

# **LEGAL SERVICES COUNTRY PROFILE**

## **JAPAN**

**International Legal Services Advisory Council**

Attorney-General's Department

Australia

January 1998

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# Table of contents

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<b>1 General information .....</b>	<b>1</b>
Official name .....	1
Population.....	1
Languages.....	1
Legal language.....	1
Form of government.....	1
<b>Economic information .....</b>	<b>2</b>
Per cent of GNP in services sector .....	2
<b>2 Basic legal information.....</b>	<b>3</b>
Legal system .....	3
Sources of law.....	3
Law-making bodies .....	3
Law derived from Australia.....	3
Court structure.....	3
Structure of the legal profession.....	4
Regulation of the legal profession .....	4
<b>Professional legal education.....</b>	<b>4</b>
Primarily trained.....	4
Qualifications for practice .....	4
Principal universities.....	5
Other domestic legal qualifications.....	5
Practical legal training .....	5
Other domestic training institutions .....	6
Post-graduate legal courses.....	6
<b>Foreign legal training .....</b>	<b>6</b>
Sources .....	6
Skills obtained .....	6
<b>3 Legal services market.....</b>	<b>7</b>
Professional associations (law societies/bar associations).....	7
<b>Local legal firms .....</b>	<b>7</b>
Local legal firms .....	7
Local lawyers.....	7
Per cent in international commerce.....	8

Dollar value of legal services .....	8
Local legal firms involved in international work.....	8
<b>Australian and other foreign legal firms.....</b>	<b>9</b>
Australian firms .....	9
Australian lawyers .....	10
Local lawyers .....	10
Foreign legal firms .....	11
Status of lawyers employed .....	11
<b>Commercial arbitration .....</b>	<b>12</b>
Firms/centres .....	12
Principal coverage .....	13
Foreign restrictions .....	13
International instruments .....	13
<b>4 Market access requirements .....</b>	<b>14</b>
<b>Foreign lawyer/firm regulation .....</b>	<b>14</b>
Body responsible .....	14
Laws and regulations .....	14
<b>Foreign lawyer admission to practice requirements .....</b>	<b>14</b>
Citizenship .....	14
Educational qualifications .....	14
Experience .....	14
Pupillage period .....	14
Residency requirements .....	15
Government approvals .....	15
Other .....	16
Admission authority.....	16
Special admission .....	16
<b>Additional requirements.....</b>	<b>17</b>
Visa restrictions .....	17
Work permits .....	17
<b>Regulation of foreign law firms.....</b>	<b>17</b>
Use of firm names .....	17
Employment of local lawyers .....	17
Government approvals .....	17
Other .....	18
<b>Restrictions on practice.....</b>	<b>18</b>

Local law.....	18
Home law.....	18
Foreign law.....	18
International law.....	19
Other.....	19
<b>Reforms in progress .....</b>	<b>20</b>
Reforms in progress.....	20
Representation in international commercial arbitration .....	21
<b>5 Australian legal services .....</b>	<b>22</b>
<b>Australian law firms .....</b>	<b>22</b>
<b>Prospects for Australian legal services .....</b>	<b>22</b>
Prospects for Australian legal services .....	22
<b>Dispute resolution services .....</b>	<b>22</b>
Centres/firms.....	22
<b>Legal education and training .....</b>	<b>24</b>
Overseas students studying law in Australia.....	24
Overseas students studying in Australia.....	24
Australian Education Centre representation.....	25
Dollar value of educational services.....	25
<b>6 References/sources .....</b>	<b>26</b>



# Introduction

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The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. <b>General information:</b>	key data, legal language, form of government and economic indicators.
2. <b>Basic legal information:</b>	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. <b>Legal services market:</b>	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. <b>Market access requirements:</b>	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. <b>Australian legal services:</b>	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. <b>References/sources:</b>	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

## **How to order**

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<http://law.gov.au/aghome/advisory/ilsac/ilsac.htm>**

# 1 General information

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## Official name

Japan.<sup>15</sup>

## Population

As at 1 May 1993 the population was estimated at 124.5 million with a growth rate estimated at 0.23 per cent per annum.<sup>42</sup> The population is very homogeneous, with approximately 99 per cent of permanent residents being Japanese. There are also some 700,000 Koreans and 140,000 Chinese living permanently in Japan.<sup>18</sup>

## Languages

The national language is Japanese.<sup>1</sup> A large number of Japanese are able to read English and many are also fluent in English, particularly those in the government, economic, trading and academic institutions involved in international activities.<sup>39</sup>

## Legal language

The official language of all legal proceedings is Japanese (pursuant to section 74 of the *Court Act 1947*).<sup>27</sup>

## Form of government

Japan has a constitutional monarchy and an essentially Westminster pattern of government. The Government consists of a bicameral legislature known as the Diet. The two popularly elected Houses in the Diet are the 512 member House of Representatives and the 252 member House of Councillors. The Prime Minister is elected by the lower House and Cabinet is responsible to the Diet.<sup>21</sup>

- Head of State: His Imperial Majesty Akihito.
- Head of Government:  
Prime Minister, Mr Tomiichi Murayama.\*
- Coalition Ruling Parties: The Social Democratic Party of Japan (SDJP), the Liberal Democratic Party (LDP) and the Sakigake (New Harbinger Party).
- Main Opposition Parties: Komeito (Clean Government Party), Japan New Party, Shinseito (Renewal Party), the Japan Communist Party (JCP) and the Democratic Socialist Party.

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\* A general election is expected sometime in the next 6 months and this could result in a change of government.

## Economic information

Basic indicators	1990	1991	1992	1993
GNP at market prices ¥'000 bn	428.7	456.1	464.9	–
Real GNP growth %	5.7	3.4	0.8	–
GDP at market prices ¥'000 bn	424.5	451.3	436.9	468.3
Real GDP growth %	4.8	4.3	1.1	0.0
GDP (\$bn)	2,925	3,341	3,651	4,225
Exports fob \$ bn	280.4	306.6	330.9	350.0
Imports fob \$ bn	216.8	203.5	198.5	209.0
Current A/c balance \$ bn	35.9	72.9	117.6	130.0

Note: 'Real' estimated are expressed in 1985 prices and exchange rates.

Sources: The Economist Intelligence Unit Country Report, Japan, 1st quarter 1994. The APEC Region—Trade and Investment, Trade Analysis Branch, Department of Foreign Affairs and Trade, November 1993. *Japan, Country Economic Brief*, Department of Foreign Affairs and Trade, November 1993.

### Per cent of GNP in services sector

The services sector represented the largest share of the GNP in 1993 (approximately 60%) and was followed by the manufacturing sector (approximately 29%).<sup>42</sup>

<b>Total two-way trade with Australia (1992–93; mn. A\$)</b>	26,325.2
as % of total Australian trade	21.9
rank in total Australian trade	1
<b>Value of Australian exports (1992–93; mn. A\$)</b>	15,103.9
as % of Australian exports	25.0
market ranking in Australian exports	1
% growth (five-year trend)	6.3
<b>Value of Australian imports (1992–93; mn. A\$)</b>	11,131,319
as % of Australian imports	18.7
market ranking in Australian imports	2
% growth (five-year trend)	2.0

Source: *Composition of Trade—Australia, 1992–93*, Trade Analysis Branch, Department of Foreign Affairs and Trade, October 1993.

## 2 Basic legal information

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### Legal system

The modern Japanese legal system is characterised as a member of the civil law family. However, the system has a heavy American common law influence in public and company and securities law.<sup>25/46</sup>

### Sources of law

The six main sources of law in Japan are known as the “Roppo”. These are:

1. the Constitution of 1946;
2. the Civil Code of 1896;
3. the Criminal Code 1907;
4. the Commercial Code of 1896 (German School);
5. the Code of Civil Procedure of 1890 (based on the German model); and
6. the Code of Criminal Procedure 1948.

The Securities and Exchange Act of 1948 (United States) and the Anti Monopoly Law 1947 are also considered to be important, though not considered part of the six main laws.<sup>20/27/46/9</sup>

### Law-making bodies

The Constitution of 1946 identifies the National Diet as the supreme law-making body.

Under the Constitution, the Supreme Court is the final court of judicial review. Each inferior court may exercise the power of judicial review, but decisions made by inferior courts are subject to judgments made by the Supreme Court.<sup>26</sup>

The legislative body of each level of local government may make Ordinances within the terms of the authority conferred on them.<sup>18</sup>

### Law derived from Australia

None.<sup>10</sup>

### Court structure

The *Court Organisation Law* (which came into force on 3 May 1947) established, by decree, the constitution of the Supreme Court and also established the High Court, District Court, Family Court and Summary Courts.<sup>19</sup> The judiciary is

independent of the legislative and executive arms of government.<sup>21</sup>

## Structure of the legal profession

*Lawyers or bengoshi*—have the right to practise law, including the unrestricted right to appear in all courts in Japan. Lawyers or *bengoshi* are also allowed to practise as tax attorneys and patent attorneys.<sup>27</sup>

*Judicial scriveners or shihoshoshi* (solicitors)—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.

*Tax attorneys or zeirishi*—prepare tax returns, represent clients before the tax authority and provide consultation services on tax matters.

*Patent attorneys or benrishi*—represent clients concerning all matters relating to patents, utility model rights, design rights and trademarks at the Patent Office and before the Minister of International Trade and Industry.<sup>3</sup>

*Administrative Scriveners or gyoseishoshi*—handle documents to be lodged with administrative agencies.

*Registered Foreign Attorneys (gaikokuho jimusho bengoshi)*—may practise in the law of their own jurisdiction.

## Regulation of the legal profession

The legal profession is regulated by the Ministry of Justice, various bar associations and the Supreme Court according to the *Lawyers Law* of 1949.<sup>25</sup>

## Professional legal education

### Primarily trained

Legal training directed towards becoming a “bengoshi” (lawyer) is wholly domestic in character.<sup>2</sup>

## Qualifications for practice

The normal progression of training is to:

- acquire an undergraduate degree from a Japanese university;
- attend a cram school for the entrance exam (commonly known as the bar exam) for the Legal Training and Research Institute during or after the undergraduate degree.

The exam has less than a two percent pass rate and, on average, is attempted seven times by successful applicants;

- attend the Legal Training and Research Institute, which is affiliated with the Supreme Court, for two years. Until 1991 there were approximately 500 trainees per intake each year. In 1992 this was increased to about 600 and in 1993 was further increased to about 700.<sup>2/43</sup>

### Principal universities

There are a large number of national prefecture city and private universities with law faculties and some 25,000 law graduates each year.<sup>25</sup> Listed below are six private and public universities with the most prominent law schools.<sup>30</sup>

#### Public Universities

s

Tokyo University  
Kyoto University  
Hitotsubashi University  
Osaka University  
Nagoya University  
Tohoku University

#### PrivateUniversitie

Keio University  
Waseda University  
Chuo University  
Meiji University  
Hosei University  
Senshu University

### Other domestic legal qualifications

Any person who satisfies one of the following conditions may qualify as a lawyer pursuant to the Bengoshi Law (which came into force on 1 September 1949):

- any person who was once a judge of the Supreme Court;
- any person who, after passing the bar exam, worked for five years or longer as a Judge of a Summary Court, public prosecutor, court researcher, court clerk, judicial officer, tutor at the Legal Training and Research Institute, the Court Clerk Training Institute or any other organisation as prescribed in the Bengoshi Law; and
- any person who has been a professor, or an assistant professor, for five years or longer in faculties of colleges as prescribed in other laws.

*Note:* There are very few lawyers who qualify via one of the above alternative means.<sup>26</sup>

### Practical legal training

The Legal Training and Research Institute is administered by the Supreme Court.<sup>2</sup>

### **Other domestic training institutions**

There are a number of private institutions that offer courses for individuals who wish to take the bar exam. The most prominent are:

- LEC Tokyo Legal Mind;
- Waseda Bar Exam Seminar;
- Tatsumi Legal Institute; and
- Shinpokai.<sup>46</sup>

### **Post-graduate legal courses**

Post-graduate degrees in legal fields are available from most universities that have undergraduate law courses.<sup>10</sup>

The University of Tokyo and Kyoto University have extensively revised and expanded their post-graduate programs, opening them up to an increased number of foreign law graduates.

### **Foreign legal training**

#### **Sources**

Predominantly the United States. The United Kingdom is relatively popular and Australia, Canada, Germany and France also attract lawyers.

#### **Skills obtained**

Post-graduate law degrees, Master of Business Administration and professional admission qualifications (eg admission to the New York Bar).<sup>2</sup>

### 3 Legal services market

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#### Professional associations (law societies/bar associations)

**Japanese Federation of Bar Associations<sup>3</sup>**  
**(Bengoshi Rengokai or Nichibenren)**  
**1 Kasumigaseki**  
**1-chome Chiyoda-ku**  
**Tokyo, 100 Japan**

The Japanese Federation of Bar Associations was founded on 1 September 1949 and its membership is comprised of all lawyers and local bar associations.<sup>8</sup>

**Japan National Notary Association<sup>3</sup>**  
**Nihon Koshonin Rengokai**  
**Meiko building, 18-2**  
**Shimbashi 1-Chome, Minato**  
**Tokyo, Japan**

**Federation of Judicial Scriveners Associations<sup>46</sup>**  
**Director: Mr Toshio Tashiro**  
**Secretary General: Mr Kenji Hisazumi**  
**5th Floor**  
**Shio Shou Kaikan**  
**9/3 Honshio-Cho**  
**Shinjuku-Ku**  
**Tokyo PO 160 Japan**  
**Telephone: 81-3-3359 4111**  
**Facsimile: 81-3-3359 4175**

#### Local legal firms

##### Local legal firms

There were an estimated 13,000 Japanese law firms in 1990.<sup>2</sup>

##### Local lawyers

There were 14,937 practising lawyers in 1993.<sup>22</sup>

Most Japanese lawyers operate in small practices (of one or two lawyers with a few clerical staff). Appearing for clients before the courts is the main activity. Only five law offices have a total staff number of 30 or more qualified lawyers.

If judicial scriveners, administrative scriveners, tax attorneys, notaries public, patent attorneys and public accountants are included, the number of people involved in the provision of legal services in Japan would be approximately 100,000.<sup>18</sup>

About 700 (an increase from 600 in 1992 and 500 in previous years) outstanding candidates are allowed to pass the bar examinations each year.

**Per cent in international commerce**

Less than one percent of Japanese law firms are involved in international commerce or related transactions (approximately 500 lawyers).<sup>2</sup>

**Dollar value of legal services**

Information not available.

**Local legal firms involved in international work**

During the 1980s there was a steady increase in the size and number of law firms, most notably firms involved in international work.

*Practice mix*

The local law firms listed below are involved in international work covering virtually all areas of practice, but are reported as possessing the following particular strengths:

- Adachi Henderson Miyatake & Fujita—general corporate firm, tax and securities;
- Anderson Mori (formerly Anderson Mori Rabinowitz)—corporate, licensing, leasing, international financing and securities;
- Aoki Christensen & Nomoto—securities;
- Asahi Law Offices (formerly Masuda & Ejiri)—general practice;
- Blakemore & Mitsuki—corporate, banking and securities;
- Braun Moriya Hoashi & Kubota—corporate, banking and securities, licensing and maritime work;
- Hamada & Matsumoto (the only Japanese firm to have an overseas office)—international finance, corporate and securities;
- Hori & Associates—corporate, particularly international real-estate and tourism development;
- Ishii Law Office—domestic work and cross-border international transactions;
- Mitsui Yasuda Wani & Maeda—banking, finance and securities;
- Mori Sogo Law Offices—domestic and corporate work within the international sphere;

- Nagashima & Ohno (the largest firm in Japan)—corporate and commercial law;
- Nakagawa Hirose & Takashina (formerly Nakagawa Godo Law Office)—banking, finance and leases;
- Nishi Tanaka & Takahashi—general corporate and banking;
- Nishimura & Sanada—corporate commercial;
- Tsuchiya Sakuragi & Sogi—general practice;
- Tsunematsu Yanase & Sekine—international securities, finance, banking and general corporate; and
- Yuasa and Harta—corporate and banking.<sup>22/33/46</sup>

## **Australian and other foreign legal firms**

### **Australian firms**

Representation by Australian law firms in Japan is usually indirect, such as through the secondment of Australian lawyers to Japanese law firms and corporations.<sup>24</sup>

The following Australian law firms are represented in Japan:

- The Australian Legal Group's contact lawyer in Tokyo is Mr Tim Manefield of Allen Allen & Hemsley who is working at Nagashima & Ohno in Tokyo;<sup>7</sup>
- Baker & McKenzie's contact partner in Tokyo is Mr Hideo Ohto at Tokyo Aoyama Law Office;<sup>49</sup>
- Blake Dawson Waldron's contact lawyer in Tokyo is Mr Nick Abrahams at Braun Moriya Hoashi & Kubota;<sup>44</sup>
- Gadens Ridgeway's contact lawyer in Tokyo is Mr Chris Wyeth at Hori & Associates;<sup>28/33</sup>
- Phillips Fox through a subsidiary consulting company (Phillips Fox International Pty Limited) maintains a liaison office in Tokyo. Phillips Fox's Japanese representative is Mr Mikio Makino; and<sup>44</sup>
- Sly & Weigall's contact lawyer in Tokyo is Mr Phillip Crowley, a partner of Sly & Weigall, Sydney, who is working at Graham & James, Sly & Weigall's affiliated firm.<sup>45</sup>

The following Australian law firms have links with firms in Japan

- Clayton Utz is associated with the Japanese law firm Asahi Law Offices through its membership of Lex Mundi and with Ishii Law Office through its membership of the Pacific Rim Advisory Council. From October 1994, Mr Andrew Hay will be the contact lawyer for Clayton Utz at Anderson Mori in Tokyo;<sup>31</sup>
- Dunhill Madden Butler has an associate firm arrangement in Tokyo with Ihara and Ihara. Dunhill Madden Butler also employs a number of fluent Japanese speakers; and<sup>6</sup>
- Freehill Hollingdale & Page is associated with Nishimura & Sanada, Tokyo.<sup>49</sup>

Mr Keld Conradsen holds both a Japanese and Australian law degree and is soon to commence an articulated clerkship with Minter Ellison Morris Fletcher in Melbourne.<sup>12</sup>

Mallesons Stephens Jaques has three lawyers fluent in written and spoken Japanese, one of whom, Ms Victoria Fisher, is a Japanese law graduate.<sup>34</sup>

Mr Frank Fotea of Barker Gosling worked, on secondment, at Anderson Mori in Tokyo between 1991 and 1993.

Mr Kotaro Matsuda of Feez Ruthning is a Japanese national with a Japanese law degree.<sup>44</sup>

Mr Kikuji Ohe of Sly & Weigall, Canberra holds both a Japanese and Australian law degree.<sup>32</sup>

Mr Takahiro Saito of Allen Allen & Hemsley in Sydney is qualified as a bengoshi in Japan and will be admitted this year to practise as a lawyer in New South Wales.<sup>47</sup>

Mr Robert Seidler, now working in Sydney as Robert L. Seidler, was, until recently, an Australian licensed foreign lawyer in Tokyo.<sup>44</sup>

Mr Yurio Tanimura of Freehill Hollingdale & Page, Sydney, is a Japanese national with a Japanese law degree.<sup>44</sup>

### **Australian lawyers**

See *Australian firms* above. In 1993, it was estimated that there were at least 30 Australian lawyers in Japan working for a combination of Japanese law firms, Japanese trading companies and other organisations.<sup>33</sup>

### **Local lawyers**

Japanese law does not permit licensed foreign lawyers to employ local Japanese lawyers.<sup>2</sup>

## Foreign legal firms

In 1987, foreign law firms were allowed to open offices in Japan. Since then much more attention has been devoted to international work. A significant number of foreign firms have established offices in Japan. These comprise:

- at least 23 American firms—including Cleary, Gottlieb, Steen & Hamilton; Coudert Brothers; Davis Polk & Wardwell; Gibson, Dunn & Crutcher; Graham & James; Jones Day Reavis & Pogue; Kelley Drye & Warren; Morgan Lewis & Bockius; Morrison & Foerster; Mudge Rose Guthrie Alexander & Ferdon; Paul Weiss Rifkind Wharton & Garrison; Pillsbury Madison & Sutro; Sidley & Austin; Simpson Thacher & Barlett; and White & Case;
- eleven British firms—including Ashurst Morris Crisp; Charles Russell; Clifford Chance; Denton Hall Burgin & Warrens; Freshfields; Linklaters & Paines; Lovell White Durrant; McKenna & Co; and Slaughter & May;
- two German firms—Sigle Loose Schmidt Diemitz & Partners and Bruckhaus Westrick Stegeman; and
- one French firm—Gide Loyrette Nouel.

An Irish firm (Matheson Ormsby Prentice), a Norwegian firm and a Geneva-based firm also have a presence in Japan.<sup>22/29</sup>

The firms of Sly & Weigall, Coudert Brothers and Baker & McKenzie (Tokyo Aoyama Law Office) have offices both in Japan and Australia as part of their international network.<sup>2</sup>

## Status of lawyers employed

### *Local lawyers*

None.<sup>2</sup>

### *Foreign lawyers*

There are currently about 120 foreign lawyers (known as *gaikokuho jimu bengoshi*) registered with the Japanese Bar Association.<sup>22/40</sup> In 1990, there were approximately 90 ‘non-admitted’ foreign lawyers.<sup>2</sup>

### *Principal home countries*

United States and United Kingdom.<sup>2</sup>

### *Practice mix*

Foreign firms, reportedly, spend an equal amount of time on the following areas: advising local companies on their home country law; advising third country companies on their home country law; and advising home country companies on local law (through Japanese law firms) and on local practices.<sup>40</sup>

The principal areas of practice ranked in approximate order of importance to United States and United Kingdom law firms in Japan with regard to their advice on home country law are:

- international business investment;
- property transactions;
- international trade law;
- financial transactions and revenue law;
- intellectual property; and
- contentious matters.<sup>2</sup>

*Note:* One of the major forms of legal work conducted by foreign lawyers in Japan is litigation before a foreign court and administrative dispositions, eg anti-dumping. Such civil or administrative procedures take place abroad but legal services and advice relating thereto are supplied by Tokyo branches of foreign law firms.<sup>26</sup>

## Commercial arbitration

Although arbitration is systematised under Japanese law as a means of dispute resolution, it is rarely used. In the great majority of cases, disputes are resolved through conciliation, mediation or other extra-judicial means. The most important law in this regard is the *Civil Conciliation Law of 1946* which revised and merged a number of existing provisions from the 1920s and early 1930s.<sup>48</sup>

Nevertheless, there is a long-standing system of arbitration in Japan. The Japanese *Code of Civil Procedure 1890* first contained rules governing formal arbitration and these rules have remained largely unchanged.<sup>18</sup>

## Firms/centres

The following bodies have been established for arbitration purposes:

- *Japan Commercial Arbitration Association (JCAA)* is the principal centre for international trade disputes. The Head office is in Tokyo and branch offices are located in Yokohama, Nagoya, Osaka and Kobe;
- *Local Chambers of Commerce* are permitted to settle domestic disputes. This is carried out on an ad hoc basis;
- *The Central and Prefectural Commissions for the Settlement of Construction Works Disputes*; and

- *Tokyo Maritime Arbitration Commission of The Japan Shipping Exchange* (international and domestic maritime disputes).

### Principal coverage

See *Firms/centres* above. Arbitration is most often used in international and maritime transactions, though not restricted to such transactions. Reliance is more commonly placed upon informal methods or on conciliation.<sup>48</sup>

The JCAA accepts, on average, four international arbitration cases a year. A party to international arbitration in Japan may choose English as the language of convenience, with the other party's consent.<sup>36</sup>

### Foreign restrictions

A number of revisions, which came into effect on 1 October 1992, allow foreign lawyers to appear before arbitral tribunals dealing with international disputes. The JCAA includes foreign lawyers on its panel of arbitrators.<sup>25</sup> (see *Reforms in progress*)

### International instruments

The *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID)* came into force for Japan on 16 September 1967.

Japan became a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)* on 20 June 1961.

Japan has not adopted the *UNCITRAL Model Law on International Commercial Arbitration (1985)*.<sup>4</sup>

## 4 Market access requirements

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### Foreign lawyer/firm regulation

#### Body responsible

Jurisdiction over foreign lawyers rests with the Ministry of Justice, the Japanese Federation of Bar Associations and various local bar associations.<sup>40</sup>

#### Laws and regulations

The *Special Measures Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 23 May 1986)* came into force on 1 April 1987 and regulates the practice in Japan of foreign law by suitably qualified foreign lawyers.<sup>11</sup>

There is a draft amendment to this law presently before the Diet (see *Foreign lawyer admission to practice requirements and Reforms in progress*)

### Foreign lawyer admission to practice requirements

#### Citizenship

There are no citizenship requirements for admitted foreign-law attorneys.<sup>10</sup>

Admission to the Japanese profession is based upon a bar examination conducted each year which is open to foreigners.

#### Educational qualifications

Admitted foreign-law attorneys must satisfy Japanese authorities of home jurisdiction qualifications.<sup>10</sup>

#### Experience

*Admitted foreign-law attorneys*, in addition to being qualified in their home jurisdiction, must have practised in the country of their qualification for not less than five years (Article 10—*Special Measures Law*) before qualifying for registration as a *gaikokuho jimu bengoshi* (foreign-law attorney) in Japan.<sup>5</sup>

#### Pupillage period

There is no pupillage period within Japan for a licensed foreign lawyer.<sup>25</sup>

## Residency requirements

Foreign lawyers licensed in Japan must be resident in Japan not less than 180 days each year (Article 48).<sup>11</sup>

## Government approvals

To be admitted to practise as a foreign lawyer a person must have the required qualifications and receive the approval of the Ministry of Justice. The Ministry of Justice then hears the opinion of the Japan Federation of Bar Associations (Nichibenren) prior to approval (Article 10(3)).<sup>10</sup>

Once approval (or designation see *Restrictions on practice of Foreign Law* below) has been obtained, the applicant must then register with the Japanese Federation of Bar Associations. Before applying for registration, the applicant must become affiliated, at least in principle, with a local bar. Any application to the federal body is then made through this local bar (Articles 24 and 25).

Registration is not automatic—it follows approval by the Ministry. Nichibenren may reject applicants (Article 26) if:

- they are mentally or physically disabled;
- they have been the subject of disciplinary action by the Japanese Bar Association in the past three years; or
- they may otherwise disturb the order or injure the reputation of Nichibenren.

Registration may be rescinded under Article 30 of the *Special Measures Law*.<sup>11</sup>

In 1993, a Study Commission was established under the co-sponsorship of the Ministry of Justice and the Japan Federation of Bar Association to investigate the regulation of foreign lawyers practising in Japan (*gaikokuho jimū bengoshi*). Australia was invited to appear and make a submission to the Study Commission. This occurred in March 1993. The Study Commission filed its report on 30 September 1993 recommending certain measures liberalising the regulation of foreign lawyers. The Japan Federation of Bar Associations passed a resolution on 3 December 1993 supporting the measures proposed by the Study Commission.

A bill implementing the Study Commission's proposals and amending the *Special Measures Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66)* was submitted to the Diet in April 1994. The bill, if passed, will allow foreign lawyers to offer a limited range of legal services jointly with their Japanese counterparts. However, it will continue to prohibit foreign lawyers from establishing law firms jointly with Japanese lawyers and from hiring Japanese lawyers. Similarly, it will also continue to ban foreign lawyers

## Legal Services Country Profile: Japan

from Japanese law related matters and from appearing in Japanese Courts.

The bill also provides for:

- the relaxation of the requirement for reciprocity (the Justice Minister will now have the discretion to approve registration of licensed foreign lawyers, even where the country of origin does not accord the same level of treatment to Japanese lawyers);
- the relaxation of work experience requirements (foreign lawyers with five years of practical experience, including up to two years in Japan, may provide legal services jointly with Japanese lawyers);
- the relaxation of the use of names (foreign lawyers may use the names of their home-country law firms when they offer limited legal services); and
- ‘Joint Enterprises’ between Japanese lawyers and licensed foreign lawyers (requires notification to the Bar Association).

### Other

At present (subject to the above amendments), permission to engage in practice is given, provided that:

- the applicant has not been subject to certain types of judgements or disciplinary proceedings and is not incompetent or an undischarged bankrupt (Article 10 (1)); and<sup>11</sup>
- Japanese lawyers are entitled to substantially similar treatment in the applicant’s home jurisdiction, i.e. there must be ‘reciprocity’ (Article 10(2)).<sup>2</sup>

The applicant must also demonstrate the financial capacity to carry on the business of a foreign licensed lawyer.

Approval can be lost or rescinded (Articles 12 and 14), and will lapse after six months if no application is made for registration with the Japanese Federation of Bar Associations.<sup>11</sup>

### Admission authority

See *Government approvals* above.

### Special admission

There is no system for special admission.<sup>25</sup>

## **Additional requirements**

### **Visa restrictions**

All visitors, except tourists, require visas. Special regulations govern diplomatic, official or transit visitors.<sup>18</sup>

Foreign lawyers intending to undertake business in Japan require visas. Visas for foreign workers are covered by the immigration law. Visas usually have time limits depending on the occupation in question. Short-term visas of 90 days are issued quickly and may be extended. Long-term visas for employment in Japan generally take longer to issue.<sup>18</sup>

### **Work permits**

Work permits are required for any employment in Japan (see *Visa restrictions* above).<sup>10</sup>

## **Regulation of foreign law firms**

### **Use of firm names**

At present, foreign law firms are required to operate under the name of the partners who head the local office, ie the office of a licensed foreign lawyer must bear his/her name or where two or more are associated, their own names. Furthermore, the office's name cannot include the name of the law firm of which it may be a branch.<sup>2</sup> However, the proposed changes, mentioned above, will allow unrestricted use of firm names, provided that reference is followed by the name of the *gaikokuho jimusho* or local office name.<sup>14</sup>

### **Employment of local lawyers**

At present admitted foreign lawyers cannot employ Japanese lawyers in their offices.<sup>5</sup>

### *Local firm association*

Foreign lawyers cannot, at present, form partnerships with Japanese lawyers (Article 49) or share profits. However, Japanese law firms can hire "non-admitted" foreign lawyers.<sup>5</sup> Moreover, under Article 45 (3), Japanese law firms may also hire admitted foreign lawyers.<sup>27</sup>

However, the proposed changes mentioned above will allow foreign lawyers to offer a limited range of legal services jointly with their Japanese counterparts (see also *Reforms in progress*).<sup>14</sup>

### **Government approvals**

Not known.

## Other

Licensed foreign lawyers are currently prohibited from:

- using a title other than licensed foreign lawyer (*gaikokuho jimusho bengoshi*) together with the jurisdiction of primary qualification (Article 44); and
- establishing more than one office in Japan, under any name (Article 45(5)).

Licensed foreign lawyers are currently required to display a sign in their office stating the law of the jurisdictions in which they are registered to practise (Article 46).<sup>11</sup>

## Restrictions on practice\*

(\*The following comments relate to licensed foreign lawyers in Japan. Non-licensed foreign lawyers are not permitted to practise law in Japan; however, in some circumstances they may act as foreign law consultants or advisers.<sup>10</sup>)

## Local law

Foreign lawyers (with the exception of resident Koreans) are prohibited from practising, which includes offering advice on Japanese law. It is also extremely difficult to gain admission to practise. All students must attend the Legal Training and Research Institute before being eligible to apply for admission, and in 1993 the Institute had an intake of only 700 students.<sup>22</sup>

## Home law

Foreign lawyers, with no less than five years experience in the jurisdiction of their primary qualification, are only licensed to practise the law of the jurisdiction in which they received their primary qualification provided that the jurisdiction treats Japanese lawyers in substantially the same way as Japan treats foreign lawyers under the *Special Measures Law* (which is the subject of amendments being considered by the Japanese Diet). New South Wales, Victoria, Western Australia, the Australian Capital Territory, Queensland and the Northern Territory have applied for and received designation as reciprocating jurisdictions under the *Special Measures Law*.

In the case of those who have applied in one state or area of a federation (such as the United States or Australia) the relevant law is that of the state and not the whole country, unless otherwise stipulated by the Ministry of Justice.<sup>2</sup>

## Foreign law

Licensed foreign lawyers may only practise the law of the jurisdiction from which they received their primary qualifications, subject to restrictions relating mainly to court procedures, criminal cases and service of process. Licensed

foreign lawyers cannot advise directly on Japanese or third country law.<sup>2</sup>

However, once approval for a primary jurisdiction has been obtained, an application may be made for designation to practise a foreign law other than that of the primary jurisdiction. To qualify for recognition in respect of an additional jurisdiction, the applicant must either be qualified in that jurisdiction, or alternatively have comparable knowledge to a qualified person in the law of that jurisdiction together with five years' practical experience in that law.

Designation is valid for six months or the currency of the primary approval (whichever is shortest), within which time the designation must be registered with Nichibenren.

Designation, like approval, may be rescinded (Article 20).<sup>11</sup>

### **International law**

There is some uncertainty in this area, however, generally, foreign lawyers are able to advise on private international law rules applicable in their home country and the impact of the public international law rules and transactions involving their home jurisdiction.<sup>25</sup>

### **Other**

Once given permission to practise the law of primary qualification, the foreign lawyer is prohibited from:

- court representation or preparation of documents;
- criminal, juvenile protection or extradition cases;
- expression of expert or other legal opinion concerning laws other than the law of primary qualification;
- service of documents for foreign courts or agencies;
- representation in preparation of Japanese notarial deeds; and
- preparation of documents (excluding opinions) in regard to a legal case concerning real property situated in Japan or of industrial, mining or other rights in Japan.<sup>5</sup>

A licensed foreign lawyer may not, without the assistance of a Japanese lawyer, undertake legal work concerning:

- matters affecting real property or administrative rights in Japan;
- family relations where one party is a Japanese national; and
- testamentary dispositions involving Japanese property.

Such assistance includes obtaining written advice or performing the work jointly.<sup>11</sup>

## Reforms in progress

### Reforms in progress

The rules for foreign lawyers were liberalised in 1987. Since then the United States and European Community governments have been lobbying Japanese officials in an effort to achieve greater market liberalisation for foreign legal services in Japan.<sup>13</sup>

In 1993, as part of the GATT Uruguay Round, Japan offered to further liberalise its legal services and, accordingly, established a Study Commission under the co-sponsorship of the Ministry of Justice and the Japan Federation of Bar Association to investigate the regulation of foreign lawyers practising in Japan (*gaikokuho jimu bengoshi*). The proposals recommended by the Commission have been endorsed by the Japanese Federation of Bar Associations.

### Proposed reforms

A bill implementing the Study Commission's proposals and amending the *Special Measures Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66)* was submitted to the Diet in April 1994.<sup>44</sup>

### Joint enterprise

The draft legislation amends Article 49 of the Special Measures Law to enable *gaikokuho jimu bengoshi* to operate a joint enterprise with a *bengoshi* or firm of *bengoshi*. The form of the association will be left to the *gaikokuho jimu bengoshi* and *bengoshi* to determine provided that such an association (i) maintains the independence of the *bengoshi*, (ii) is supervised by the Japanese Federation of Bar Associations, and (iii) does not permit the practice of Japanese law by the *gaikokuho jimu bengoshi*. In addition, the Japanese Federation of Bar Associations resolved that:

- the offices of *bengoshi* and *gaikokuho jimu bengoshi* should be individual and independent entities;
- *bengoshi* and *gaikokuho jimu bengoshi* should jointly register with, or report to, the Japanese Federation of Bar Associations;
- the following matters should not be handled by 'joint enterprise':
  - (i) litigation in Japan; and
  - (ii) domestic matters governed only by Japanese laws (ie matters involving no international elements); and

- fees and profits realised from the matters handled by ‘joint enterprise’ may be distributed to the *gaikokuho jimu bengoshi* and *bengoshi*.

### *Reciprocity*

Article 1 and Article 10, paragraph 2 of the Special Measures Law may be amended to replace the present rule of compulsory reciprocity. It is proposed that the Justice Minister will now have the discretion to approve registration of licensed foreign lawyers, even where the country of origin does not accord the same level of treatment to Japanese lawyers.

### *Employment*

Where a *gaikokuho jimu bengoshi* practises otherwise than in a joint association with a *bengoshi*, employment of a *bengoshi* by the *gaikokuho jimu bengoshi* will continue to be prohibited.

However, in the case of a ‘joint enterprise’ conducted by a *bengoshi* and *gaikokuho jimu bengoshi*, the employment of *bengoshi* may be permitted provided that the *gaikokuho jimu bengoshi* does not control or supervise the *bengoshi* when the *bengoshi* handles purely domestic law matters in respect of which the *gaikokuho jimu bengoshi* is not permitted to practise.

### *Use of law firm name*

Following the proposed amendments, rather than using the individual name of a *gaikokuho jimu bengoshi*, such *gaikokuho jimu bengoshi* may use the name of a law firm provided that after the law firm’s name there appears the words ‘*gaikokuho jimu bengoshi*’.

In relation to a joint enterprise between *bengoshi* and *gaikokuho jimu bengoshi* an appropriate name may be permitted which takes into consideration the characteristics of the joint enterprise with a view to avoiding misleading the general public.

### *Five year rule*

Following the proposed amendments, foreign lawyers with five years of practical experience, including up to two years in Japan, may provide legal services jointly with Japanese lawyers.

### **Representation in international commercial arbitration**

The Commission has recommended that serious consideration be given, amongst the relevant agencies concerned, to further liberalising the representation of *gaikokuho jimu bengoshi* in international commercial arbitration conducted in Japan. (see also *Foreign restrictions*)

## 5 Australian legal services

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### Australian law firms\*

(\*Australian law firms and lawyers providing services see 3—*Legal services market* above.)

### Prospects for Australian legal services

#### Prospects for Australian legal services

A role exists for Australian law firms to establish an office in Tokyo (jointly with a Japanese firm if the proposed amendments to the *Special Measures Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66)* are passed) to provide advice and assistance on Australian law to Japanese corporations and individuals doing business with Australia. Such a presence would also allow more effective marketing for the law firms and raise the awareness among the Japanese of Australian law and its possible use as a choice of law in preference to United Kingdom or United States law in transactions in Asia. There are also opportunities to advise Australian companies on doing business in Japan.

The proposed amendments to the *Special Measures Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66)* foreshadow significant changes in the way in which foreign lawyers may operate in Japan. As the market opens up, there may be significant opportunities for foreign lawyers, including Australian corporate lawyers, to advise on joint venture transactions.

However, a number of factors may continue to limit market opportunities for Australian lawyers. In particular, the low level of legal transactions that the Japanese engage in compared to other developed economies and the fact that most of this work is at the grass roots level which does not require foreign input. In addition, there are institutional and cultural barriers to litigation in Japan and the complex relations Japanese lawyers form with their clients. Furthermore, the seemingly uncompromising attitude of the Bar Associations towards foreign law firms and the significant cost of maintaining an office and representatives in Tokyo are also perceived as obstacles.<sup>2/40/44/14</sup>

### Dispute resolution services

#### Centres/firms

The Australian Centre for International Commercial Arbitration (ACICA) provides services on the settlement of international

commercial disputes of all kinds to the region. The Institute of Arbitrators Australia, which controls ACICA, has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate domestic disputes, and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the International Chamber of Commerce Court of Arbitration in Paris.

ACICA is also in the final stages of finalising an agreement with the Japan Arbitration Association. Such agreements, formalised with overseas countries by ACICA, involve exchanges of information, Journals and similar material including a formal exchange for each organisation to be nominated in matters where a particular country is nominated or required, including the appropriate arbitration clause(s).

For further information on ACICA<sup>38</sup> contact:

**The Secretary General  
ACICA  
Level 1  
22 William Street  
Melbourne Victoria 3000  
Telephone: (03) 9629 6799  
Facsimile: (03) 9629 5250**

The Australian Commercial Disputes Centre (ACDC) provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres.

For further information on ACDC<sup>37</sup> contact:

**The Chief Executive Officer  
Australian Commercial Disputes Centre  
Level 5  
50 Park Street  
Sydney NSW 2000  
Telephone: (02) 9267 1000  
Facsimile: (02) 9267 3125**

## **Legal education and training**

### **Overseas students studying law in Australia**

#### *Undergraduate*

In 1993, there were 23 Japanese students recorded as undertaking Law/Legal studies in Australian (Public & Private) Universities. As at February 1994, there were eleven Japanese Students enrolled in undergraduate law at Bond University.

#### *Post-graduate*

In 1993, there was one Japanese postgraduate student studying at an Australian University. As at February 1994 there were no Japanese postgraduate students studying law at Bond University.<sup>23/46</sup>

#### *Short courses*

Not known.

Bond University's School of Law is offering a two-week residential short course in August 1994 for Asian lawyers, law students and business persons. The course entitled "Orientation in the Common Law of Australia" is designed to introduce Australian law to non-native English speakers with training in a civil law jurisdiction.<sup>46</sup>

### **Overseas students studying in Australia**

#### *Commonwealth-funded higher education institutions*

In 1993, there were 1,006 Japanese students recorded as enrolled in Australian publicly or privately funded tertiary institutions.

#### *Overall*

In the 1992/93 period, 4,036 student visas were issued to Japanese seeking to study in Australia, representing a 3 per cent increase on the previous year. This also represents 3.8 per cent of all Japanese studying abroad. English language courses are the most popular courses in Australia for Japanese. There is

also a growing interest in a variety of other special courses such as hospitality and tourism.

The majority of the 45,000 foreign students in Japan come from China, Korea and other parts of Asia. There are more than 200 Australians studying at Japanese universities and a large number participate in long-term secondary school exchanges annually. The Australian Vice Chancellors' Committee and the Japanese Association of National Universities are also involved in the University Mobility in the Asia-Pacific (UMAP) scheme. The scheme provides for accredited long-term study in countries that are signatories to the agreement. The scheme provides for both staff and student mobility. Currently, there are fifty six institution-to-institution agreements between Australian and Japanese universities.<sup>39</sup>

### *Qualifications recognised*

Most Australian law schools will recognise a Japanese law degree for the purposes of admission to graduate programs.

Australian law degrees are also recognised by leading Japanese universities as a satisfactory base for application to graduate programs. Often Japanese universities will conduct an entrance examination.<sup>25</sup>

As Japan is a civil law jurisdiction, Japanese law degrees are not recognised for admission to practice purposes in Australia. Japanese lawyers or law graduates would be required to complete at least 75 per cent of an Australian law degree to cover the areas of knowledge required for admission to practice in Australia. However, under the reciprocity principal, Japanese lawyers may practise Japanese law in Australian jurisdictions.<sup>16</sup>

### **Australian Education Centre representation**

It is understood that there are no plans to establish an Australian Education Centre in Tokyo in the near future.<sup>41</sup>

### **Dollar value of educational services**

Information not available.

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