

# Regulation of Unrequested Solicitation in Japan: The Way Toward a Do-Not-Call and Do-Not-Knock System?

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# Regulation of Unrequested Solicitation in Japan: The Way Toward a Do-Not-Call and Do-Not-Knock System?

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## I. Introduction

Unrequested solicitation is any solicitation performed by businesses one-sidedly, without any request for solicitation on the part of consumers<sup>1)</sup>. The main reasons why it has been regarded as necessary to provide for a special treatment of such solicitation, is that it is conducted at residences or during personal times, which are originally not intended for business purposes; that such solicitation includes elements of surprise for consumers; and that on account of such characteristics, it can cause a nuisance to a large

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1) Makinori Goto, *Wagakuni ni okeru Fushoseikanyukisei no Arikata* [*Current State of Affairs of the Regulation of Unrequested Solicitation in Japan*], Gendaishohishaho, no.9 (2010), p.38.

number of consumers.

This paper deals with the issue of regulation of unrequested telephone and door-to-door solicitation. In general, the debate regarding unrequested solicitation usually also includes e-mail solicitation (e-spamming), junk mail etc.<sup>2)</sup>. In this paper, such other aspects of unrequested solicitation will not be treated. The reason for this is that the main motive for this research has been the recent developments in Japan in the field of telephone and door-to-door solicitation<sup>3)</sup>. As will be described in detail later in this paper, there has recently been a large debate in Japan regarding these specific two types of unrequested solicitation in Japan, driven by the relevant legislative procedure, during which the possible introduction of new regulation systems for them has been considered. Unfortunately, mainly due to a strong opposition expressed by businesses, no such new regulation has been introduced. However, the author believes that it is of great importance to present and analyze the issue of these two types of regulation in Japan, in view of prospective future developments.

The above-mentioned debate regarding telephone and door-to-door solicitation in Japan has mainly focused on the issue of introducing a system that would either prohibit in general telephone and door-to-door solicitation made without the consumer's consent, or that would make it possible for consumers to comprehensively refuse *ex ante*. This debate has been strongly influenced by the existence of such systems abroad. Just to mention some recent developments in the Asian region, Singapore and Korea introduced a so-called Do-Not-Call system (an opt-out system that will be analyzed in Section II.1) in 2014. Further, in Australia, court decisions delivered in 2013 have contributed to an enhancement of the regulation of door-to-door solicitation.

The analysis in this paper will start by exploring telephone and door-to-door solicitation regulation abroad (Chapter II), in order to make clear the "international standards" of such regulation. Next, the current state of affairs of regulation in Japan, as well as the issues and debate related to it will be presented (Chapter III). Subsequently, the relevant legislative procedure in Japan and its outcome will be treated (Chapter IV), followed by some brief closing remarks (Chapter V).

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2) Regarding the regulation of unrequested solicitation in Japan in general, see Yoshifumi Imagawa, *Fushoseikanyukisei no Igi to Kadai* [Significance and Issues of Regulation of Unrequested Solicitation], *Kobegakuinhogaku*, vol.41, no.2 (2011), p.1 ff., Megumi Uesugi, *Fushoseikanyukinshi o meguru Hotekikadai (1) (2)* [Legal Issues Regarding the Prohibition of Unrequested Solicitation (1) (2)], *Aichidaigakuhogakubuhokeironshu*, no.193 (2013), p.1 ff, no.198 (2014), p.49 ff.

3) Regarding such developments, the current state and issues of telephone and door-to-door regulation in Japan, see Ryosuke Morisada, *Nihon no Fushoseikanyukisei to Tokuteishotorihikiho no Kaiseigiron* [Regulation of Unrequested Solicitation and Debate on the Reform of the Act on Specified Commercial Transactions in Japan], *Oike Library*, no.43 (2016), p.41.

## II. International Trends

In this chapter, a brief presentation of the regulation of unrequested solicitation in other countries will be made, so as to provide some comparative law material that will elucidate the insufficiency or need for improvement of the existing regulation in Japan. Section 1 will provide an overview of the two types of regulation (“opt-in” and “opt-out”), and Section 2 will present concrete examples of regulation in some countries.

### 1. Opt-in and Opt-out System

By taking a look at the regulation of unrequested solicitations in several countries worldwide, it becomes clear that there are two main systems for providing consumers the opportunity to avoid such solicitations beforehand and comprehensively. The first is prohibiting solicitations, unless there has been a previous request or consent on the part of the person to be solicited (prohibition of unrequested solicitations; “opt-in” system). The second is allowing in principle unrequested solicitations, and providing to the persons to be solicited the ability to express their refusal against such solicitations beforehand and in a comprehensive manner (“opt-out” system)<sup>4</sup>.

As will be presented in Chapter III Section 1, there exists in Japan a legislative prohibition of re-solicitation for door-to-door and telephone solicitation. Such regulation belongs to the category of opt-out regulation, since re-solicitation is prohibited only when there has been a refusal on the part of the consumer. The main difference (and weakness) of this system compared to the Do-Not-Call and Do-Not-Knock systems in other countries (opt-out systems) is that the relevant provisions of the Japanese legislation allow only for a per-company-basis refusal (which has to be repeated for each new solicitation by a new company), whereas the Do-Not-Call and Do-Not-Knock systems abroad allow for a comprehensive refusal of all future solicitations. The time- and effort-saving effects of the latter are quite obvious. Needless to say, the opt-in solution (general prohibition of unrequested solicitation without the consumer’s request or consent) provides for the highest level of protection.

### 2. Regulation in Foreign Countries

#### A. Telephone Solicitation<sup>5</sup>

The usage of Do-Not-Call systems (opt-out systems) is widespread internationally.

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4) In Japan, the terms “opt-in” and “opt-out” are used with the meaning explained in this paper. However, the usage of these terms may differ in other countries, with the terms being used with the contrary meaning. This has to do with a difference as to the object to which the person to be solicited will opt “in” or “out.” In Japan, it is unrequested solicitation that is regarded as being such object. In countries where the terms have the contrary meaning, the object is the state where no unrequested solicitation is performed. In this paper, the terms will be used with the meaning they have in Japanese literature.

5) Regarding the regulation of telephone solicitation in countries other than Japan see Shinji Minai and

Further, there also exist countries that have chosen to introduce a comprehensive prohibition of unrequested telephone solicitation (opt-in system). In the following, the outline of such regulation in countries other than Japan will be presented.

**(i) The American Continent**

- **United States**<sup>6)</sup>: In the United States, a certain degree of regulation of unrequested telephone solicitation has been in existence since 1991, and a National Do Not Call Registry<sup>7)</sup> has been in operation since 2003. The registry is operated by the Federal Trade Commission (FTC) and enforcement is carried out by the FTC, the Federal Communications Commission (FCC) and the State Governments. Registration was initially valid for five years, but currently there is no expiration period. Political calls, charitable calls, debt collection calls, information calls, and telephone survey calls, as well as calls from parties with whom the registered person has recently done business or to whom the person has given written permission to call are exempted. Telemarketers bear the obligation to obtain copies of the registry, check their list of numbers to be solicited against them, and delete registered numbers. Those who violate the registry can be fined up to 16,000 U.S. dollars. There were 217,855,659 registrations as of September 30, 2014. The system removes numbers automatically when they are disconnected and reassigned.

It is worth noting here that the constitutionality of this system has been challenged at the time of its introduction. However, the *Mainstream Marketing Services, Inc. v. Federal Trade Commission* decision (2004)<sup>8)</sup> has unanimously admitted the constitutionality of the registry.

Antonios Karaïskos, *Shogaikoku ni okeru Do-Not-Call Seido to Nihonho e no Shisa – Denwakanyukyohitorokuseido no Donyu e no Giron ni mukete – [Do-Not-Call Systems in Foreign Countries and Lessons for Japanese Law: In Preparation of the Debate towards an Introduction of a Registration System for Refusals against Telephone Solicitation]*, Gendaishohishaho no.26 (2015), p.80 ff., Shinji Minai, *Nihon ni okeru Denwakanyukisei to Kongo no Tenbo [Regulation of Telephone Solicitation in Japan and Future Perspectives]*, Webuban Kokuminseikatsu, no.45 (2015), p.16 ff.

6) Regarding the Do-Not-Call system of the U.S. see Antonios Karaïskos, *Amerika no Do-Not-Call Seido [The Do-Not-Call System of the United States]*, Webuban Kokuminseikatsu, no.36 (2015), p.17 ff., Kenji Saigusa, *Denwakanyukisei – Zenbei Do-Not-Call Seido no Donyukanosei no Kento – [Regulation of Telephone Solicitation: A Study on the Possibility of Introduction of the Pan-American Do-Not-Call System]*, Kokuminseikatsukenkyu, vol.44, no.1 (2001), p.13 ff. (both in Japanese), as well as Kathleen Ann Ruane, *Telemarketing Regulation: National and State Do Not Call Registries*, Congressional Research Service 7-5700 www.crs.gov R43684, Charles V. Gall and Margaret M. Stolar, *Federal and State Telemarketing Developments*, *The Business Lawyer*, vol.59 (2004), p.1241 ff. (in English).

7) <https://www.donotcall.gov/> (last visited September 30, 2016).

8) *Mainstream Marketing Services, Inc. v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir.), 543 U.S. 812 (2004). Regarding this decision, see Hidetomo Sasaki, *Comment on the Decision*, *Amerikaho* no.2 (2006), p.365 ff., Osawa Kenkyukai [Osawa Study Group], *Amerika ni okeru Eiriteikigenron no Jiyu [The Freedom of Commercial Speech in the United States]*, *Seijigakukenkkyu*, no.40 (2009), p.157 ff.

- **Canada**<sup>9)</sup>: In Canada, a National Do Not Call List<sup>10)</sup> has been operating from 2008. The list is operated by Bell Canada and enforced by Canada Radio-television and Telecommunications Commission (CRTC). There is no expiration period for registrations. Registered charities, political parties and candidates, opinion polling firms or market research firms conducting surveys, newspapers calling to sell a subscription, and organizations that have a business relationship with the person registered are exempted. If a telemarketer has violated the rules regarding the list, the CRTC may impose a penalty of up to 1,500 Canadian dollars per violation for individuals and up to 15,000 Canadian dollars per violation for corporations. The number of registrations was 12,239,563 as of March 31, 2014.

- **Mexico**<sup>11)</sup>: In Mexico, a nationwide system has been operating since 2007, and was revised to the currently existing system called REPEP<sup>12)</sup> in 2012. The system is administered by PROFECO. In the beginning, the registrations were valid for three years, but currently there is no expiration period. Political parties, telephone surveys etc. are exempted. Each violation is sanctioned with a penalty of between 411 to 1,317,147 pesos. The number of registrations was 345,000 as of October 2015. One of the characteristics of this system is that the persons who register can choose among categories of businesses whose solicitation they wish to refuse.

- **Brazil**<sup>13)</sup>: In Brazil, there is still no nationwide system, but systems within states or cities have been developed.

- **Argentina**<sup>14)</sup>: In Argentina, the Registro Nacional No Llame<sup>15)</sup> has been operating since 2015. It is administered by the PDP. Registrations are valid for two years, but are automatically renewed. Election campaigns, companies with existing contractual relations etc. are exempted. Violations are sanctioned with penalties of between 1,000 to 10,000 pesos etc.

## (ii) Europe

Regarding the European countries that are member states of the European Union, unrequested telephone solicitation is regulated by EU directives. Art. 13 of e-privacy

9) Regarding the Do-Not-Call system of Canada see Michiyo Maeda, *Kanada, Mekishiko no Do-Not-Call Seido [The Do-Not-Call Systems of Canada and Mexico]*, Webuban Kokuminseikatsu, no.39 (2015), p.16 ff.

10) <https://www.innate-dncl.gc.ca/insnum-regnum-eng> (last visited September 30, 2016).

11) Regarding the Do-Not-Call system of Mexico, see Michiyo Maeda (op. cit. at note 9), p.17 ff. Further, regarding the systems of Mexico, Argentine and Brazil, see Michiyo Maeda, *Raten Amerika no Don't-Call-Registry – Mekishiko, Aruzenchin, Burajiru – [Don't-Call-Registry in Latin America – Mexico, Argentina, Brazil]*, Shohishahonyusu, no.102 (2015), p.188 ff.

12) <http://rpc.profeco.gob.mx/index.jsp?menu=2> (last visited September 30, 2016).

13) Regarding the system of Brazil see Michiyo Maeda, *Burajiru no Do-Not-Call Seido [The Do-Not-Call System of Brazil]*, Webuban Kokuminseikatsu, no.40 (2015), p.16 ff.

14) Regarding the Do-Not-Call system of Argentina, see Michiyo Maeda, *Aruzenchin no Do-Not-Call Shisutemu [The Do-Not-Call System of Argentina]*, Webuban Kokuminseikatsu, no.40 (2015), p.17 ff.

15) <http://www.nollame.gob.ar/> (last visited September 30, 2016).

directive 2002/58/EC as currently in effect, provides that member states shall take appropriate measures to ensure that unsolicited communications for the purposes of direct marketing, in cases other than the use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail<sup>16)</sup>, are not allowed either without the consent of the subscribers or users concerned (opt-in system) or in respect of subscribers or users who do not wish to receive these communications (opt-out system); the choice between these options is determined by national legislation, taking into account that both options must be free of charge for the subscriber or user (para.3). This shall apply to subscribers who are natural persons, but member states shall also ensure that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected (para.5).

According to the above, EU member states are free to choose between an opt-in and an opt-out system. This has led to a variation in the regulation systems, with some countries adopting a nationwide opt-out system (U.K., France, Italy etc.), some having a voluntary opt-out system run by business organizations etc. (Switzerland, Sweden, Finland etc.) and others adopting an opt-in system that is stricter for businesses (Germany, Austria, Luxembourg etc.).

- **United Kingdom**<sup>17)</sup>: In the U.K., a Telephone Preference Service<sup>17)</sup> has been operated by the Direct Marketing Association since 1996, and has become a nationwide official system<sup>18)</sup> since 1999. The service is supervised by the Information Commissioner's Office (ICO). There is no expiration period for registrations. The remit of the system lies strictly within the boundaries of live unsolicited calls of a sales/marketing nature, and it does not stop other call types such as recorded/automated messages, silent calls, market research, overseas companies, debt collection, scam calls, nuisance and abusive calls etc. Violations are sanctioned with fines of up to 500,000 pounds. As of July 2015, there were around 21,000,000 registrations. It is noteworthy that there also exists a system for registration of

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16) The use of these for the purposes of direct marketing may be allowed only in respect of subscribers or users who have given their prior consent (opt-in system).

17) Regarding the Do-Not-Call system of the U.K., see Megumi Uesugi, *Igirisu de no Cold Calls ni kansuru Genjo* [The Present State of Cold Calls in the United Kingdom], *Shohishahonyusu*, no.106 (2016) p.42 ff, Megumi Uesugi, *Igirisu no Nuisance Calls e no Torikumi* [Initiatives against Nuisance Calls in the United Kingdom], *Aichi Daigaku Hogakubu Hokeironshu*, no.204 (2015) p.229 ff., Megumi Uesugi, *Igirisu no Do-Not-Call Seido* [The Do-Not-Call System of the United Kingdom], *Webuban Kokuminseikatsu*, no.36 (2015), p.16 ff., Megumi Uesugi, *Tokuteishotorihikiho ni okeru Fushoseikanyu no Kisei no Arikata* [The Way of Being of the Regulation of Unrequested Solicitation in the Act on Specified Commercial Transactions], *Gendaishohishaho*, no.27 (2015), p.35 ff., Megumi Uesugi, *Igirisu ni okeru Dairekuto Maketingu no Kisei* [Regulation of Direct Marketing in the United Kingdom], *Aichi Daigaku Hogakubu Hokeironshu*, no.201 (2014) p.1 ff., Megumi Uesugi, *Igirisu ni okeru Fushoseikanyu no kisei* [Regulation of Unrequested Solicitation in the United Kingdom], *Shohishahonyusu*, no.91 (2012), p.161 ff.

18) <http://www.tpsonline.org.uk/tps/whatistps.html> (last visited September 30, 2016).

corporate numbers, the Corporate Telephone Preference Service (CTPS).

- **France**<sup>19)</sup>: In France, the new nationwide Bloctel started operating from June 2016. Its operation has been assigned to Opposetel, a company composed of four telemarketing companies, and enforcement is carried out by the DGCCRF. Registration is valid for three years. Solicitations by companies with existing transaction relations, solicitations for newspapers, magazines etc. are exempted. Violations are sanctioned with an administrative penalty of a maximum of 15,000 euros for individuals and 75,000 euros for legal entities. The number of persons registered already exceeded 1,000,000 as of June 2, 2016. The method used for verifying whether a certain number is registered, is that of “washing,” which means that telemarketers “wash” their list of prospective telephone numbers to be solicited against the registry<sup>20)</sup>. This means that the telemarketer submits a list of the prospective persons to be solicited, and the operator sends back the list with the numbers registered in the system deleted. In general, this system provides for a higher level of protection, compared to systems like the ones in the U.S. and other countries where businesses obtain copies of the registry<sup>21)</sup>.

- **Italy**<sup>22)</sup>: In Italy, the Registro Pubblico delle Opposizioni<sup>23)</sup> was introduced in 2011. Its operation has been assigned to the Fondazione Ugo Bordoni by the Ministry of Economic Development – Department of Communications through a service agreement. There is no expiration period for registrations, and the sanctions for violations are stipulated in the Personal Data Protection Code. As of October 2015, there were 1,421,939 persons registered. Legal entities can also register their numbers. The registry is automatically updated, and numbers whose holders have changed or which are not any more in use are deleted. The method used for verification is that of “washing.”

- **Norway**<sup>24)</sup>: In Norway, the Reservasjonsregisteret has been operated since 2001, by a

19) Regarding the Do-Not-Call system of France, see Antonios Karaïskos, *Furansu no Do-Not-Call Seido “Burokuteru (Bloctel)” no Unyokaishi [Commencement of Operation of the Do-Not-Call System “Bloctel” in France]*, Shohishahonyusu, no.108 (2016), p.151 ff., Antonios Karaïskos, *Furansu no Aratana Do-Not-Call Seido ga Shido [The New Do-Not-Call System of France Started Operating]*, Webuban Kokuminseikatsu, no.48 (2016) p.19, Antonios Karaïskos, *Furansu no Do-Not-Call Seido [The Do-Not-Call System of France]*, Webuban Kokuminseikatsu, no.41 (2015), p.15 ff.

20) Regarding the existing verification methods, see Masashi Okamoto, Naoyuki Nishizuka and Hirokazu Sawada, *Denwakanyukyohitorokuseido ni okeru Shogohoshiki – Osutoraria/Shingaporu no Chosa o Fumaete – [Verification Methods for Telephone Solicitation Refusal Systems: Based on the Research Trip to Australia/Singapore]*, Shohishahonyusu, no.41 (2015), p.156 ff.

21) In Japan, it is pointed out that this entails the danger of misuse of such copies, since they include the telephone numbers of persons who can be in general assumed to be “vulnerable” (in the sense that they are comparatively not able to strongly resist unrequested solicitation). Regarding this issue, see Shinji Minai and Antonios Karaïskos (op. cit. at note 5), p.86.

22) Regarding the Do-Not-Call system of Italy, see Antonios Karaïskos, *Itaria no Do-Not-Call Seido [The Do-Not-Call System of Italy]*, Webuban Kokuminseikatsu, no.41 (2015), p.17 ff.

23) <http://www.registrodelleopposizioni.it/> (last visited September 30, 2016).

24) Regarding the Do-Not-Call system of Norway, see Antonios Karaïskos, *Norwe no Do-Not-Call Seido [The*



government registration organization called Brønnøysundregistrene. There is no expiration period for registrations. Companies with whom there exists a customer relationship are exempted, as long as the objective of the telephone solicitation is the goods or services that formed the basis of such relationship. When registering, it is possible to exempt telephone solicitations for charities. According to the annual report of 2014<sup>25)</sup>, there were 2,110,675 registrations at the point of time of preparation of the report.

- **The Netherlands**<sup>26)</sup>: In the Netherlands, a voluntary registry was being operated by Stichting Infolfilter, and in 2009, a nationwide official registry called Bel-me-niet Register<sup>27)</sup> was introduced, operated by the same organization. There is no expiration period for registrations. Companies with whom there is a customer relationship, market research calls etc. are exempted. Sanctions against violations are imposed by the Netherlands Authority for Consumers and Markets. As of April 2013, the number of registrations was around 8,000,000. Apart from natural persons, some types of legal entities can also register their numbers. When registering, it is possible to choose to refuse from among ten business categories of telephone solicitation. It is noteworthy that telephone solicitation having as its purpose the transmission of thoughts or charity is also subject to refusal.

- **Belgium**<sup>28)</sup>: In Belgium, a voluntary Robinson List<sup>29)</sup> had been operated by the Belgian Direct Marketing Association (BDMA), and in March 2013 the nationwide official list “Ne m’appelez plus”<sup>30)</sup> was introduced. The list is operated by the non-lucrative organization DNCM (which stands for “Do Not Call Me”), established by BDMA. Registrations were originally valid for two years, but there is currently no expiration period. Sanctions against violations are imposed by the Ministry of Finance. As of October 2015, there were 723,633 registrations. It is worth mentioning that the Belgian system allows for refusal of telephone solicitations even when there is an existing customer relationship. Further, legal entities can also register their numbers, and telephone numbers that are no longer in use etc. are automatically deleted from the list.

*Do-Not-Call System of Norway*], Webuban Kokuminseikatsu, no.42 (2016), p.16 ff.

25) The annual report (in Norwegian), can be downloaded from the website of Brønnøysundregistrene, <http://www.nsd.uib.no/polsys/data/en/forvaltning/enhet/13514/aarsmelding> (last visited September 30, 2016).

26) Regarding the Do-Not-call system of the Netherlands, see Antonios Karaiskos, *Oranda no Do-Not-Call Seido* [*The Do-Not-Call System of the Netherlands*], Webuban Kokuminseikatsu, no.32 (2016), p.17 ff.

27) <https://www.bel-me-niet.nl/> (last visited September 30, 2016).

28) Regarding the Do-Not-Call system of Belgium, see Antonios Karaiskos, *Berugi no Do-Not-Call Seido* [*The Do-Not-Call System of Belgium*], Webuban Kokuminseikatsu, no.43 (2016), p.16 ff.

29) Robinson Lists are lists that enable the persons registered on them to avoid solicitation by means of telephone, door-to-door visits, facsimile, post mail, e-mail etc. The reason why such lists are so named seems to be that they allow registered persons to spend their lives in tranquility and undisturbed, just like Robinson Crusoe did on his island.

30) <https://www.ne-m-appelez-plus.be/> (last visited September 30, 2016).

- **Spain**<sup>31)</sup>: In Spain, a Robinson List<sup>32)</sup> has been functioning since 2009. It is operated by ADIGITAL, an organization formed by businesses. Enforcement is carried out by the Data Protection Authority. There is no expiration period for registrations. Violations are sanctioned with penalties of between 40,001 to 300,000 euros. According to the White Paper for the year 2015, the number of persons registered at the time of preparation of the paper was 400,000<sup>33)</sup>.

- **Switzerland, Sweden, Finland, and Portugal** have lists operated by business organizations. These lists are not compulsory like the ones mentioned above, but voluntary. This means that only businesses that are members of the relevant organizations are bound by such lists.

- **Germany, Austria, Luxembourg, and Denmark** have adopted an opt-in system, where unrequested telephone solicitation is allowed only in cases where the person to be solicited has previously given its consent to such solicitation. It should be mentioned here that although Denmark in principle adopts an opt-in system, there exist at the same time some categories of unrequested telephone solicitation that are exempted and allowed, namely (i) ordering of books; (ii) subscriptions for newspapers, magazines, and periodicals; (iii) brokering of insurance contracts etc.; and (iv) subscriptions for rescue services or medical transport<sup>34)</sup>. However, an opt-out list is available for persons who wish to refuse such solicitations too<sup>35)</sup>.

### (iii) Oceania/Asia

- **Australia**<sup>36)</sup>: In Australia, a Do-Not-Call Register<sup>37)</sup> exists since 2007. Before this register came into force, there existed a voluntary register run by a business organization, as well as regulations within states. Enforcement is performed by the Australian

31) Regarding the Do-Not-Call system of Spain, see Michiyo Maeda, *Supein no Do-Not-Call Seido [The Do-Not-Call System of Spain]*, Webuban Kokuminseikatsu, no.44 (2016), p.17 ff.

32) <https://www.listarobinson.es/> (last visited September 30, 2016).

33) Michiyo Maeda (op. cit. at note 31), p.18.

34) Art. 4 para. 2 of the Danish Consumer Contracts Act, available (in English translation) at [www.consumer europe.dk/Menu/Consumer-laws/Danish-laws/The-Danish-Consumer-Contracts-Act](http://www.consumer europe.dk/Menu/Consumer-laws/Danish-laws/The-Danish-Consumer-Contracts-Act) (last visited September 30, 2016).

35) Art. 6, para. 3 of the Consolidated Marketing Practices Act, available (in English translation) at <http://www.consumerombudsman.dk/~media/Consumerombudsman/dco/Markedsfoeringsloven%20lbkg%202013.pdf> (last visited September 30, 2016).

36) Regarding the Do-Not-Call system of Australia, see Gensei Ohama, *Osutoraria no Do-Not-Call Seido [The Do-Not-Call System of Australia]*, Webuban Kokuminseikatsu, no.37 (2015), p.15 ff. Further, regarding the systems of Australia and Singapore, see Kinkibengoshikairengokai [Kinki Federation of Bar Associations], *Osutoraria/Shingaporu ni okeru Do Not Call Register no Unyokyo ni kansuru Chosahokokusho [Research Report on the Operational Status of the Do Not Call Register in Australia and Singapore]*, 2015 (the author of this paper participated in this research as coordinator and interpreter), as well as Akira Hasegawa/Kozo Nagano/Gensei Ohama, *Osutoraria/Shingaporu no Do Not Call Seido Chosahokokusho [Research Report on the Do-Not-Call System in Australia/Singapore]*, Shohishahonyusu, no.104 (2015), p.152 ff.

37) <https://www.donotcall.gov.au/> (last visited September 30, 2016).

Communications and Media Authority (ACMA). Registrations were at the beginning valid for three years, but now there is no expiration period. Exceptions from the prohibition are allowed for certain public interest organizations, such as charities, educational institutions, social researchers, opinion pollsters, and government bodies to make specific telemarketing calls. The amount payable in case of an infringement notice ranges up to 110,000 Australian dollars for each day on which contraventions occurred, and penalties as a result of court action range up to 220,000 Australian dollars for each day on which infringements occurred. There were 10,000,000 registrations as of February 2015. The businesses check their lists by “washing” them against the register.

- **India**: In India, the National Call Preference Register (NCPR)<sup>38)</sup> has been operating since 2011. It is a revised version of the National Do Not Call Registry (NDNC) introduced in 2007. The register is administered by the Telecom Regulatory Authority of India (TRAI). There is no expiration period for registrations. Violations are sanctioned with penalties whose amount increases according to the number of violations.

- **Singapore**<sup>39)</sup>: In Singapore, a Do Not Call Registry<sup>40)</sup> has been operated since 2014. Before, there was a voluntary registry operated by the Direct Marketing Association. The registry is operated and enforced by the Personal Data Protection Commission (PDPC). There is no expiration period for registrations. Charity calls, market researches etc. are exempted. Violations are sanctioned with penalties of a maximum of 10,000 Singapore dollars. As of July 2015, there were 821,000 registrations. The businesses check their lists by “washing” them against the registry.

- **Korea**<sup>41)</sup>: In Korea, a system for registration of refusals<sup>42)</sup> has been operated since 2014. The system is enforced by the Fair Trade Commission (local authorities are also granted some enforcement competences). Political parties, solicitation of insurance transactions etc. are exempted. Violations are sanctioned with a maximum of 10,000,000 South Korean won. Characteristic to the system is the fact that it allows refusal per business field. The checking of telemarketers’ lists is done by a “washing.”

## B. Door-to-Door Solicitation

- **Australia**<sup>43)</sup>: In Australia, public authorities, including the Australian Competition and

38) <http://www.nccptrai.gov.in/nccpregistry/> (last visited September 30, 2016).

39) Regarding the Do-Not-Call system of Singapore, see Akira Hasegawa, *Shingaporu no Do-Not-Call Seido* [*The Do-Not-Call System of Singapore*], *Webuban Kokuminseikatsu*, no.38 (2015), p.15 ff.

40) <https://www.dnc.gov.sg/index.html> (last visited September 30, 2016).

41) Regarding the Do-Not-Call system of Korea, see Yasuhiro Yoshioka, *Kankoku no Do-Not-Call Seido* [*The Do-Not-Call System of Korea*], *Webuban Kokuminseikatsu*, no.38 (2015), p.16 ff.

42) <https://www.donotcall.go.kr/teldeny/TouchEnKey/install.do> (last visited September 30, 2016).

43) Regarding the Do-Not-Knock system of Australia, see Gensei Ohama, *Osutoraria no Do-Not-Knock Seido* [*The Do-Not-Knock System of Australia*], *Webuban Kokuminseikatsu*, no.46 (2016), p.17 ff., Shinji Minai, *Osutoraria no Do-Not-Knock Sutekka – Homonhanbaikanyu ni taisuru Jizenkyohi no Shien* – [*The Do-Not-Knock Sticker of Australia: Assistance of Ex Ante Refusal Against Door-to-Door Solicitation*], *Shohishahonyusu*,

Consumer Commission (ACCC) have been creating and distributing Do-Not-Knock stickers. The Federal Supreme Court of Australia has, in two recent decisions, admitted the legal effect of such stickers, in connection with Art. 75, para. 1 of the Australian Consumer Law (ACL). According to the same provision, a dealer who calls on a person at any premises for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must leave the premises immediately on the request of the occupier of the premises, or any person acting with the actual or apparent authority of the occupier; or the person with whom the negotiations are being conducted.

In a case, which occurred in South Australia in November 2011, a sign was affixed to the consumer's front door and contained an image of a fist knocking with a line through it and the words "DO NOT KNOCK Unsolicited door-to-door selling not welcome here." The Federal Court found, in its decision of October 13, 2013<sup>44)</sup>, that AGL South Australia Pty Ltd and its marketing company, CPM Australia Pty Ltd, broke the law when their salesperson attempted to negotiate an agreement despite the presence of this sign on the consumer's front door. This court decision confirmed that consumers can use a sign to request uninvited salespeople to leave their premises and do not need to meet the salesperson face-to-face to ask them to leave<sup>45)</sup>.

Further, in its decision of December 12, 2013<sup>46)</sup>, the court ordered AGL SA and CPM to pay a pecuniary penalty of 35,000 and 25,000 Australian dollars respectively.

- **United States**<sup>47)</sup>: In the U.S., contrary to the already mentioned Do-Not-Call system of the same country, there is no nationwide system, and regulation is performed on a state basis. Various methods are used for such regulation, with the main ones being the following: (1) obligation of solicitors to perform registrations or obtain licenses, (2) restrictions regarding the time and/or place etc. where solicitations are allowed, (3) Do-Not-Knock systems (opt-out systems), where the will to refuse solicitation is expressed with stickers, registries or a combination of them, and (4) general prohibition of

no.99 (2014), p.99 ff.

44) Australian Competition and Consumer Commission v AGL Sales Pty Ltd [2013] FCA 1030 (11 October 2013).

45) Regarding this decision, see for example the media release on the website of ACCC, <https://www.accc.gov.au/media-release/court-confirms-salespeople-must-not-ignore-%E2%80%98do-not-knock%E2%80%99-signs> (last visited September 30, 2016).

46) Australian Competition and Consumer Commission v AGL Sales Pty Ltd (No 2) [2013] FCA 1360 (12 December 2013).

47) Regarding the Do-Not-Knock system of the U.S., see Antonios Karaiskos, *Amerika no Do-Not-Knock Seido* [The Do-Not-Knock System of the United States], Webuban Kokuminseikatsu, no.46 (2016), p.18 ff., Shinji Minai, *Amerika no Chihojichitai ni okeru Homonhanbaikisei –No Soliciting Sutekka to Kanyujyorei–* [Regulation of Door-to-Door Solicitation in Local Authorities of the United States: No Soliciting Stickers and Solicitation Ordinances], Shohishahonyusu, no.100 (2014), p.197 ff., Masato Yamada, *Shohisha no Jinkakuken to Homonhanbai to no Kankei –Beikoku no Jitsurei o Sanko ni –* [The Relation Between Personal Rights of Consumers and Door-to-Door Solicitation: Using Examples in the United States as a Reference], Gendaishohishahoho, no.30 (2016), p.70 ff.

door-to-door solicitation (opt-in system), regarding either only commercial solicitation or solicitation in general.

The Supreme Court of the United States has repeatedly admitted the right to have one's refusal against door-to-door solicitation observed<sup>48)</sup>. The validity of restrictions falling under the above-mentioned categories by ordinances of local authorities has often been argued in lawsuits. An overview of the relevant court decisions creates the following impressions. In general, American courts seem not to be admitting the validity of general prohibitions against door-to-door solicitations performed by charity or religious organizations, in the light of the protection of freedom of speech and religion. Respectively, local authorities seem to be avoiding the stipulating of such restrictions. Further, courts seem to be refusing the validity of extensively wide restrictions, admitting only reasonable restrictions. The constitutionality of provisions stipulating a general prohibition on unrequested door-to-door solicitation has been admitted by the Supreme Court<sup>49)</sup>. However, this decision has been delivered at a time when freedom of commercial speech was not thought to be included in the scope of the First Amendment to the United States Constitution. This decision has been followed by lower court decisions denying the validity of such a general prohibition. There is also a Supreme Court Decision<sup>50)</sup>, which denied the constitutionality of an ordinance that made registering and obtaining licenses compulsory for all door-to-door solicitation, including religious solicitation as well as pamphleteering.

Consequently, it could be said that American courts show a tendency to judge that systems where the decision of refusing or not unrequested door-to-door solicitation is left to each individual, namely opt-out systems, are the most reasonable.

- **Luxembourg**<sup>51)</sup>: In Luxembourg, the Consumer Code (*Code de la Consommation*) includes a special article regarding stickers etc. against door-to-door solicitation. More specifically, Art. L.222-8 stipulates that all contracts concluded as a result of door-to-door solicitation in violation of a refusal of such solicitation expressed by means of stickers etc. are void (para. 1). Violations of such wishes are sanctioned with a penalty between 251 to 120,000 euros (para. 2). Although there is no specific format for stickers or other means of expression of refusal, the government of Luxembourg has prepared and is delivering

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48) For example, in *Rowan v. Post Office Dept.*, 397 U.S. 728 (1970), the Supreme Court judged that "The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property."

49) *Breard v. Alexandria*, 341 U.S. 622 (1951).

50) *Watchtower Bible & Tract Soc. of N. Y., Inc. v. Village of Stratton* 536 U.S. 150 (2002).

51) Regarding the Do-Not-Knock system of Luxembourg, see Antonios Karaiskos, *Rukusenburuku no Do-Not-Knock Seido* [*The Do-Not-Knock System of Luxembourg*], *Webuban Kokuminseikatsu*, no.47 (2016), p.18 ff., Antonios Karaiskos, *Rukusenburuku ni okeru Homonhanbai no Kisei – Homonhanbai Okotowari Sutekka o Chushin ni* – [*Regulation of Door-to-Door Solicitation in Luxembourg: Focusing on Do-Not-Knock Stickers*], *Shohishahonyusu*, no.101 (2014), p.91 ff.

stickers for this purpose free of charge.

- **United Kingdom**<sup>52)</sup>: In the U.K., just as in the U.S., there is no nationwide system regulating door-to-door solicitation. Many local authorities are delivering Do-Not-Knock stickers. Further, there are local authorities with so-called “No Cold Calling Zones” or “Cold Calling Control Zones,” which are set to prevent cold calling and reduce the risk of doorstep crime. Such zones do not create exclusion zones, but can be useful in deterring unscrupulous cold callers. Zones do not automatically make it a criminal offence for unwanted doorstep sellers to call at someone’s door. However, since 2008, there is legislation that makes it an offence for any trader calling at doors to sell goods or services, to refuse a request to leave and/or return later. According to some local authorities, window or door stickers displaying such a request to cold callers are classed as a request to leave and not to call at the property<sup>53)</sup>.

There also exists the “nominated neighbour scheme,” which is designed to let a trusted neighbor, relative, or friend help an elderly or vulnerable person to deal with unexpected or unrecognized callers at their door.

- **Unfair Commercial Practices Directive**<sup>54)</sup>: it should be noted here, that regarding door-to-door solicitation (as well as telephone solicitation), the Unfair Commercial Practices Directive 2005/29/EC also includes important provisions. According to Annex I, conducting personal visits to a consumer’s home, ignoring the consumer’s request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation, is an aggressive commercial practice (para. 1). Further, the same applies to making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation (para. 2).

### III. Regulation in Japan

The presentation of the systems abroad has given a picture of the international standards and trends of the regulation of unrequested telephone and door-to-door solicitation. In the following, the current state of affairs of such regulation under the current legislation (Section 1) as well as by other means (Section 2) in Japan will be

52) Regarding the Do-Not-Knock system of the U.K., see Megumi Uesugi, *Igirisu no Do-Not-Knock Seido [The Do-Not-Knock System of the U.K.]*, Webuban Kokuminseikatsu, no.47 (2016), p.17 ff., Megumi Uesugi (op. cit. at note 2), p.32 ff.

53) See for example the website of Wales, <http://www.tradingstandards.wales.org.uk/help/nocoldcalling.cfm> (last visited September 30, 2016).

54) Regarding the content of the directive and its implementation in member states, see Shinji Minai, *Fukoseitorihikihohoshirei to Kameikoku no Taio – UCPD o Manabu Koto de Mietekuru Koto – [Directive on Unfair Commercial Practices and Implementation in Member States: Lessons to be Learned by Analyzing the UCPD]*, Shohishahonyusu, no.108 (2016), p.242 ff.

presented. This will make clear the deficiency and the issues of the current state of affairs of regulation in the same country (Section 3).

## 1. Legislative Regulation

### A. Acts

The main acts dealing with the issue of regulation of unrequested door-to-door and telephone solicitation in Japan are as follows. The Act on Specified Commercial Transactions, which covers seven transaction types (transactions arising from door-to-door sales, mail order sales, telemarketing sales, multilevel marketing transactions, transactions arising from the provision of specified continuous services, business opportunity sales transactions, and door-to-door purchases) offers protection with regard to those categories of telephone and door-to-door transactions that are included in its scope.

Among transactions that do not fall within its scope, the most problematic from the viewpoint of severe consumer damage occurring as a result of unrequested solicitation have been those of financial and commodity derivatives<sup>55)</sup>. Therefore, unrequested solicitation regarding these types of transactions has been especially prohibited (with some exceptions, however) by the relevant special acts, as mentioned below. However, it must be emphasized that no regulation is included in any act regarding other transactions that do not fall under the scopes of the acts presented below. This means that under the existing legislation, consumers in Japan are not granted the right to refuse unrequested solicitation, except for such specific transaction types.

#### (i) Act on Specified Commercial Transactions<sup>56)</sup>

The purpose of this Act is to protect the interests of purchasers and others, and cause the distribution of goods and provision of services to be appropriate and smooth by ensuring fairness in transactions falling under its scope, and preventing damages that may be caused to the purchasers and others so as to contribute to the sound development of the national economy (Art. 1)<sup>57)</sup>.

Regarding telephone solicitations, Art. 17 of the Act provides that no seller or service provider shall solicit a sales contract or a service contract through telemarketing sales from a person who has manifested the intention not to conclude such a contract. Further, regarding door-to-door solicitations, Art. 3-2, para. 2 of the Act provides that no seller or service provider shall solicit the conclusion of a sales contract or a service contract through door-to-door sales from a person who has manifested the intention not to conclude such a contract.

The above-mentioned provisions do not apply to all telephone and door-to-door

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55) Shinji Minai (op. cit. at note 5) p.17.

56) Act No.57 of June 4, 1976.

57) All English translations of Japanese acts in this paper are based on the Japanese Law Translation Website (Japanese Law Translation Database System), <http://www.japaneselawtranslation.go.jp/?re=02> (last visited September 30, 2016), prepared by the Ministry of Justice, with minor adjustments where considered necessary.

solicitations. According to Art. 26, para. 1 (viii) of the Act, certain sales or provision of services prescribed in the Financial Instruments and Exchange Act, the Building Lots and Buildings Transaction Business Act, the Act on Provision, etc. of Trust Businesses by Financial Institutions, the Travel Agency Act etc., are not included in the scope of the above-mentioned provisions.

Moreover, in light of the large increase in consumer damage caused by forced buying of noble metals etc., a provision prohibiting unrequested solicitation regarding door-to-door purchases was also introduced with the amendment of the Act in 2012 (Art. 58-6).

The above-mentioned provision of Art. 3-2, para. 2 of the Act on Specified Commercial Transactions, which prohibits door-to-door solicitation of persons who have made clear their intention not to conclude a contract, provides for a prohibition of re-solicitation. From the wording of this provision, one could suggest that its scope also includes cases where such a refusal has been made clear in advance by use of paper, stickers, or any other indication mentioning such a refusal, e.g. using the wording “No Solicitation.”

However, according to the “Guideline on Article 3-2 etc. of the Act on Specified Commercial Transactions” issued by the Consumer Affairs Agency<sup>58)</sup>, the manifestation of the intention not to conclude such a contract needs to be a refusal expressed against each individual solicitation. According to this understanding, the scope of this provision is restricted to cases where the consumer has expressed its will not to receive solicitation, after such solicitation has in fact started. This means that paper, stickers, or any other indication mentioning such a refusal is not considered to fulfill the requirements of the above-mentioned provision, since the object, content etc. of such refusal are not clear. The same interpretation is included in the explanation of this provision provided by the Consumer Affairs Agency<sup>59)</sup>.

It should also be mentioned here that, regarding solicitation via e-mail, Art. 12-3, para. 1 of the Act stipulates that neither a seller nor a service provider shall in principle advertise via e-mail with regard to the terms and conditions under which it sells goods or designated rights or provides services through mail order sales, without the consent of the advertising target (opt-in system). Previously, an opt-out system was adopted for the regulation of unrequested e-mail solicitation, but this was changed to the current system in 2007 due to the lack of effectiveness of the previous one<sup>60)</sup>.

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58) The Guideline (in Japanese) can be found on the website of the Consumer Affairs Agency, [http://www.caa.go.jp/trade/pdf/130220legal\\_4.pdf](http://www.caa.go.jp/trade/pdf/130220legal_4.pdf) (last visited September 30, 2016).

59) Shohishacho Torihikitaishakuka [Consumer Affairs Agency, Consumer Transaction Division] and Keizaisangyosho Shomuryutsuhoangurupu Shohikeizaikikakushitsu [Ministry of Economy, Trade and Industry, Commerce, Distribution and Industrial Safety Policy Group, Consumer Affairs Policy Planning Office] (eds.), *Tokuteishotorihiki ni kansuru Horitsu no Kaisetsu [Explanation of the Act on Specified Commercial Transactions]*, (Tokyo: Shojihomu 2014), p.60.

60) Megumi Uesugi, *Tokuteishotorihikiho ni okeru Fushoseikanyu no Kisei no Arikata [The Way of Being of*



**(ii) Financial Instruments and Exchange Act<sup>61)</sup>**

The purpose of this Act is to ensure fairness in the issuance of securities and transactions of financial instruments, etc. and to facilitate the smooth distribution of securities, as well as to achieve fair price formation for financial instruments, etc. through the full utilization of the functions of the capital markets, by streamlining systems for the disclosure of corporate affairs, specifying the necessary particulars relevant to persons conducting financial instruments business, and ensuring the appropriate operation of financial instruments exchanges, thereby contributing to the sound development of the national economy and the protection of investors (Art. 1).

According to Art. 38, (iv) and (v) of the Act, it is prohibited for a financial services provider, etc. or the officer or employee thereof to engage in any of the following acts; provided, however, that this excludes acts that are specified by a cabinet office ordinance as being unlikely to result in insufficient investor protection, harm the fairness of transactions, or cause a loss of confidence in the financial instruments business: (iv) visiting or telephoning a customer that is not asking to be solicited for the conclusion of a financial instruments transaction contract (limited to one that is specified by cabinet order in consideration of the content of the financial instruments transaction contract and other circumstances, as a contract in connection with which it is particularly necessary to ensure the protection of investors), and soliciting such a customer to conclude a financial instruments transaction contract; (v) soliciting a customer to conclude a financial instruments transaction contract (limited to one that is specified by cabinet order in consideration of the contents of the financial instruments transaction contract and other circumstances, as a contract in connection with which it is necessary to ensure the protection of investors) without obtaining confirmation from the customer, prior to solicitation, regarding whether or not the customer is willing to be solicited.

**(iii) Commodity Derivatives Act<sup>62)</sup>**

The purpose of this Act is to ensure fairness in the price formation, buying and selling, and other transactions in connection with commodities and in the acceptance of consignment of transactions, etc. on commodity markets, etc. and to facilitate the production and distribution of commodities by ensuring the sound management of commodity exchanges, ensuring the proper management of the business of persons who operate commodity derivatives business and by achieving other conditions through making stipulations about the organization of commodity exchanges, management of transactions

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*the Regulation of Unrequested Solicitation in the Act on Specified Commercial Transactions*], (op.cit. at note 17), p.30 ff.

61) Act No.25 of April 13, 1948.

62) Act No.239 of August 5, 1950. Regarding the regulation of unrequested solicitation by this Act, see Shinichiro Kato, *Shohinsakimonotorihiki ni okeru Fushoseikanyu no Kaikin ni tomonau Jitsumutaio* [Practical Measures following the Removal of the Ban on Unrequested Solicitation for Commodity Derivatives Transactions], Gendaishohishaho, no.28 (2015), p.75 ff.

on commodity markets and other matters, thereby contributing to the sound development of the national economy and to the protection of customers, etc. of consignment of transactions and other on commodity markets, etc. (Art. 1).

According to Art. 214 (vii) and (ix) of the Act, a commodity derivatives business operator shall not commit any of the following acts: (vii) carrying out solicitation with regard to a commodity transactions contract without confirming in advance whether or not a customer has any desire to receive such solicitation after telling such customer the trade name or name of the commodity derivatives business operator and the fact that it is a solicitation for a conclusion of a commodity transactions contract; (ix) the act of visiting or making a telephone call to a customer who has not requested solicitation of conclusion of a commodity transaction contract (limited to those designated by cabinet order, by taking into consideration the contents of the relevant commodity transaction contract and other circumstances concerned, contracts for which protection of customers, etc. is particularly necessary), thereby soliciting him/her to conclude a commodity transaction contract (excluding acts specified by an ordinance of the competent ministry to be those that are not lacking in protection of customers, etc. or that are not likely to harm the fairness of transactions).

Although, at first sight, this Act seems to be providing for a total prohibition of unrequested telephone and door-to-door solicitation, according to the Ordinance for Enforcement of the Commodity Derivatives Act<sup>63)</sup>, as in force after its amendment in 2015, certain solicitations aiming at persons of under 65 years of age and with a certain annual income are allowed, from the viewpoint of an activation of the relevant market, on condition that a consideration period after the conclusion of the contract will be allowed etc. This amendment has been the object of criticism, as being contrary to the purport of the authorization by the Act<sup>64)</sup>.

## B. Ordinances

As presented above, the Acts currently in force in Japan do not provide for a system allowing consumers to refuse unrequested solicitation comprehensively and in advance. However, there exist consumer affairs ordinances stipulated by local authorities, which provide for similar systems. Such ordinances stipulate that in cases where consumers have previously expressed their intention to refuse solicitation, before receiving such solicitation, acts of businesses that ignore such intentions are treated as “unfair commercial practices” and therefore prohibited<sup>65)</sup>.

In general, there are two main types of ordinances dealing with the issue of the refusal

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63) Ordinance of the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Economy, Trade and Industry No.3 of February 22, 2005.

64) Shinichiro Kato (op.cit. at note 62), p.75.

65) An overview of the relevant ordinance provisions gives the strong impression that their content shows many similarities to that of the Unfair Commercial Practices Directive 2005/29/EC.

of solicitation, namely (i) ordinances giving effect to *ex post* refusals of solicitations only, and (ii) ordinances giving effects to *ex ante* refusals too<sup>66)</sup>.

**(i) Ordinances Giving Effect Only to *Ex Post* Refusals**

Ordinances belonging to this category provide that in cases where the consumer has expressed its will to refuse solicitation, further continuing to solicit or re-soliciting is regarded as being an “unfair commercial practice” and therefore not allowed<sup>67)</sup>. The content of the regulation provided by such ordinances is almost the same as that provided by the Act on Specified Commercial Practices.

**(ii) Ordinances Giving Effect to *Ex Ante* Refusals**

Ordinances belonging to this category prohibit solicitation against consumers who have previously refused such solicitation as being an “unfair commercial practice,” providing higher protection compared to that of the Act on Specified Commercial Transactions<sup>68)</sup>.

An important issue in cases of ordinances of this category is the concrete means to be used for expressing the consumer’s refusal against unrequested solicitation. It is noteworthy in this context that part of the ordinances of this category refer to the usage of paper patches or stickers as examples, and give legal effect to such usage<sup>69)</sup>. Further, some

66) Regarding the classification mentioned in the following and concrete examples of such ordinances, see Yoshinori Matsuo, *Nihon ni okeru Homonkanyuhanbai no Jizenkyohi to Chihojichitai no Torikumi* [*Ex Ante Refusal of Door-to-Door Solicitation and Initiatives of Local Authorities in Japan*], Webuban Kokuminseikatsu, no.48 (2016), p.16 ff.

67) For example, the Criteria for Unfair Commercial Practices stipulated by the Mayor of Nagoya, which provide details for unfair commercial practices according to Art. 16 para. 3 of the Nagoya City Consumer Affairs Safety Ordinance, stipulate that re-soliciting the conclusion of a contract against or concluding a contract with a consumer who has expressed its will of refusal is an unfair commercial practice (and therefore prohibited by Art. 16 para. 1 (i) of the Ordinance). The content of the Criteria and the Ordinance (in Japanese) can be downloaded from the website of the Nagoya City Consumer Affairs Center, <https://www.seikatsu.city.nagoya.jp/app/webroot/plaza/gaiyou/> (last visited September 30, 2016).

68) For example, at a prefectural level, Art. 15 (i) of the Kyoto Prefecture Consumer Affairs Safety Ordinance, which can be downloaded (in Japanese) from the website of the Prefecture, <http://www.pref.kyoto.jp/shohise/1175083751318.html> (last visited September 30, 2016), provides that soliciting the conclusion of a contract against a consumer against its will of refusal is prohibited as being an unfair commercial practice. Further, at a municipal level, Annex no.9 (12-2) of the Enforcement Regulations to the Ordinance for the Protection of Life of Kobe Citizens, related to Art. 14 of the same Enforcement Regulations, which provides details for Art. 23 of the Ordinance for the Protection of Life of Kobe Citizens, stipulates that soliciting the conclusion of a contract against consumers who have made clear the lack of will to conclude a contract related to door-to-door or telephone solicitation is prohibited as being an unfair commercial practice. The content of the Kobe City Ordinance and Enforcement Regulations (in Japanese) can be downloaded from the City’s website, <http://www.city.kobe.lg.jp/life/livelihood/lifestyle/kurashijyourei/index.html> (last visited September 30, 2016).

69) For example, the Enforcement Regulations to the Hokkaido Prefecture Ordinance for Consumer Affairs provide in no.4 of their Annex (related to Art. 3-2 of the Enforcement Regulations), which stipulates details for Art. 16, para. 1 (iv) of the Hokkaido Prefecture Consumer Affairs Ordinance, that soliciting a consumer to conclude a contract although the consumer has expressed its refusal to be solicited is prohibited as being an unfair commercial practice. Further, the “Purport/Explication of Words/Related Laws and Regulations/

local authorities have even prepared and deliver stickers for this purpose<sup>70)</sup>.

The systems where ordinances grant stickers etc. that are recognized as legally effective refusals are similar to those of the U.S. or Australia mentioned above. However, a view at the consequences of breaches of the will expressed by such stickers etc. in Japan gives only poor results. Most of the local authority ordinances provide only for investigations, administrative guidance, adjurations, or publications of the businesses in breach, and no stricter sanctions (e.g. cessation of business, penalties, invalidity of the contracts concluded as a result etc.) can be found<sup>71)</sup>.

## 2. Regulation by Other Means

### A. Technical Solutions Against Cold Calling

Due to the shortcomings in the legislative regulation of cold calling in Japan as seen above under 1., technical devices that enable dealing with such calls as well as with fraud calls have been developed and have started spreading in Japan. There are mainly two types of such devices: conversation recording type and refusal of incoming calls type.

In the case of the former type, the content of the conversations is automatically recorded, after having played a message that warns the caller that such recording will be performed. Various such devices are currently sold in the market. From 2013, the Metropolitan Police Department has lent 15,000 devices in the metropolitan area of Tokyo<sup>72)</sup> as part of countermeasures against remittance frauds (bank transfer scams)<sup>73)</sup>. Further, from September 2013, the Consumer Affairs Agency lent such devices to 238

Application Examples for Unfair Commercial Practices Based on the Provisions of Article 16 Paragraph 1 of the Hokkaido Prefecture Consumer Affairs Ordinance (Hokkaido Prefecture Environmental and Community Affairs Department, Life Safety Bureau, Consumer Safety Division)" expressly mentions (in page 26) that the expression of refusal of solicitations of the above-mentioned provisions can be made either orally or in writing, and that the usage of stickers at the entrance of houses or apartments expressing such refusal is understood as expression of the will of all residents of such houses or apartments. The content of the Ordinance can be found at <http://www.pref.hokkaido.lg.jp/ks/sak/kaisei-shohijourei.htm>, the content of the Enforcement Regulations at <http://www.pref.hokkaido.lg.jp/ks/sak/kisoku.htm>, and the content of the Explications etc. at <http://www.pref.hokkaido.lg.jp/ks/sak/grp/chikujou.pdf> (all websites of the Prefecture, in Japanese, last visited September 30, 2016).

70) For example, Otaru City in Hokkaido Prefecture has prepared and delivers a sticker mentioning that soliciting in spite of the usage of the sticker is a violation of the City Ordinance. See Yoshinori Matsuo (op. cit. at note 66), p.17.

71) Ibid. The same author also shows concern about the fact that even the investigations and administrative guidance etc. procedures provided are very rarely used by the local authorities.

72) Shinji Minai (op. cit. at note 5), p.17.

73) The so-called "*Furikomesagi*" in Japanese. Regarding the spreading of such frauds in the Japanese society, see for example the article "Remittance fraud cases set new record in first 10 months of 2014" published on the website of The Japan Times News on December 1, 2014, available at [http://www.japantimes.co.jp/news/2014/12/01/national/crime-legal/remittance-fraud-cases-set-new-record-in-first-10-months-of-2014/#\\_xSqCQWTcM](http://www.japantimes.co.jp/news/2014/12/01/national/crime-legal/remittance-fraud-cases-set-new-record-in-first-10-months-of-2014/#_xSqCQWTcM) (last visited September 30, 2016).

households in five areas within Iwate, Chiba, and Oita prefectures, in the framework of a “Model Work for the Prevention of Secondary Damage Caused to Elderly Consumers” implemented for five months from the end of September 2013 to the end of February 2014<sup>74</sup>). Such lending is also performed in many other prefectures throughout Japan<sup>75</sup>).

Further, in the case of the latter type, the telephone numbers from which nuisance calls are performed are consolidated and registered in the form of a “blacklist”; the devices automatically recognize calls from such numbers and either block such incoming calls, or warn the receiver using warning lights<sup>76</sup>). Such devices can be either installed separately from the telephone device, or are integrated with the telephone device, and are available for mobile phones as well. The information on the telephone numbers from which nuisance calls are performed is gathered from information provided by the police, and also by accumulation of registration information provided by users of such devices<sup>77</sup>). A basic fee is charged for this service, but free lending of such devices has been performed by many local authorities or police departments throughout Japan<sup>78</sup>). In view of the fact that such devices have been demonstrating a certain effect, the Consumer Affairs Agency has prepared a “Manual for the Introduction of Prevention Countermeasures against Damage from Malicious Telephone Solicitation of Elderly Consumers,” considering and analyzing actual examples of usage of such devices. This manual was distributed to local authorities with the aim of increasing the usage of such devices<sup>79</sup>).

## B. Do-Not-Knock Stickers

As mentioned above in Section 1. B., there exist local authorities with ordinances that grant Do-Not-Knock stickers a certain legal effect. At the same time, there are also many local authorities that prepare and deliver Do-Not-Knock stickers in order to prevent consumer damage arising from door-to-door solicitation, regardless of the fact that no legal effect is granted to them by the ordinances<sup>80</sup>).

As already mentioned, according to the understanding of the Consumer Affairs Agency,

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74) White Paper on Consumer Affairs 2014 (hereinafter referred to as the “White Paper”), p.204 ff. The content of the White Paper (in Japanese) can be downloaded from the website of the Consumer Affairs Agency, [http://www.caa.go.jp/adjustments/index\\_15.html](http://www.caa.go.jp/adjustments/index_15.html) (last visited September 30, 2016). According to the Paper, devices with such warning messages reduce the number of malicious calls to around one tenth, and in a questionnaire, 96% of the users answered that they felt safe.

75) For details see Shinji Minai (op. cit. at note 5), p.18.

76) For example, according to the image no.5-2-8 presented in the White Paper, p.206, a call coming from a number registered as a nuisance call number would be indicated by a red light, a call from an unregistered number by a yellow light, and a call from a number previously authorized by the receiver by a blue light.

77) See for example the information provided about such devices (in Japanese) on the website of Fukuoka Prefecture, <http://www.pref.fukuoka.lg.jp/contents/rokuon-souchi.html> (last visited September 30, 2016).

78) Shinji Minai (op. cit. at note 5), p.18.

79) White Paper, p.206.

80) Yoshinori Matsuo (op. cit. at note 66), p.18.

such stickers do not meet the requirements of the refusal of solicitation under the prohibition of re-solicitation as provided in the Act on Specified Commercial Transactions. However, according to an official statement of the same Agency, stickers prepared and delivered by local authorities, as well as those prepared by consumers, regardless of whether they are granted with legal effects by the ordinances or not, “are effective means for the prevention of consumer troubles in local areas, are not affected at all by the above-mentioned interpretation of the provision of the Act on Specified Commercial Transactions prohibiting re-solicitation, and mutually supplement with the Act on Specified Commercial Transactions.” Further, “In cases where there exist patches of paper, seals etc., businesses should, as ethics of business, naturally respect such will of consumers”<sup>81)</sup>.

### 3. Issues with the Current State of Affairs of Regulation

In Japan, there exists data that demonstrates consumers’ abhorrence of unrequested solicitations. According to the results of a “Consumer Attitude Survey on Door-to-Door Solicitation, Telephone Solicitation and Fax Solicitation”<sup>82)</sup> conducted in 2014, among 2000 consumers who replied, the rate of those who “totally do not want” to be solicited was 96.2% for door-to-door solicitation and 96.4% for telephone solicitation.

Why are consumers (apparently, not only in Japan) so against unrequested solicitation? The main issues that are pointed out as problems of unrequested solicitation are the following: (1) a solicitation lacking previous consent is a nuisance in itself, (2) such solicitation can easily become a hotbed of malicious business methods, since consumers usually are not interested in the relevant products or services and do not possess sufficient information about them (the element of “surprise” characterizing such solicitation is also emphasized), (3) there are occasions where such solicitation targets consumers with issues regarding their judgment capacity, e.g. persons with mental diseases such as Alzheimer’s disease, people who cannot easily refuse due to their character, and (4) such solicitation often targets consumers who lack payment capacity, resulting in contracts exceeding such capacity or contracts for quantities that considerably exceed what is normally required

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81) “Regarding the Provision Prohibiting Re-Solicitation in the Act on Specified Commercial Transactions and ‘Do-Not-Knock Patches of Paper/Seals etc.’” published by the Consumer Affairs Agency, Commercial Business and Price Regulation Division on December 10, 2009. Its content (in Japanese) can be downloaded from the website of the Consumer Affairs Agency, [http://www.caa.go.jp/policies/policy/consumer\\_transaction/release/](http://www.caa.go.jp/policies/policy/consumer_transaction/release/) (last visited September 30, 2016).

82) The results of this survey can be found in Shohishacho [Consumer Affairs Agency], *Heisei 26nendo Shohishaseisaku no Jissijokyo [Implementation Status of Consumer Policy in 2014]*, p.84, chart 2-2-6. This document (in Japanese) can be downloaded from [http://www.caa.go.jp/adjustments/pdf/27hakusho\\_honbun.pdf#search=%27%E5%B9%B3%E6%88%9026%E5%B9%B4%E5%BA%A6%E6%B6%88%E8%B2%BB%E8%80%85%E6%94%BF%E7%AD%96%E3%81%AE%E5%AE%9F%E6%96%BD%E7%8A%B6%E6%B3%81%27](http://www.caa.go.jp/adjustments/pdf/27hakusho_honbun.pdf#search=%27%E5%B9%B3%E6%88%9026%E5%B9%B4%E5%BA%A6%E6%B6%88%E8%B2%BB%E8%80%85%E6%94%BF%E7%AD%96%E3%81%AE%E5%AE%9F%E6%96%BD%E7%8A%B6%E6%B3%81%27) (last visited September 30, 2016).

being concluded, sometimes severely affecting the economic life of consumers<sup>83)</sup>.

In view of the above, in Japan, the necessity of the introduction of an opt-in or opt-out system regarding unrequested telephone and door-to-door solicitation has been debated for many years. The relevant debate has been quite detailed and refers to many aspects. In the following, only an overview of the main grounds referred to by the doctrine in favor of the introduction of a regulation system in Japan, as well as the main grounds for oppositions will be presented.

The main reasons forming the basis of the opinion in favor of the introduction of such a system have been the following: (1) the necessity for protection of the tranquility of life/ of the right to privacy (here, the necessity to respect the consumer's wish not to be solicited from the beginning, namely, not only after solicitation has started, but even before that is emphasized), (2) the necessity to protect and support autonomic decision-making, (3) the lack of information on the part of consumers (discrepancy of information between businesses and consumers), (4) the possibility of infringement of the consumers' right to life (in relation to the so-called "suitability rule"), (5) the necessity to achieve the purpose of each industry law (in case such regulation is to be introduced in specific industry laws), and (6) the function of such regulation as a rule for fair competition<sup>84)</sup>.

On the other hand, businesses strongly oppose the introduction of such regulation. More specifically, according to the opinions of business representatives expressed at a hearing of the Expert Examination Committee (hereinafter also referred to as the "Committee")<sup>85)</sup> established within the Consumer Commission, during the preparatory procedure for the review of the Act on Specified Commercial Transactions (which will be presented below in Chapter IV), businesses seem not to be opposing the strengthening of regulation against malicious telephone and door-to-door solicitation businesses. However, businesses seem to be strongly against a general regulation of such solicitations. Regarding door-to-door solicitation, the main reasons are two-fold: (1) More than 80% of employees performing door-to-door solicitation are women. This field has been offering employment to elderly people and women, and a large part of them will lose their jobs; (2) A comprehensive regulation would restrict consumers' opportunities to choose among

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83) Makinori Goto (op. cit. at note 1), p.38.

84) Regarding such justifications for the introduction of a regulation system, see id. at p.41 ff., Yutaka Ishitoya, *Fushoseikanyukisei no Hokisei no Genjo to Kadai* [Current State and Issues of Legal Regulation of Unrequested Solicitation], Gendaishohishaho, no.9 (2010), p.10 ff., Shinji Minai, *Do-Not-Call Seido to wa* [What is the Do-Not-Call System?], Webuban Kokuminseikatsu, no.35 (2015), p.16 ff.

85) The Committee was presided by Professor Makinori Goto (Waseda University), and consisted of 15 members with various backgrounds (university professors, lawyers, board members of business or consumer organizations etc.). The member list of the Committee as well as details of the works performed and reports published by the Committee can be found (in Japanese) on the website of the Cabinet Office, <http://www.cao.go.jp/consumer/kabusoshiki/tokusho/> (last visited September 30, 2016). The author of this paper was invited to participate as an observer to the 6<sup>th</sup> meeting of the Committee, where the hearings of business representatives were held.

various products, and result in consumers losing convenience<sup>86)</sup>.

Under the current state of legislation, as presented above in Section 1, existing provisions prohibit solicitations of consumers who have not requested such solicitations regarding transactions that fall within the scope of the Financial Instruments and Exchange Act and Commodity Derivatives Act, as well as for door-to-door purchases. These prohibitions provide for an opt-in regulation.

On the contrary, regarding transactions that are not included in the scope of the above-mentioned provisions, there is no such prohibition of unrequested solicitation. Art. 3-2, para. 1 of the Act on Specified Commercial Transactions provides that “When a seller or a Service Provider seeks to conduct Door-to-Door Sales, he/she shall endeavor to confirm that the counterparty is willing to be solicited,” imposing on the businesses an “obligation to make effort” to confirm the consumer’s will to be solicited before starting such solicitation for door-to-door sales. Regarding telephone solicitations, not even such an “obligation to make effort” is provided for.

The understanding of the Consumer Affairs Agency regarding Art. 3-2 para. 2 of the Act on Specified Commercial Transactions which is strongly relevant for door-to-door solicitation has been strongly criticized, since it does not allow for a prevention of consumer damage caused by such solicitation, as it requires consumers to first be exposed to solicitation, before refusing it. Further, it has been pointed out that the efforts to diffuse the usage of Do-Not-Knock stickers etc. are still limited in few local authorities, and that given the weak nature of the sanctions stipulated, the preventing effect of such stickers is considerably insufficient. According to this opinion, it is necessary to (1) promote the establishment of ordinances which treat solicitations contrary to the previously expressed refusal of consumer as being prohibited unfair commercial practices, (2) grant with ordinances legal effects to Do-Not-Knock stickers as a means of expression of such refusal, and (3) provide in ordinances effective sanctions (both administrative and penal sanctions) against businesses performing door-to-door solicitation in breach of such wishes<sup>87)</sup>.

Regarding the development and diffusion of technical devices against telephone solicitation, it cannot be denied that such devices could contribute to the protection of consumers, especially of the so-called “vulnerable consumers”, from malicious telephone solicitation, including unrequested telephone solicitation. However, it must also be pointed out that such devices do not provide a comprehensive protection of the consumer’s will not to receive unrequested telephone solicitation. The author strongly agrees with the

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86) See for example the material submitted during the 1st meeting of the Committee by the Japan Direct Selling Association, the Japan Direct Marketing Association and the Vice-President (then) of the Japan Direct Selling Association and member of the Committee, Hiroki Suzuki, available at the website of the Cabinet Office, <http://www.cao.go.jp/consumer/history/03/kabusoshiki/tokusho/senmon/001/shiryou/index.html> (last visited September 30, 2016).

87) Yoshinori Matsuo (op. cit. at note 66), p.18.



opinion expressed in the above-presented Mainstream Marketing Services Decision of the Supreme Court of the U.S., that “[e]ach of these alternatives puts the cost of avoiding unwanted telemarketing calls on consumers,” and that “[f]orcing consumers to compete in a technological arms race with the telemarketing industry is not an equally effective alternative to the do-not-call registry.”

Thus, under the current state of legislative regulation in Japan, although there are some transaction types where solicitation is prohibited once the consumer has expressed its refusal against such solicitation after it has begun, no comprehensive right of consumers to refuse all unrequested solicitation beforehand has been established. On the other hand, although it cannot be denied that the existing non-legislative means offer a certain degree of support to consumers, their efficiency depends on the specific circumstances of each case and sometimes leads to a “race” between consumers who attempt to protect themselves and businesses who try to circumvent such means.

Taking into consideration the above, it could be pointed out that Japanese legislation has fallen behind compared to that of most (regarding telephone solicitation) and many (regarding door-to-door solicitation) countries abroad, regarding the provision to the persons to be solicited of the ability to comprehensively refuse all future unrequested telephone and/or door-to-door solicitations.

#### **IV. Deliberations within the Expert Examination Committee**

The above-mentioned Act on Specified Commercial Transactions, which was established in 1976, has undergone a few amendments, with the most recent and significant being that of 2008. Art.8 of Act No.74 of June 18, 2008, by which this amendment was carried, provided for a review of the Act on Specified Commercial Transactions after the lapse of a period of five years after the amendment.

In January 2015, the Prime Minister consulted with the Consumer Commission of the Cabinet Office for a revision of the Act on Specified Commercial Transactions. From March 2015, the Committee began to reconsider the provisions of the same Act, in order to ensure that it corresponds to the social changes etc. that had taken place after the above-mentioned amendment in 2008. In August 2015, the Committee published an Intermediate Report, and in December of the same year a Final Report<sup>88)</sup>.

During this procedure, the introduction of provisions regarding unrequested telephone and door-to-door solicitation was also deliberated.

Before this procedure, the relevant debate regarding unrequested telephone solicitation has been focusing on the necessity or not of the introduction of an opt-out system for

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88) The Intermediate and Final Report (in Japanese) are available at the website of the Cabinet Office, [www.cao.go.jp/consumer/kabusoshiki/tokusho/](http://www.cao.go.jp/consumer/kabusoshiki/tokusho/) (last visited September 30, 2016).

investment transactions<sup>89)</sup>, which have been regarded as being the most problematic in this aspect as already mentioned. However, the necessity of introducing a Do-Not-Call system was also considered during the 22<sup>nd</sup> meeting (held on July 2, 2009) of the Committee on Economy, Trade and Industry of the National Diet<sup>90)</sup>. Further, local authorities<sup>91)</sup> and bar associations<sup>92)</sup> have been expressing opinions and making suggestions about an introduction of a system against telephone and door-to-door solicitation<sup>93)</sup>. It must be also pointed out that voluntary systems of a similar nature, such as the “Telephone Preference Service” run by the Call Center Association of Japan (CCAJ, former Telemarketing Association of Japan), have existed between 2003 and 2006.

In the following, the content of the Intermediate Report and the Final Report regarding telephone and door-to-door solicitation will be analyzed (sections 1 and 2 respectively).

## 1. Intermediate Report

The Intermediate Report mentions that during the Committee Deliberations, the opinion that despite the introduction of the already mentioned prohibition of re-solicitation

89) Shinji Minai (op. cit. at note 5), p.19.

90) According to the website of the House of Councilors of the National Diet of Japan, [http://www.sangiin.go.jp/japanese/kaigijoho/shitsugi/171/s071\\_0702.html](http://www.sangiin.go.jp/japanese/kaigijoho/shitsugi/171/s071_0702.html) (last visited September 30, 2016), among the questions raised during the same meeting, was that of “The necessity of introducing also in Japan the system of the United States where telephone numbers of those not willing to receive nuisance telephone solicitation are registered.”

91) See for example the “Opinion Paper Requesting for an Introduction of a System Allowing Consumers to Previously Refuse Undesirable Solicitation,” adopted by the Osaka Prefectural Assembly on October 27, 2015, which can be accessed (in Japanese) on the website of the Prefecture, [http://www.pref.osaka.lg.jp/gikai\\_somu/h2709/1027tokutei.html](http://www.pref.osaka.lg.jp/gikai_somu/h2709/1027tokutei.html) (last visited September 30, 2016).

92) In Japan, there is the Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/> (last visited on September 30, 2016), which is the nationwide lawyers’ organization, eight regional federations of bar associations in the districts of jurisdiction of each high court, and 52 bar associations.

93) See for example the “Opinion Paper Regarding the ‘Consumer Basic Plan’”, adopted by the Japan Federation of Bar Associations on January 21, 2010, which can be downloaded (in Japanese) from the website of the Federation, <http://www.nichibenren.or.jp/activity/document/opinion/year/2010/100121.html> (last visited September 30, 2016), and the “Opinion Paper Requesting for the Introduction into the Act on Specified Commercial Transactions of a System Prohibiting Solicitation against Persons who have previously refused” adopted on July 17, 2015 by the same Federation, which can be downloaded (in Japanese) also from the website of the Federation, [http://www.nichibenren.or.jp/activity/document/opinion/year/2015/150717\\_2.html](http://www.nichibenren.or.jp/activity/document/opinion/year/2015/150717_2.html) (last visited September 30, 2016). The latter opinion paper, (1) requests for an immediate introduction of a Do-Not-Call and a Do-Not-Knock System, and suggests (2) that the checking of the existence or not of Do-Not-Call registrations (with charge for the businesses) should be done with a “washing” of the lists of persons to be solicited submitted by the businesses, by the State which should be in charge of administrating the registrations (which should be performed free of charge), (3) that regarding the Do-Not-Knock system, stickers, registries or a combination of both should be used, and the same above under (2) should apply, and (4) that the exemptions provided in Art. 26, para. 1 (viii) of the Act on Specified Commercial Transactions should not apply to the prohibition of solicitation to persons who have previously refused, and that the relevant provisions must be revised.

to the Act on Specified Commercial Transactions in 2008, the number of complaints submitted to Consumer Affairs Centers<sup>94)</sup> has not declined, showing that the current legislation is not effective enough to prevent troubles<sup>95)</sup>. The concrete means for dealing with unrequested solicitation that were presented during deliberations in the Committee were Do-Not-Call Stickers, Do-Not-Call and Do-Not-Knock registries, automatic telephone responses etc.<sup>96)</sup>

The concerns pointed out on behalf of businesses regarding the introduction of legislative measures against unrequested solicitation were that there is no sufficient factual evidence indicating their necessity; that a comprehensive regulation of such commercial activities would be equal to their prohibition; that since the current consumer damage is actually caused by some dishonest businesses that do not observe the existing legislation, it would be possible to deal with the issue by establishing a proper enforcement system; and that in cases of small businesses that do not have enough funds for publicities, door-to-door solicitation is an important means of commercial activity<sup>97)</sup>. Thus, businesses positioned themselves against the introduction of any regulation other than that currently in existence.

In view of the above, the Intermediate Report concludes that no common understanding about the necessity of an enhancement of the relevant regulation has been formed among the members of the Committee, and that considerations regarding this issue should further continue<sup>98)</sup>.

## 2. Final Report

The Final Report concludes that no common understanding could be formed among the members of the Committee regarding the necessity of an enhancement of the existing regulation on door-to-door and telephone solicitation, as well as a review of the interpretation of Art. 3-2 of the Act on Specified Commercial Transactions as included in the already mentioned “Guideline on Article 3-2 etc. of the Act on Specified Commercial Transactions”<sup>99)</sup>.

The reasons mentioned in the Final Report for the failure to form such a common understanding among the members are that the information regarding relevant consumer damage as included in PIO-NET<sup>100)</sup> is problematic, because the content of complaints etc.

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94) Administrative bodies established by local authorities, which deal with consumer complaints against businesses (free of charge), perform information campaigns for consumers etc.

95) Intermediate Report, p.9.

96) Intermediate Report, p.13.

97) Intermediate Report, p.7.

98) Intermediate Report, p.11 ff.

99) Final report, p.16.

100) PIO-NET (Practical Living Information Online Network System) is a network system that links the National Consumer Affairs Center of Japan (NCAC) and the Consumer Affairs Centers, and collects

has not been objectively classified, and it can therefore not be used as a database grounding the necessity for legislative action, and that as a result of a public call for the submission of opinions about the points-at-issue regarding regulation of unrequested solicitation, only 545 opinions were expressed in favor, whereas 39,428 opinions against such regulation were submitted<sup>101)</sup>.

A Draft Bill, not including suggestions about the introduction of a system allowing for a general *ex ante* refusal of door-to-door and telephone solicitation, was submitted to the Diet on March 4, 2016, with the final Bill adopted on May 25 of the same year, and promulgated on June 3. The only new element regarding unrequested solicitation introduced by this Bill is the prohibition (opt-in system) of unrequested solicitation by fax (an extension of the already existing regulation on e-mails). It will come into force within one year and six months from the day of its promulgation, and will be revised within five years from its coming into force. According to the supplementary resolutions of the House of Representatives<sup>102)</sup> and the House of Councilors<sup>103)</sup>, if the necessity arises due to new consumer damage, revision will be made earlier than five years. Further, if damage to elderly people etc. continues to occur, strengthening the regulation will also be considered (the supplementary resolution of the House of Councilors mentions that such strengthening will take place also “taking into consideration initiatives taken in foreign countries”).

## V. Closing Remarks: The Way Ahead

The analysis in this paper has shown the international trends of regulation of telephone and door-to-door solicitation, the current state of and issues regarding such regulation, as well as the most recent developments in this field. In this closing chapter, the author would like to make some remarks regarding the way ahead in Japan.

Regarding telephone solicitation, it seems difficult for businesses to continue resisting the introduction of a Do-Not-Call system in the future. The international trends clearly

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information about consumer complaints submitted to Consumer Affairs Centers. According to the website of the National Consumer Affairs Center of Japan (in Japanese), <http://www.kokusen.go.jp/pionet/> (last visited September 30, 2016), as of April 1, 2016, there exist 3,262 PIO-NET terminal units installed in 785 locations (Consumer Affairs Centers) throughout Japan.

101) Final Report, p.15 ff.

102) Supplementary Resolution Regarding the Draft Bill Revising Part of the Act on Specified Commercial Transactions, of the Special Committee for Consumer Issues (April 28, 2016), which can be found on the website of the House of Representatives, [http://www.shugiin.go.jp/internet/itdb\\_rchome.nsf/html/rchome/Futai/shohishaA74D4C40873F3AA049257FAF001FD4C7.htm](http://www.shugiin.go.jp/internet/itdb_rchome.nsf/html/rchome/Futai/shohishaA74D4C40873F3AA049257FAF001FD4C7.htm) (last visited September 30, 2016).

103) Supplementary Resolution Regarding the Draft Bill Revising Part of the Act on Specified Commercial Transactions, of the Special Committee for Provinces/Consumer Issues (May 20, 2016), which can be downloaded (in Japanese) from the website of the House of Councilors, [http://www.sangiin.go.jp/japanese/gianjoho/ketsugi/190/futai\\_ind.html](http://www.sangiin.go.jp/japanese/gianjoho/ketsugi/190/futai_ind.html) (last visited September 30, 2016).

show that the existence of at least an opt-out system is necessary. The lack of such a system in Japan could possibly place barriers on Japan's enhancement of international competitiveness, in view of the existence of such systems in the main markets of the Asian region.

On the other hand, the introduction of a legislation providing for an opt-out or opt-in regulation system for door-to-door solicitation seems to be difficult under the current circumstances, one reason being that Do-Not-Knock systems are introduced only in a few countries, as shown in this paper. The author's opinion is that this has also to do with differences in the market composition of each country, as well as the fact that in some countries, for examples in EU member states, a certain degree of protection is assured by means of a regulation of unfair commercial practices in general. This would in any case need separate and detailed consideration in another paper.

However, it seems that local authority ordinances in Japan have been really productive in this field, pushing ahead despite the reluctant position of the Japanese government and of the agency in charge. The diffusion of such ordinances in many local authorities seems to be possible, and would lead to a similar situation to that of a Do-Not-Knock system provided by nationwide legislation. Needless to say, if such ordinances would be established in most (or all) local authorities and actually used by the vast majority of consumers, this would lead to the *de facto* existence of an opt-in regulation. It must be also emphasized that such a development could make Japan a pioneer in this field.

The author believes that despite the recent legislative developments in this field, the supplementary resolutions of both Houses of the Japanese Diet show a certain degree of understanding and willingness to embrace the introduction of new systems for consumer protection. Future debates and developments in this field in Japan are certainly worthy of attention.