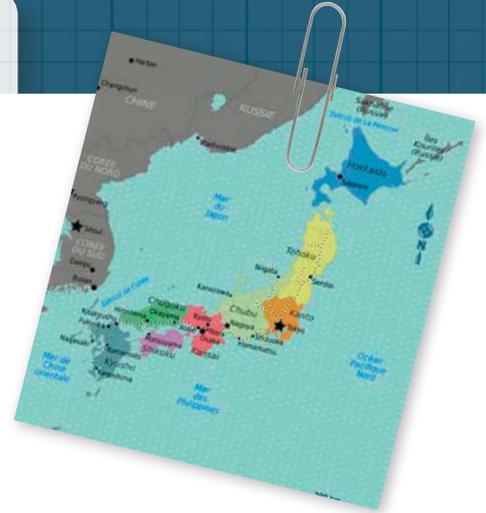


Japan



What is the basis of law in Japan?

Japan has a mostly civil law system. It is also heavily influenced in specific areas of law by Anglo-American law, such as the Constitution (incorporating a bill of rights and judicial review) as well as corporations and securities law. Japan's domestic legal system is also increasingly impacted by obligations under international treaties, including free trade agreements and investment treaties.

How is the legal profession regulated?

In accordance with the *Attorneys Act* of 1949, the legal profession is regulated by the Ministry of Justice, Japanese Federation of Bar Associations (*Nichibenren*) and the Supreme Court.

Lawyers (*bengoshi*) have the right to practise law, including the unrestricted right to appear in all courts in Japan. Judicial Scriveners (*shihoshoshi*) handle registration and cash deposit matters with the Legal Affairs Bureau, and prepare documents to be filed with the court and the Public Prosecutor's Office. With additional qualifications they can also appear in Summary Courts. Tax attorneys (*zeirishi*) prepare tax returns, represent clients before the tax authority and provide consultation services on tax matters.

Since 2002, tax attorneys may also assist their clients in lawsuits concerning tax matters provided the clients are represented by *bengoshi*.

Patent attorneys (*benrishi*) represent clients concerning all matters relating to patents, utility model rights, design rights and trademarks at the Japan Patent Office (*JPO*) and before the Ministry of Economy, Trade and Industry (*METI*, which has jurisdiction over the JPO).

Administrative Scriveners (*gyoseishoshi*) handle documents to be lodged with administrative agencies. Public notaries (*koshonin*), appointed from retired judges, public prosecutors and the like, authenticate and preserve certain legal documents, such as contracts, which may gain additional force in civil litigation.

Registered Foreign Attorneys (*gaikokuho jimu bengoshi*) may practise in the law of their home jurisdiction and in certain circumstances, the law of a 'specially designated country'. They are not allowed to act in court or similar proceedings (excluding certain international arbitration cases).

What is the professional representative body or bodies?

The Japan Federation of Bar Associations (JFBA) is the peak body of the legal profession in Japan. The Law Council reaffirmed its MOU with the JFBA on 28 July 2009 on its 10th year anniversary.

Which body is responsible for professional regulation?

The Ministry of Justice, JFBA and the Supreme Court.

What rules govern fly-in/fly-out practice?

There is no express rule allowing temporary practice by foreign lawyers, except in the case of certain international arbitration proceedings. Article 72 of the *Lawyers Act* (*Bengoshi Ho*, Law No 53 of 1933) had prohibited non-*bengoshi*

from representing a party in arbitration, but the *Act on Special Measures Law concerning the Handling of Legal Services by Foreign Lawyers* (Law No 66 of 1986) was amended in 1996 to provide as follows in Article 58-2:

A person who is a foreign lawyer (excluding a person who is a gaikokuho jimu bengoshi) and is engaged in legal business in a foreign country, on the basis of his or her qualification to become such a foreign lawyer (excluding a person who is employed and is providing services in Japan, based on his or her knowledge of foreign law) may, notwithstanding the provision of Article 72 of the Bengoshi Ho, undertake representation in regard to the procedures for an international arbitration case which he or she has been requested to undertake or undertook in that foreign country...

Article 2 defines an 'international arbitration case' as a civil arbitration case conducted in Japan where all or some of the parties are persons who have addresses, main offices or headquarters in foreign countries. Note, however, that such foreign lawyer representatives must be engaged overseas to assist in the arbitral proceedings in Japan.

What rules govern foreign legal consultants?

A foreign lawyer may apply to become a *gaikokuho jimu bengoshi* (GJB). This entitles a foreign lawyer to offer (as a business) advisory services in the law of his/her 'home country', as well as the law of any 'specially designated country'. The relevant legislation is the *Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers*. Article 5-3 also permits GJB to represent parties in an international arbitration case.

A foreign lawyer must be recognised as a GJB by the Minister of Justice and register with the JFBA. The conditions for granting recognition by the Minister include that the person:

- be qualified as a lawyer in their home jurisdiction;
- have practised for at least three years (at least two of which must have been in the home jurisdiction);
- is not subject to disqualification;
- intends to undertake the profession in good faith;
- plans to perform its functions properly and reliably; and
- possesses the capability to compensate for damages caused to a client, if any.

The absence of prior criminal conviction is also required. Once GJB registration is obtained, the foreign qualification to practise must be maintained, otherwise the registration will be withdrawn.

The scope of practice is limited to the law of the home country and any "specially designated country".

As at 1 January 2014, 376 GJB limited licences were issued to foreign lawyers. Thirteen were for lawyers qualified in NSW, four from Queensland, two from Victoria and one from Western Australia.

What rules govern foreign lawyer admissions?

It is not possible for a foreign lawyer to convert their foreign qualification in order to obtain a full licence to practise law in Japan. A foreign lawyer must prepare for and sit the notoriously difficult Japanese bar exam (in Japanese), usually after completing a postgraduate program in "Law Schools" established since 2004, and then undertake training at the Legal Research and Training Institute – like any other person in Japan who wishes to qualify as a local lawyer in Japan.

What forms of commercial associations are permitted between foreign and local lawyers and law practices?

As a result of reforms to the judicial system in Japan in the past decade and related revisions to the *Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers*:

- registered foreign lawyers (i.e. a GJB), (acting through the foreign law firms of which they are a member, if applicable) are permitted to employ Japanese-qualified lawyers (*bengoshi*); and
- registered foreign lawyers/foreign firms are allowed to freely carry on the business of a legal practice with *bengoshi*, either by admitting *bengoshi* as partners or entering into some other form of business collaboration, such as a joint venture.

Registered foreign lawyers/foreign firms may also establish legal professional corporations through which they can carry on their legal practice in Japan.

What is the extent of Australian legal presence in Japan?

Allens Linklaters has an office in Tokyo. In 2010, Blake Dawson (now Ashurst) opened an office in Tokyo. Herbert Smith Freehills also has an office in Tokyo. Other Australian firms have different forms of arrangements with one or more local Japanese firms.

Additional information

The processing of Australian practising certificates for the purpose of GJB applications in Japan can be lengthy. Japanese legal profession legislation treats each member state of a federation as a separate jurisdiction. This means that lawyers who have not spent a continuous period of two years in one jurisdiction (e.g. New South Wales) will not meet the minimum experience requirements for registration as a GJB.

The Law Council is currently working with the Ministry of Justice to address and expedite the lengthy processing times and this recognition issue (as well as other matters designed to streamline the registration of Australian lawyers as GJB).

The typical time frame at present is three to six months.

Further inquiries

[Japanese Federation of Bar Associations](#)

[Japanese Ministry of Justice \(Judicial System Department\)](#)

[Australian Network for Japanese Law](#)

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