, is significant from the perspective of improving access to legal counsel for insured individuals who have fallen victim. Since access to justice often commences

<sup>5</sup> Because the Insurance Business Law allows the small-amount, short-term insurance business to be operated concurrently by both life and non-life insurers, life insurance companies, in addition to non-life insurers, have recently entered the small-amount, short-term insurance business with digital completion.

<sup>6</sup> German insurance broker Friendsurance offers LEI as a P2P policy, in addition to liability and homeowners' insurance.

with legal consultations, including legal consultation fees in the scope of insurance coverage enhances the utility of LEI for insureds.

Regarding insurance payment limits, the JFBA LAC established the "Insurance Payment Standards for Legal Costs in LEI" (commonly referred to as the "LAC Standards") in 2004. These standards serve as guidelines that insurance companies are required to "respect." They outline the basic approach to insurance claim payments, specifying the maximum legal costs per case and the hourly rate of legal costs. While the actual amount of lawyers' fees may not necessarily coincide with the amount of lawyers' fees compensated by LEI due to the client-attorney relationship, as long as the fees fall within the specified limits of LAC Standards, they are generally reimbursed as insurance claims without issues, assuming they are not unreasonably excessive (LAC Study Group, 2017). Consequently, the LAC Standards play a crucial role in protecting victims by facilitating prompt and appropriate insurance claim settlements for policyholders.

## V. Conclusions and Prospects for Strengthening the Protection of Victims in LEI

LEI in Japan stands out for its dual function of providing access to legal services and bearing the burden of cost risks. This dual function plays a crucial role in safeguarding the legal rights of consumers who have fallen victim to various circumstances. To further strengthen victim protection in LEI, it is crucial to foster collaboration between insurance companies as providers of insurance products and attorneys, as well as the JFBA LAC, which facilitates legal services. This collaborative approach aims to address the three key tasks for revitalizing LEI mentioned above, ultimately promoting its growth, and ensuring trust among all stakeholders. Furthermore, this concerted effort is expected to enhance access to justice, thereby facilitating the realization of a fair and equitable legal system.

It is imperative for consumers to acquire a profound comprehension of LEIs. Equipped with this knowledge, consumers can proactively select and effectively utilize LEI as a sustainable means of consistently protecting their own rights.

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