

Editorial

Considering the International Standard (ISO) 22458, “Consumer Vulnerability: Requirements and Guidelines for the Design and Delivery of Inclusive Service” in the context of Japanese Consumer Law

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Reflexões sobre a Norma ISO 22458: “Vulnerabilidade do consumidor: Requisitos e linhas orientadoras para o desenho e a prestação de um serviço inclusivo” no contexto do Direito dos Consumidores japonês

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1. Introduction

We consumers all entail the possibilities of having vulnerabilities or falling into vulnerable situations during our lifetime. However, even if we are potentially “vulnerable consumers,” the manifestation of such vulnerabilities can be suppressed depending on how business operators conduct contract solicitation, how customer services are provided, and how products and services are designed in the first place. It was for this purpose that the ISO22458 was published in April 2022. ISO22458 shows us how “consumer vulnerability” can be overcome by good practices of organisations which integrate the “outcome-focused” and “proactive” approach in their internal mechanism.

2. The latest reform of consumer law in Japan

On May 25th, 2022, the third amendment to the Consumer Contract Act (Act No. 59 of 2022) was enacted in Japan. This amendment was expected to be a reform that would respond to the social reality of the growing elderly population, as a response to the 2018 supplementary resolutions. Amidst growing calls for businesses to give more certain consideration to consumers in vulnerable situations, it was expected that businesses would be obligated to provide information in a suitable way based on consumers' age, mental or physical conditions, and that consumers would have the right of rescission if they failed to do so. However, the amendment only made it an effort-based (moral) obligation, “*doryoku-gimu*”, for traders.

Even if this reform has not reached to making a new legal obligation, some may positively evaluate it as a legal clarification of the importance of providing information that takes consumer vulnerability into consideration. On the other hand, the fact that it is not a legal obligation may be seen as sending a negative message that businesses are completely free to make or not to make such efforts. Others may see it as a sign that the law is silent on what to do and how to do it, which may be confusing to those businesses that want to make an effort.

3. On the emergence of the ISO22458

Outside of Japan, there is a growing awareness of the requirement for businesses to be more proactive in “identifying” the vulnerabilities of individual consumers and “responding to” their needs. In order to increase the effectiveness of such a requirement, it has been proposed that self-regulations should be developed to provide specific guidelines to businesses in a manner that could complement the contract law and consumer law of each country. For example, in 2012, at the general assemble of the Committee on Consumer Policy: COPOLCO), an organization set up within the International Organization for Standardization (ISO), Canada noted that the main sources of complaints received by its Banking Ombudsman (an

organization involved in handling complaints, mediation, and identifying structural problems within the financial sector) were elderly people, immigrants, and those with mental health problems, and recommended that the development of an international standard/guideline should be initiated to provide an appropriate response to this population. Subsequent scrutiny, mainly in the United Kingdom, led to a proposal for a broader field, which was approved as a [new project in ISO in June 2017](#).

Thus, since 2017, [lots of discussion were made](#) on drafting a new standard for the provision of products and services that can be "inclusive to all consumers". The basis for the draft was the [British Standard \(BS\) 18477](#), "the standard for inclusive service provision - Identifying and responding to consumers in vulnerable situations," published by the British Standards Institution (BSI) in 2010. Although the BS18477 was a voluntary standard, it had highly recommended that traders should consider consumer vulnerability in the design of their products and services as well as in the way they provide them (e.g., ease of understanding and using products and services, transparency of contracts, access to consultation services, training of frontline staffs, and handling of complaint services).

In July 2021, a draft standard (DIS) was passed after several rounds of detailed discussions. However, discussions continued as Member States proposed revised comments further on details. Finally, on April 5, 2022, the [International Standard ISO 22458 "Consumer vulnerability - Requirements and guidelines for the design and delivery of inclusive services"](#) was adopted. There were 11 votes in favor (100% in favor with 5 abstentions) by "participating members (P-member)" and no votes by "observing members (O-member)" against.

4. The 9 principles and 2 strategies of the ISO22458

The core principles of the standard are; (1) Accountability (embed a culture of accountability by taking responsibility for organizational actions and resulting consumer outcomes), (2) Empathy (treat consumers in vulnerable situations with kindness and without judgement or assumption), (3) Empowerment (provide consumers with the tools they need to make informed decisions about service; provide staff with the tools they need to support consumers in decision making and to facilitate quick and effective resolution of problems), (4) Fairness (treat all consumers fairly, and do not discriminate against or seek to mislead or exploit any particular group(s) of consumers), (5) Flexibility (adopt a flexible approach to service provision, which can be adapted to suit the specific needs and abilities of an individual in a vulnerable situation), (6) Inclusivity (design and deliver services so that they are accessible to, and usable by, a diverse range of individuals, including those who are vulnerable), (7) Innovation (be creative in using new technology and processes to identify and support consumers in vulnerable situations; recognize and adapt emerging marketplace issues and new concepts in consumer protection, while ensuring that use of new technology and processes does not risk unintended exclusion of some consumers), (8) Privacy (treat personal information

respectfully and confidentially), and (9) Transparency (be clear and open about the intent to provide an inclusive service, the nature of support available for consumers in vulnerable situations, details of policies, terms and conditions and potential risks).

The organization's top management must ensure that these principles are clearly communicated to staff at all levels within the organization to ensure that consumers in vulnerable situations are identified and supported. Furthermore, the Standard requires two strategies for traders to take throughout the entire process of the design and delivery of services. One is the "outcome-focused" approach, which holds that it is meaningless unless consumers acquire outcomes of the efforts of the provider, and another is the "proactive" approach, which tells traders to look at the impact of the vulnerability rather than the cause of the vulnerability and respond to their needs in advance before troubles happen(not retroactively).

5. The possible impact of ISO 24588 on future consumer legislation in Japan

We have looked at the role that ISO 22458 is expected to play in building a society in which people with vulnerabilities in gathering, understanding and comparing information, and having a negotiation for making contracts with traders can be secured of their contractual subjectivity. ISO 22458 which aims to change the attitude of business operators, based on the strict principle of "inclusivity," will create a legal and societal environment in which everyone can engage in "fair" trading, and will pave the way for all people to continue to trade as parties to contracts despite their vulnerability. ISO 22458 is expected to function to break the circuit where vulnerability causes harm, and to provide practical suggestions to businesses on what they should specifically do.

Traditionally, self-regulation seems to have been left unilaterally to organizations or industries. However, as seen in the recent spread of the SDGs and the regulation of plastics, self-regulation is closely related to the development of legal norms and the increase in people's awareness, and as something that concerns society as a whole, its formulation requires consideration from the perspective of incorporating social demands and considering the direction that society should take and implementing them. In this light, although ISO 22458 is a voluntary standard of self-regulation, we believe that the values embodied in it can be shared by people living in modern society across national and cultural borders.

It can also be seen, as a matter of fact, that ISO22458 is associated with the legal concepts such as "supported decision-making" and "social disability" as prescribed by Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, obligations of "reasonable accommodation" in equality (non-discrimination) law in each country, in addition to the association with the SDG Goal 10 of "reducing inequality within and among countries". In

other words the implementation of ISO22458 is linked with considering integration of consumer law and welfare law from the perspective of the rights of self-determination.

In relation to consumer legislation in Japan, ISO 224258, as "an actor" that can take charge of controlling "consumer vulnerability," should have the potential to support, supplement, or lay the groundwork for future legal reforms, while respecting the actual laws that are widely applicable to consumer legislation, such as the Consumer Contract Act, the Act on Specified Commercial Transactions, the Civil Code, the Act Against Unjustifiable Premiums and Misleading Representations, and so forth. In other words, whether or not we have consumer vulnerability, ISO22458 aims to secure the right of self-determination in trading, under the name of informed decision or informed choices universally.

6. Conclusion

Throughout this small article, we have discussed the development of a legal and societal environment that can realistically ensure the continued involvement in the market society for everyone, as a party to a contract, despite its vulnerability. By changing the conventional way of thinking and attempting to take proactive actions on the part of business operators and the market according to the ISO22458, we will actively control and eventually eliminate consumer vulnerability, and, as a result, include everyone within the market. ISO22458 aims to build a trading environment that is "fair for all consumers" by establishing a social and legal system that includes all consumers without allowing exploitation.

Even though it seems, at least in Japan, premature to directly mandate business operators' attitude towards supporting decision-making by law, we believe that there is sufficient usefulness in actively using self-regulation in anticipation of social movement and changes in awareness in the near future. In conclusion, we see that ISO 224258, as an actor that can control "consumer vulnerability," has the potential to support, supplement, or prepare the ground for future amendments to Japanese consumer law. We hope that in Japan, various stakeholders (e.g., business associations, consumer groups, support groups for people with disabilities, and advocacy groups) will work together to verify that ISO is useful and feasible as practical guidance, standardization, and standards, and that discussions will progress toward the adoption of Japanese standards (JIS).