

ADR for Consumer Protection in Japan

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1. An overview of the legal systems governing ADR and consumer protection in Japan

As an introduction to the presentation of trends surrounding alternative dispute resolution (ADR) for consumer protection in Japan, this section outlines the general legal systems governing ADR and consumer protection, respectively.

(1) Legal system governing ADR

There are three types of ADR in Japan: judicial, governmental, and private. Of these, judicial ADR, in the form of civil conciliation and domestic relations conciliation, has the longest history and is the most frequently applied today. Historically, conciliation as it is practiced today commenced with the Land Lease and House Lease Conciliation Law of 1922 and a subsequent series of laws treating specific cases of conciliation (Farm Tenancy Conciliation Law of 1924, Commercial Affairs Conciliation Law of 1926, Monetary Claims Temporary Conciliation Law of 1932, etc.) The legal system governing conciliation thus developed gradually with laws concerning specific activities in an increasing number of domains of society, in line with its socioeconomic development. In 1951, amid the democratization movement under the new Constitution, the Civil Conciliation Act was proposed by parliamentarians and adopted (which is quite rare since most bills are proposed by the Cabinet in Japan). This comprehensive law has thus instituted the general system of judicial conciliation for settling civil disputes through mutual concession by the concerned parties and reaching a reasonable agreement in phase with the actual state of affairs.

In this court-based conciliation system, which takes place within a court of justice, a conciliation committee composed of two conciliators who are selected from the general public and presided over by one judge negotiates for a compromise. In the case of a successful conciliation, a statement is drawn up, which becomes valid as an obligation of debt. The court-based conciliation system has produced considerably positive results, counting a total of about 610,000 new cases in a year in peak (as of 2003). These figures suggest society's great trust in, and expectations for the procedure, especially for civil disputes: while conciliation is not necessarily the choice of the concerned parties of domestic disputes since it is obligatory before initiating litigation, a large number of parties to civil disputes choose conciliation over litigation, which is also possible from the beginning.

In addition to the judicial civil conciliation system, there is a wide range of permanent organizations for dispute settlement that engage in more informal conciliation or mediation. For example, the National Consumer Information Center and the Prefectural Consumer Information Centers are governmental organizations that collect information of consumer interest, conduct activities to prevent or minimize damage to consumers, test commercial products to settle consumer complaints or raise consumer awareness, provide training to local government employees and consumer service counselors, and dispatch experienced specialists of consumer issues to smaller consumer information centers for training. In fact, the National Consumer Information Center itself serves as an ADR body, as described in the subsequent section. ADR organizations operated by private-sector parties include the Moneylenders Association of Tokyo, the Bankers Association of Tokyo, Tokyo Bill Clearing House's Committee on the Treatment of Dishonored Bills, Securities Dealers Association of Japan, Professional Cleaning Accident Damage Compensation Conference, Tokyo Dental Association's Medical Affairs Settlement Committee, Tokyo Real Estate Association, Real Estate Information Center, Real Estate

Transaction Improvement Organization, Japan Advertising Review Organization, and Japan Credit Counseling Association. As for disputes concerning manufactured product liability, trade associations concerned with the manufacturing of the respective products have established permanent organizations for dispute settlement in compliance with the Product Liability (PL) Act. The Consumer Affairs Agency's website lists the PL centers of 15 trade associations: Federation of Pharmaceutical Manufacturers Associations of Japan, Japan Chemical Industry Association, Japan Heating Appliances Inspection Association, Association for Electric Home Appliances, Japan Automobile Manufacturers Association, Inc., Center for Housing Renovation and Dispute Settlement Support, Consumer Product Safety Association, Japan General Merchandise Promotion Center, Japan Cosmetic Industry Association, Fire Equipment and Safety Center of Japan, Japan Boating Industry Association, Japan Toy Association, Japan Paint Manufacturers Association, and Japan Construction Material & Housing Equipment Industries Federation.

As for arbitration, governmental organizations include Environmental Dispute Coordination Commission, Prefectural Environmental Dispute Settlement Committees, Central Construction Work Disputes Committee of the Ministry of Land, Infrastructure, Transport and Tourism, and Prefectural Construction Work Disputes Committees. Private-sector arbitration organizations include The Japan Commercial Arbitration Association, Japan Shipping Exchange, Inc., and Japan Center for Settlement of Traffic Accident Disputes. Bar association-operated arbitration organizations include Daini Tokyo Bar Association Arbitration and Mediation Center, Osaka Bar Association Civil Dispute Resolution Center, Tokyo Bar Association Dispute Resolution Center, Hiroshima Bar Association Arbitration Center, Yokohama Bar Association Dispute Resolution Center, Dai-ichi Tokyo Bar Association Arbitration Center, Okayama Arbitration Center, and Nagoya Bar Association Arbitration Center.

The performance of the arbitration organizations seems somewhat inferior to that of conciliation (except for arbitration by bar associations and cases of traffic accident disputes, which have produced relatively favorable results¹). The average numbers of arbitration cases treated each year are reported to be 40 environmental disputes, 50 construction-related disputes, 10 or so maritime disputes, and a few international commercial disputes.

In 1999, the Japanese government initiated judicial system reforms. In this framework, the promotion of ADR other than judicial conciliation was launched, leading to the establishment of the new Arbitration Act, based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law, in 2003, and the Act on Promotion of Use of Alternative Dispute Resolution (hereinafter referred to as "ADR Act") in 2004, to promote private-sector ADR. The latter law stipulates the system of authorization of dispute resolution organizations, as well as provisions intended to promote the use of arbitration by such organizations: for example, interruption of prescription, obligatory pre-litigation procedure, and exemption from Article 72 of the Attorney Act are applicable to arbitration by authorized organizations. A total of 106 organizations have been recognized thus far as dispute resolution organizations under this law.

In the course of deliberations toward establishment of the new Arbitration Act, a heated debate took place over the question of how arbitration of disputes involving consumers and individual labor disputes should be treated. Regarding this question, solutions "for the time being" are provided in the Supplementary Provisions of the law: Article 3 stipulates the consumer's right to cancel a consumer arbitration agreement concluded between a consumer and business, requirement of attendance at oral hearings, the legal fiction of cancellation of an arbitration agreement established by a party's failure to attend an oral hearing, and the duty of businesses to notify consumers of the commencement of

arbitration; Article 4 states that any arbitration agreements concerning individual labor disputes that may arise in the future are invalid (Article 4 of the Supplementary Provisions).

(2) Legal system governing consumer protection

The Japanese legal system governing consumer protection is complex, involving a number of laws, the center of which is the Consumer Basic Act enacted in 2004. This law, established to replace the former Consumer Protection Fundamental Act, institutes a system of consumer protection from a new perspective. The major reforms brought about by the new law include the following: (1) Change of the consumer's image (from someone to be protected to an independent person), (2) shift of emphasis from prior restriction to retroactive check, and (3) promotion of information disclosure and legal compliance by businesses.

The Consumer Basic Act is characterized by the statement in Article 1 (Objectives) that the cause of consumer problems is the difference between consumers and businesses in the quality and quantity of information and negotiating power available to the two parties. To minimize this difference, the law states, as basic concepts of consumer policy, respect for the rights of consumers and support for independence of consumers, among others. The law also states as its objectives the protection and improvement of the interest of consumers and the stabilization and enhancement of consumers' livelihoods.

Specifically, as consumer rights to be respected, the law enumerates (1) guarantee of basic consumer demand, (2) securing of a sound daily environment, (3) securing of consumer safety, (4) an independent and reasonable choice of products and services, (5) access to necessary information, (6) access to educational opportunities, (7) consideration of consumer views, and (8)

appropriate and prompt relief of damage. The measures to support independent decision-making by consumers include (1) securing of appropriate activities by businesses and (2) consideration for the age and characteristics of consumers, to which items are added concerning responses to the advanced information-oriented society, solidarity with the international community, and environmental considerations. To realize the above, the specific responsibilities of businesses, consumers, consumer organizations and the national government are stipulated in the law, including that (1) businesses must strive to provide information to consumers and adopt voluntary standards concerning their business activities, (2) consumers must learn to act independently and reasonably by proactively obtaining information and knowledge, and give consideration to environmental conservation and appropriate protection of intellectual property, (3) consumer organizations must endeavor to conduct on their own initiative activities such as information collection and dissemination, publication of opinions, public awareness raising, education, and damage prevention, and (4) the national government must formulate basic plans to improve and promote consumer education and ensure that consumer complaints and disputes are promptly settled in cooperation with prefectural governments. Regarding consumer contracts and their appropriateness, the law states that the national government must devise measures to ensure the appropriateness of information provision and solicitation by businesses in the stage prior to conclusion of the contract between the consumer and the business and the inclusion of necessary provisions in the contract, so as to ensure appropriate transactions between the two parties (Article 12).

Moreover, the law also includes specific provisions regarding the National Consumer Information Center and other consumer organizations and their roles (Articles 25 and 26). It is particularly noteworthy that judicial regulations are explicitly mentioned as objects of consumer policies and that consumer organizations are clearly positioned as main players in that context.

One notable result of the institutional reforms effected under the Consumer Basic Act is the creation of a consumer group action system following the amendment of the Consumer Contract Act in 2006. The Consumer Contract Act, under which consumer contracts are defined as contracts entered into by and between consumers and business operators, premises that there are disparities between the two parties in the quantity and quality of available information and negotiation power. Accordingly, the law allows the termination of contracts that are entered into due to misunderstanding or confusion on the part of consumers as a result of those disparities; relieves consumers of the obligation of compensation for damage suffered by business operators and invalidates clauses in consumer contracts that are deemed to unfairly harm the interests of consumers; and contains provisions on injunctive actions that qualified consumer protection groups may undertake to prevent or mitigate damage to consumers. Considering that the right to apply for an injunction is granted only to consumer protection groups certified by the Prime Minister² and not to individual consumers, it is not a representative group action representing the rights of consumers, but a non-representative group action based on pre-authorized qualification for litigation.

The right to apply for an injunction, which is not granted under ordinary contract law, is approved in the Consumer Contract Act for consumer-related disputes because of a recent tendency in consumer contract disputes in Japan: they often involve large numbers of people each losing a relatively small amount of money; therefore, there is little motivation for the victims to initiate litigation if only individual rights to claim damage are recognized, even if it is possible to do so. As a result, it becomes difficult to prevent the expansion of similar types of damage. Moreover, limiting the right to approved consumer protection organizations is found to be highly effective in preventing the occurrence or expansion of damage. Yet, considering the great impact that the execution of

this right can have on society and the economy, it is deemed necessary to specify clear and appropriate conditions that consumer groups must fulfill in order to be certified.

The consumer group action system was introduced in 2006 at the time of the amendment of the Consumer Contract Act. Currently, deliberations on the introduction of a group action system for damage compensation claims, which was shelved at the time of the amendment, are entering their final stage. In September 2010, several models of possible procedures were presented. A bill based on one of them is expected to be submitted shortly to the Diet. In this manner, the legal system governing consumer protection based on the principles stated in the Consumer Basic Act is being solidified, with gradual establishment of ADR for consumers, such as ADR operated by the National Consumer Information Center or the financial service association (discussed below), in addition to the consumer group action system.

2. Current situation of ADR for consumer protection

(1) An overview of ADR for consumer protection

In Japan, court-based civil conciliation is often used. However, since conciliators selected from the general public in this system are not necessarily well versed in commercial products, it is not frequently used to settle disputes involving consumers of commercial products or services. Up until now, ADR for consumers has been typically assured by PL centers. The "PL center" is the general term for industry-sponsored ADR organizations established in response to the official notice of the then Ministry of International Trade and Industry in accordance with the supplementary resolution adopted together with the Product Liability (PL) Act in 1994. The resolution recommends the establishment of systems for product liability dispute resolution outside the formal judicial

procedure. In this sense, PL centers represent private-sponsored but government-guided ADR. Likewise, the Securities and Exchange Act (the current Financial Instruments and Exchange Act, Article 77 and below) states in Article 79-16, Paragraph 1 that the Japan Securities Dealers Association, in its status as a financial instruments firms association authorized by the Prime Minister under the same law, has the duty to investigate investors' complaints and resolve them. Organizations established in compliance with this law are therefore another example of ADR explicitly defined by law. However, the existence of these ADR organizations alone has been found to be insufficient. PL centers can adequately handle disputes involving consumers and product liability, but not necessarily contractual disputes. As for the Japan Securities Dealers Association, it is said to have handled far fewer cases than generally estimated.

The current situation as described above necessitates an explanation of restrictions imposed under the Attorney Act. In Japan, unauthorized practice of law, that is, judicial acts undertaken by those other than attorneys, is prohibited under the Attorney Act (Article 72) and subject to punishment. It has been generally believed that ADR can violate this provision since its principal activity, mediation for a settlement, is considered a judicial act. Then in April 2007, the ADR Act was enacted, enabling certified organizations to conduct ADR under specific conditions without an attorney's qualification. It should be noted, however, that the ADR Act has not dramatically increased the number of ADR cases involving consumers. The emergence of ADR organizations adequately suited for consumer disputes is awaited.

2. Characteristics of ADR for consumer-related disputes

How would it be possible to promote ADR for consumer-related disputes? First of all, it would be necessary to design a form of ADR that corresponds to the

characteristics of consumer-related disputes, characteristics which become apparent in the process of dispute resolution.

Firstly, many consumer disputes cause prejudice in a small monetary amount. Therefore, victims tend to hesitate to resort to ADR if the procedure is costly. At the same time, disputes causing a small loss of money can involve a large number of victims and have an extensive impact on society. ADR for consumers must adequately respond to such conditions of scale. Secondly, disputes often concern a diverse range of matters depending on the nature of the product or service in question and require specialized knowledge for resolution. This can in turn lead to the problems of expert availability and cost. Moreover, the involvement of experts, if they do not exist in large numbers, can threaten the neutrality of the procedure. Thirdly, opposing requirements must be adequately satisfied: careful and thorough treatment of disputes that can cause extensive damage, and swift and simple treatment of individual disputes. In this regard, general rule-making may be necessary, even for ADR, as to how disputes concerning, for example, new products, should be handled. Fourthly, it is not easy to adequately handle the difficulty of proof, which can be a major problem in ADR as well. Consumer disputes involving a small amount of money are not necessarily simple in nature. Some require an extremely complex process of demonstration or a scientific investigation, which can be theoretically feasible but prohibitively expensive. Moreover, even an in-depth investigation cannot always definitely prove or disprove information disclosure prior to the signing of a contract, a frequent point in dispute.

In addition to those characteristics of the ADR process, the problems of administrative cost and manpower shortage, experienced on the part of ADR operators, must be adequately handled. From the user's standpoint, the neutrality and fairness of ADR operators, as well as transparency of the process, are constant requirements. In other words, challenges exist in various aspects

and must be addressed and overcome to promote ADR for consumers. This is no easy task, but the Japanese legal system has started dealing with it, as witnessed by recent reforms in ADR by the National Consumer Information Center and by the financial service sector.

(2) Recent trends

□ ADR by the National Consumer Information Center

1) Practice

The National Consumer Information Center is an independent administrative agency whose objective is to provide information of daily consumer interest and conduct surveys and investigations from a comprehensive standpoint in order to contribute to the stabilization and improvement of people's livelihoods. Recently, the Japanese government partially amended the Act on the National Consumer Information Center of Japan, Independent Administrative Agency (hereinafter referred to as "Center Act"), creating a new ADR system in which the National Consumer Information Center undertakes dispute resolution from the consumer's standpoint. In the background of this move is the growing number of increasingly complex and diversified disputes that erupt between consumers and businesses with regard to the consumption of products and services.

Litigation as the only means of resolving those disputes and bringing relief to victims is considered unrealistic, given the disparities between the parties in the quality and quantity of information and negotiation power available to them, and the fact that most consumer disputes involve a small amount of money in prejudice. The amendment of the law enables consumers to apply for intermediation for a settlement or arbitration to the Dispute Resolution Committee of the National Consumer Information Center, to solve problems that have been reported to the advisory division of the National Consumer Information Center or a prefectural consumer information center but have not

been resolved through its advice or mediation. Consumers can also directly apply for ADR to the Dispute Resolution Committee without passing through the Center.

ADR at the National Consumer Information Center proceeds roughly in the following manner:

The Dispute Resolution Committee, established within the National Consumer Information Center (hereinafter referred to as "the Committee"), handles the procedure of dispute resolution from a neutral and fair standpoint while playing the role of a consumer guardian. The Committee comprises expert members who have specialized knowledge and experience in law and business transactions, as well as special members. The members exercise their authority independently.

The Committee conducts two types of ADR: intermediation for a settlement (corresponding to mediation and conciliation) and arbitration (the decision is entrusted to a third-party arbitrator based on the parties' agreement as a result of the arbitration). Both types are initiated by one or both of the opposing parties applying for the procedure. Judicial effects such as interruption of prescription and suspension of litigation are granted to the Committee's ADR.

The procedure is carried out behind closed doors, presided over by one, two or more mediator(s) or arbitrator(s) appointed from among the Committee members (expert and special) by the Chairperson of the Committee, with the goal of completing the procedure within four months from the day of application. The mediators and arbitrators may require the parties to attend the procedure or submit related documents, and advise the concerned parties to execute an agreement reached as a result of the procedure when it is not forthcoming.

As ADR for consumers, the National Consumer Information Center's ADR has several unique characteristics.

Firstly, the Center does not handle all cases for which applications have been received; rather, it conducts ADR solely for civil disputes between consumers and businesses whose resolution is of nationwide importance ("important consumer disputes") in view of the large numbers of similar cases or injuries, the seriousness of damage, the complex nature of cases and so on.

Secondly, the Center has a unique concept of neutrality and fairness among its mediators and arbitrators. The Center Act states that they must engage in the procedure in a neutral and fair manner (Article 20, Paragraph 4; Article 30, Paragraph 5). However, in the process of the amendment of the Center Act, it was confirmed that the neutrality and fairness required of mediators and arbitrators cannot be simply formal but must be substantial, founded on an accurate understanding of the characteristics of consumer problems, in view of the objective of the Center's ADR of bringing relief to consumer victims in consideration of the structural disparities between consumers and businesses. Accordingly, the supplementary resolution proposed by the Committee on the Cabinet of both Houses of the Diet (April 11-24, 2008) requires mediators and arbitrators to actively serve as consumers' guardians as deemed necessary, in consideration of the differences between the two parties.

This requirement translates into specific forms of assistance provided by the Center: an office to which consumers can direct inquiries about ADR, support for filling out application forms and smoothly completing the application formalities, the use of a teleconferencing system to lessen the temporal and economic burden otherwise borne by the parties, and even dispatches of mediators or secretarial personnel to locations across the country in some cases.

Thirdly, the Center maintains a relaxed rule of confidentiality. ADR is usually conducted behind closed doors to flexibly resolve disputes. In the case of ADR by the Center, on the other hand, summaries of results of terminated cases of intermediation for settlement or arbitration may be published if the Committee recognizes the need to do so for the stabilization and improvement of consumers' livelihoods, in consideration of the fact that important consumer disputes handled by the Center often represent the tip of the iceberg of numerous similar disputes.

Moreover, the Committee may publish information that enables the identification of concerned business operators, such as their names and addresses, when it is deemed particularly necessary to do, based on a comprehensive review of circumstances: the refusal of a business operator, without legitimate reason, to cooperate in the procedure, leading the Committee to conclude that it will be difficult to resolve similar disputes in the future with them by the same procedure; the occurrence of numerous similar disputes involving the same business operator; the seriousness of damage incurred, and so on. Prior to publishing such information, the Committee is required to interview the parties so as not to cause them any damage.

2) Problems

ADR by the Center as described above commenced in May 2008. In the same fiscal year, 106 applications for ADR were submitted, followed by 137 in FY 2009 and 19 in FY 2010 (April and May only). Of those, the procedures were terminated for 57 in FY 2008, 103 in FY 2009, and 41 in FY 2010. Slightly over 60% of all the cases for which applications have been submitted since the inauguration of the system (300 cases) were formally terminated, and about 60% of the 173 cases whose actual procedures were terminated (including withdrawn or rejected cases), that is 104 cases, closed with an amicable settlement. The summaries of results of one hundred cases were published due

to their seriousness.

It can be said that the National Consumer Information Center has produced positive results in its ADR as expected. At the same time, some problems have been identified with the system, as summarized below³.

Firstly, as stated above, under the Center Act, the publication of summarized results of ADR procedures is permitted, or required in some cases, along with information that makes it possible to identify the business operators concerned so as to prevent and minimize similar types of damage to consumers. However, publication of the names of the business operators concerned upon the completion of ADR procedures, including those terminated amicably, eliminates the incentive for business operators to participate in ADR. In the framework of ADR, in which the parties are free to respond to the procedure, it is necessary to maintain this incentive; otherwise ADR cannot fulfill its essential function of resolving individual disputes. Maintaining a good balance between the functions of dispute resolution and information dissemination is a major challenge currently confronting the Committee.

Secondly, the Center must find a way to reconcile its role of bringing relief to individual victims, which is the essential function of ADR, with its role of governmental ADR sponsor that proposes global guidelines for dispute resolution. In the Center's intermediation for a settlement, third-party mediators engage in ADR to amicably arrive at an agreement between the parties. This is, so to speak, ADR practiced as coordination. On the other hand, in handling "important consumer disputes," behind which large numbers of similar disputes may be latent at present or in the future, the Center cannot overlook the impact of such cases on the resolution of similar cases and on society at large. In reality, however, such cases are often terminated with a settlement detached from what seems a legally reasonable solution, sometimes because the concerned

consumers prefer not to proceed to litigation due to anticipated financial and psychological burdens or the business operators being insolvent. The Center must resolve this significant problem of reconciling individual consumers' interests with the public interest.

Thirdly, a system must be established to facilitate transition from the Committee's ADR to litigation. As a result of the legal system reforms, litigation has become more accessible to the general public than before, but it is not yet easily approachable. This is attested by the fact that claimants in the Committee's ADR, discouraged by some factors such as a small monetary amount of damage, often opt for a settlement even when it is not legally reasonable. While it should be left to the concerned parties to decide which solution to seek in the end, a systematic switch to litigation should be seriously considered in cases where ADR does not lead to a fair and acceptable solution.

Fourthly, the Center must eventually overcome the problem of factual verification. Unlike lawsuits, which result in a ruling, coordination-oriented ADR by the Center inevitably encounters difficulty in verifying the facts of the matter, which provide the basis for legal application, when the parties' claims largely deviate from each other. In such cases, the Center currently relies on information available from PIO-NET⁴, which stores data collected from consumer information centers all over Japan. This type of data compilation should be further reinforced in the future.

Fifthly, the Center must consider the need for collective relief for consumer victims. A broad-ranging examination is currently under way by various sectors to design a practically effective system of collective relief to consumer victims in consideration of the characteristics of damage generally caused to consumers. The Center, in its ADR procedures, tries to efficiently recover damage for a large number of consumers by merging the procedures when several similar

applications are submitted concerning an identical business operator. However, this approach has its limits because of non-relief to other victims of the same or similar causes who have not applied for intermediation for a settlement and of the coordination-oriented nature of the procedures. Active remedial measures must be examined in this regard, including utilization of the Center's network with local consumer information centers across the country.

Finally, partnership and cooperation with other ADR organizations must be promoted. For comprehensive resolution of consumer disputes, it is necessary for ADR to be efficiently conducted not only by the National Consumer Information Center but also by local governments. A new information exchange scheme between them has recently been created for this purpose. In addition, an information exchange system must be established to realize optimal role-sharing and collaboration with ADR organizations certified under the ADR Act and designated dispute resolution organizations in the ADR system for financial services.

□ ADR in the financial sector

1) Practice

Risk is inherent in financial instruments and services because of their nature. In principle, investors engage in financial transactions in full knowledge of the existence of risk. When financial institutions try to sell their products and services to their customers, they sometimes do not sufficiently explain the risk, in which case customer complaints and disputes between the two parties can occur when risk manifests itself as a tangible loss. In recent years, as financial products and services become increasingly diverse and sophisticated, related complaints and disputes have been on the rise. Traditionally, litigation has always been available as the means of resolving such disputes. However, its disadvantages for consumers, such as the time-consuming process, high cost

including attorney's fees, lack of proof supporting consumers' claims, and the risk of privacy being compromised by a publicly-held court trial, tend to force victims to abandon hope of recovery, especially when only a small amount of money has been lost.

Under such circumstances, expectations were growing for the establishment of ADR for financial services as a simple and quick means of settling disputes outside the formal judicial system, thereby providing greater protection and convenience to users of financial services. In 2009, the Japanese government revised 16 laws, thereby initiating ADR specifically for disputes resulting from financial services.

ADR in the financial sector roughly proceeds as follows:

In the first place, a financial ADR organization receives inquiries and complaints about financial products and services from its customers on the telephone or in person. When a dispute is not resolved in discussions between the parties and the consumer wishes to resort to ADR, the consumer can apply to the financial ADR organization. The organization is then required to assist the claimant in preparing the necessary documents.

Following the above, the ADR organization appoints members of its dispute resolution committee which must include an attorney, a person engaged in the financial operation concerned, a consumer counselor, and a designated judicial scrivener, all of whom fulfill specified roles. None of the committee members can have an interest in the claimant. A person who "has an interest" in this context is defined in an order issued by the Cabinet Office as a person who is remunerated by the claimant for a service or who has ceased being remunerated by the claimant less than three full years ago. The dispute resolution committee may decide not to execute ADR if it recognizes the claimant as being able to

appropriately resolve the dispute alone. Specifically, this concerns cases in which the claimant is a large corporation or another financial institution, which is believed to not differ significantly from the other party in terms of information in possession. ADR is considered inappropriate in such cases. Once the procedure is initiated following the consumer's application, the other party, i.e. a financial service provider, is not allowed to refuse when requested by the designated dispute resolution organization or committee to respond, without legitimate reasons (Financial Instruments and Exchange Act, Article 156-44, Paragraph 2, Item 2).

The dispute resolution committee interviews the parties and witnesses; requests submission of written reports, account books, documents and other materials; prepares a draft settlement and advises its acceptance. Financial institutions are required to sign a basic agreement concerning the execution of ADR procedures with the designated dispute resolution organization that covers the domain of their commercial services, if such an organization exists. The basic agreement stipulates financial institutions' duties: for example, financial institutions may not refuse, without legitimate reason, to submit account books and other documents prepared in connection with the contract signed with the claimant if so requested by the designated dispute resolution organization or committee (duty to cooperate in the investigation); they must accept a draft conciliation plan proposed by the dispute resolution committee and accepted by the claimant, except in specified cases (duty to respect the result of the procedure). In other words, financial institutions are required to respect a settlement resulting from the procedure and, when a settlement is unlikely, accept a special settlement proposal that the committee may submit to the parties if the claimant accepts it, except under certain conditions, such as the financial institution concerned filing a lawsuit within one month. Designated dispute resolution organizations are legally authorized to publish cases of non-compliance with these obligations by financial organizations. Furthermore, the organizations may charge a monetary

penalty to, or cancel the agreement with delinquent financial institutions if the basic agreement contains corresponding clauses.

ADR procedures in the financial service sector are characterized by neutrality, fairness, rapidity and low cost. Specifically, the average time required for dispute settlement is two to six months, much shorter than a lawsuit, thanks to the efforts for settlement, including the formulation of a draft settlement plan, by neutral and impartial experts and attorneys (dispute resolution committee members) of a financial ADR organization well versed in financial affairs. Financial ADR organizations fix their own fees for procedures, which are mostly free.

The institutional characteristics of ADR in the financial service sector include the following:

Firstly, different organizations provide specific frameworks of ADR for different financial products and services. This is based on the belief that the scope of products and services treated by each financial ADR organization should basically correspond to the division of operations determined by applicable laws, just in the way voluntary activities have been conducted thus far by the financial community. It is also believed that a comprehensive ADR would not be desirable, given the high levels of specialization of different financial services. At present, the Japanese Bankers Association, the Trust Companies Association of Japan, The Life Insurance Association of Japan, the Maritime and Fire Insurance Association of Japan, Inc., Insurance Ombudsman, The Small Amount & Short Term Insurance Association of Japan, the Financial Instruments Mediation Assistance Center, and the Japan Financial Service Association have their own ADR organizations to handle disputes related to their respective specialized operations.

The second institutional characteristic of financial ADR organizations is that the

establishment of a designated dispute resolution organization is voluntary and not obligatory. This is largely due to the independent nature of the industry and its diversity. Financial institutions are nevertheless required to sign a basic contract for ADR procedures with designated dispute resolution organizations covering their operational domains when they exist. In the absence of such organizations, financial institutions must devise their own measures for handling complaints and settling disputes in place of dispute resolution organizations.

Thirdly, ADR for financial services is placed under closer administrative supervision and more detailed regulation than ADR in other sectors. Since the objective of designation of dispute resolution organizations is to ensure the neutrality and impartiality of financial ADR executors, private-sector groups such as trade associations and voluntary regulatory organizations would be naturally expected to take charge of ADR for financial services. Yet, candidate groups may be officially designated as dispute resolution organizations only after the government authorities confirm their systems and competence for handling ADR.

In this regard, the designation of dispute resolution organization has another unique aspect. An organization applying for designation as a dispute resolution organization must present its operational regulations before the financial service providers with whom it will sign a binding basic contract for ADR procedures upon designation. Nevertheless, if the regulations are rejected by more than one-third of the financial service providers, the organization cannot be designated. This control is expected to ensure the smooth operation of ADR organizations.

Fourthly, financial institutions' duties are considered contractual, and not regulatory. In the system of ADR for financial services, designated dispute resolution organizations are not voluntary regulatory organizations and therefore

cannot impose regulations on financial institutions. However, the obligatory basic agreement provides them with authority equivalent to that of voluntary regulatory organizations and necessary for dispute resolution. If provisions on sanctions to be imposed on financial organizations not fulfilling their duties can be included in the basic agreement, the designated dispute resolution organizations can exercise even greater power than the voluntary regulatory organizations. While the violations by financial institutions of their duty to respond to ADR procedures, cooperate in the investigation and respect ADR results cannot be viewed as legal violations, to which the Prime Minister may issue orders for suspension of business activities, these violations provide grounds for the designated dispute resolution organizations to cancel the basic agreement, thereby putting financial institutions into a state of not observing the contractual regulation, and therefore subject to administrative inspection. This structural control ensures the effective observance of regulations.

2) Problems

Since the system has only recently been established, it is too early to evaluate its performance with any certitude. One designated dispute resolution organization handling disputes related to banking services of the Japanese Bankers Association handled 26 cases in 2008 and has been since receiving 70 to 80 applications per year.

Problems that have been identified thus far include the need for structural adjustment to accommodate the increasing number of applications and collaboration between diversified dispute resolution support groups. System users have pointed out the need to accelerate proceedings, improve accessibility, and introduce a system of forfeiting profits for effective security.

3. Future challenges and prospects for ADR for consumer protection in Japan

Since the establishment of the Consumer Basic Act, Japan's consumer policy has largely shifted its orientation, from government-centered prior control to judiciary-led retroactive control. The two ADR organizations for consumer disputes presented in the preceding section respectively represent an example of a governmental ADR as a pillar supporting a retroactive control-oriented society and a private-sector ADR introduced in such a way as not to compromise the industry's independence in the financial field which essentially requires strict regulations. The examples suggest two interesting directions that provide clues as to how the government and private sectors should interact in the future. One commonality of the two systems is the fundamental concept of mitigation of the disparities between consumers and business operators in information and negotiation power, as stated in the Consumer Basic Act. It can be said that this concept has enabled a clear expression of the notion of neutrality in the two systems, leading to policy development squaring with consumer protection. This is an achievement that should be highly evaluated.

At the same time, the two examples cover areas in which governmental intervention is relatively strongly needed: important consumer disputes and financial services disputes. To be sure, different consumer disputes require different levels of government intervention, and some disputes impose limitations on government intervention. Deeper examination is necessary for future development of ADR for consumer protection, with lessons drawn from the two examples.

In addition to those discussed in this paper, ADR is desired in many domains such as online shopping and advertising. For ADR in these domains, challenges are expected to emerge in various forms, concerning stronger incentives for users, the maintenance of neutrality of ADR organizations, cost reduction, improvement of accessibility and so on, and these must be dealt with in accordance with the characteristics of these domains. Moreover, a mechanism

for integrating diversified ADR information will be necessary from both sides of the system, i.e., users and administrators.

(Footnotes)

1. In 2010, a total of 988 arbitration cases were filed with bar association-operated ADR bodies, of which Aichi Prefecture Bar Association received the most, 233. In about 60% of the cases, the defendants responded, and many cases were settled with an amicable agreement. In 2010, in the entire country, only 11 cases were terminated as arbitration. Japan Center for Settlement of Traffic Accident Disputes practices one-sided arbitration (called "committee arbitration"), the judgment of which becomes binding only for insurance companies when the parties do not reach an agreement. According to the organization's website, in 2010, there were 25,414 new and recurrent cases, of which 7,699 were amicably settled, and only 39 cases resulted in post-committee arbitration disagreement or withdrawal.

2. The conditions for consumer group certification include the following: (1) the group's main objective is to conduct activities to support the interest of an unspecified but large number of consumers; (2) the group has a proven track record of such activities conducted continuously over an extended period of time; (3) it is a non-profit or public-interest organization; (4) it has appropriately established rules regarding its structure and operation; (5) it retains consumer-interest and legal professionals; and (6) it has a solid accounting and auditing foundation. Furthermore, to prevent abuse of the system, the law stipulates that consumer groups that fulfill these conditions cannot be qualified if they are political bodies or organizations whose activities are supervised, executed or assisted by members of anti-social organizations (such as criminal organizations). The authorization system came into force in June 2007, and as of September 2011, the following nine organizations have been officially certified: Consumers Organization of Japan (specified non-profit organization

certified August 23, 2007), Kansai Consumers Support Organization (specified non-profit organization certified August 23, 2007), Japan Association of Consumer Affairs Specialists (corporation certified November 9, 2007), Kyoto Consumer Contract Network (specified non-profit organization certified December 25, 2007), Shohisha Net Hiroshima (specified non-profit organization certified January 29, 2008), Hyogo Consumers Net (specified non-profit organization certified May 28, 2008), Saitama Organization to Get Rid of Consumer Damage (specified non-profit organization certified March 5, 2009), Hokkaido Consumers Net (specified non-profit organization certified February 25, 2010), Aichi Consumer Damage Prevention Network (specified non-profit organization certified April 14, 2010).

3. The problems are taken from "Kokumin Seikatsu Senta Funso Kaiketu linkai ni yoru ADR no gaiyo to jissi jokyo (Overview and Practice of ADR by the Dispute Resolution Committee of the National Consumer Information Center)" by Yoshiaki TAGUCHI and Ayumi EDAKUBO, *Shohishaho*, No. 9, p. 79.

4. PIO-NET stands for the Practical-living Information Online Network System, a network linking the National Consumer Information Center with consumer information centers operated by local governments across Japan. PIO-NET is considered highly reliable for the following reasons: (1) information is collected via an actual consumer counseling service provided at consumer information centers all over Japan; in communicating with consumers, the centers collect their personal information including names, addresses and telephone numbers (this discourages slanderous or defamatory comments); (2) data are input following a fixed format at local consumer information centers operated by local governments by professionally qualified and experienced counselors who advise consumers on a daily basis; (3) the inclusion of information that seems false or unreliable is still useful when similar details are found in a large number of cases since this suggests the truthfulness of the information, according to the law of

large numbers; (4) because of the reasons cited above, PIO-NET is actively used and receives many requests for provision of information each year from bar associations, police, certified consumer groups and so on.