

ABSTRACT OF

JAPANESE LAWYERS

Types and Roles in the Legal Profession

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LEGAL "PRACTICE," WHICH IS NOT confined to lawyers (*bengoshi*) in Japan, involves a variety of activities and types of professionals (see those described below). These activities are paralleled by considerable heterogeneity in recruitment, training, prerequisite and qualifications. Since the bachelor's degree in law is so widely regarded as the chief avenue to business and official power, only about half of those who flock to the law schools actually take the National Legal Examination, and only about 4% of those who take it pass. From this remaining handful come the future judges, procurators, and lawyers, all of whom receive, after passing the examination, the same two-year professional training at the Legal Training and Research Institute before entering their respective specialties. Once this divergence has occurred, there is very little shifting across professional lines: the judges remain judges, the procurators remain in their government offices, and the lawyers remain as private practitioners. Attempts to open up the judiciary to recruitment from the bar have had very little success, in part because of the relatively low level of compensation provided for judges.

The foreign investor is faced with a variety of legal practitioners, each with qualifications limited by license to very specific problem areas. The liaison lawyers, specializing in international transactions involving Japan, have generally been American lawyers working with Japanese partners. These Americans, admitted to practice both in Japan and in one or more of the States, have been crucial to the business flow between the two countries. But even counting the few Japanese who

have acquired these qualifications, the number of liaison lawyers is dwarfed by the vast volume of business needing attention.

Japanese lawyers, as such, number only around 8,000 for the entire nation, and until recently their work has been restricted mainly to trial work. The small number is a product partly of tradition and partly of the restrictive standards of the judicial examination. As a result, counseling, legal drafting, tax work, regulatory filings and corporate documents and registration are all handled by other types of experts:

1. **Law-trained Corporate Employees:** These are the law school graduates who either do not take, or fail, the National Legal Examination, and go directly into business firms in a quasi-professional legal capacity. In both public offices and businesses, these are the ones who handle almost all legal work besides litigation. While they lack the lawyer's sense of professionalism, they often become highly skilled in technical legal matters.
2. **Patent Agents:** This is a separate professional group, regulated by the Minister of International Trade and Industry, not required to be lawyers, but qualified to handle litigation in their special area of competence. Patent agents must register and become members of the Association organized in 1922, and cannot practice before passing two examinations (in which only 5% succeed). No special training institute is provided.
3. **Tax Agents:** The work of tax agents can be done by lawyers, C.P.A.'s, and those qualified only as tax agents. With the introduction of the self-assessment tax system, the role of tax agents has taken on new importance so that the average annual income for them may be higher than that for lawyers now. The Ministry of Finance regulates this work and supervises the qualifying examination which only around 4% of the candidates pass.
4. **Judicial Scriveners:** While they cannot appear in court for a client, judicial scriveners play an important role in drafting and registering legal documents, and probably aid litigants with paper work prior to their court appearance without a lawyer. (In about 90% of summary court cases one or both parties do appear without counsel.)
5. **Administrative Scriveners:** Licensed to work only in his own prefecture, the administrative scrivener's role is narrowly limited to drafting work which does not overlap with that of lawyers, judicial

scriveners, patent agents, tax agents, or C.P.A.'s. As a result of the restrictions, their work centers around the business of small operators—restaurant owners, barbers, and the like. Most of them also have other qualifications to supplement this work.

6. **Certified Public Accountants:** Stimulated largely by the accounting requirements of the Securities and Exchange Law, the C.P.A.'s role has grown since its initial American-instigated inception in 1948. Joint venture contracts and other international arrangements have made the role critical, but it is one field in which lawyers are not licensed to enter. The C.P.A. must pass a three-stage examination and join a local chapter of the Japanese Institute of C.P.A.'s.
7. **Japanese Notaries:** The Notary's chief functions are making notarial deeds, attesting articles of incorporation, and attesting all sorts of private documents. He is paid by the clientele to attest signatures and keep copies on file for thirty years. He is assigned to a district and supervised by the Ministry of Justice, and he is appointed after retirement from the bench or procuracy.

The foreign investor must thus look for more than just a lawyer when in search of various legal means of pursuing investment opportunities.