

Spring 1-1-2018

## Role of Bar Associations in the Globalization of Japanese Lawyers

Tatsu Katayama

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review](https://repository.uchastings.edu/hastings_international_comparative_law_review)

 Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Tatsu Katayama, *Role of Bar Associations in the Globalization of Japanese Lawyers*, 41 HASTINGS INT'L & COMP.L. Rev. 157 (2018).  
Available at: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol41/iss2/4](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol41/iss2/4)

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository.

---

---

## **Role of Bar Associations in the Globalization of Japanese Lawyers**

BY TATSU KATAYAMA<sup>1</sup>

This article was prepared based on my presentation entitled “Role of Bar Associations” at the symposium on “Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations to American Law School” held at the UC Hastings Law School on November 18, 2016. Japanese lawyers have faced the globalization of legal markets for decades. The first wave of globalization was characterized by inbound work. It came in 1987, when Japan opened its legal markets to foreign lawyers. Since then, foreign law firms have established offices in Japan and practiced together with Japanese lawyers on international legal matters. The second wave of globalization was characterized by outbound work. Japanese lawyers practicing outside of Japan have increased significantly in the past several years. My presentation briefly describes activities of the Japan Federation of Bar Associations (“JFBA”) in the context of the globalization of Japanese lawyers.

---

1. Partner, Anderson Mori & Tomotsune. The author has held positions within the JFBA, mainly in relation to international aspects of bar issues including the Director of International Affairs (2008-2009), Chair of Foreign Lawyers and International Legal Practices Committee (2014-2017), and Chair of Attorney Client Privilege Working Group (2015-present). The views expressed in this Article should be attributed to the author and not to any organization to which he belongs. The author would like to thank Professor Setsuo Miyazawa and the organizers of the symposium for giving me the opportunity of the presentation and to Professor Richard Zitrin and participants in the symposium for their valuable comments.

---

---

## I. Organization and Role of Bar Associations in Japan

By way of background, I would start with basic data about legal markets in Japan and to introduce the roles of bar associations in the Japanese legal system.

### 1. Legal Markets in Japan<sup>2</sup>

**Table 1** presents a list of large law firms. There are five “big” firms with more than 300 *bengoshi* each. These firms have grown rapidly in recent times. However, these firms are still smaller than large firms in the U.S. or other major legal markets. The table also shows that more than half of law offices in Japan consist of solo practitioners

As of April 1, 2016, there were 381 foreign lawyers registered with the JFBA. They are authorized to practice the laws of their home jurisdictions. **Table 2** shows that the largest group of foreign lawyers are US qualified. Of those US lawyers, those with Californian qualifications are the second largest group. Table 2 shows foreign law firms in Japan by number of lawyers. Foreign firms may practice local laws by employing, or partnering with, Japanese *bengoshi*. These numbers include both foreign lawyers and *bengoshi*. U.S. law firms operate in Japan in a few different ways. The firms named in Table 2 provide full services for both international laws and Japanese laws. Some internationally well-known U.S. firms are not named in Table 2. These firms have a small presence in Japan because they provide advice on U.S. laws only.

### 2. Japan Federation of Bar Associations

The JFBA is the national bar association. Its members include the

---

2. The data shown in this section was taken from the white paper published JFBA each year. The statistics are also publicly available at its website (only in Japanese): *See* Japan Fed'n of Bar Associations, WHITE PAPER ON ATTORNEYS 2016 46 (2016). The statistics are also publicly available at its website (only in Japanese), *see* *Number of Lawyers in Office, Basic Statistical Information*, JAPAN FED'N OF BAR ASSOCIATIONS,

52 local bars throughout the country and all individual lawyers comprised of both Japanese *bengoshi* and foreign lawyers. Japanese bar associations are self-regulating bodies. It is mandatory for all practicing lawyers, both *bengoshi* and foreign lawyers, to register with their local bar and with the JFBA. Both the local bars and the JFBA have the statutory authority to supervise lawyers. Japanese bars are independent from the government in terms of management, as well as, finances. Japanese bars are also independent from the courts, which may sound unusual to U.S. legal professionals. The judiciary has not been truly independent from the government. In order to ensure true independence of the legal profession, Japanese bars need to be independent, not only, from the government, but also, from the courts.

### 3. Role of Bar Association

The activities of the bars may be viewed from three perspectives. The first is the *regulatory role*. The bars are authorized to make rules binding on their members, and discipline members who do not comply with the rules. The second is the *representative role*. The bars promote the interests of the legal profession. Such activities include supporting the career development of young lawyers and supporting lawyers practicing in rural and distant areas. The third is the role as a *civic organization*. The bars advocate for improving the legal system and the protection of human rights.

There are potential conflicts between the regulatory role and representative role. For this reason, there are jurisdictions that separate the regulatory function from the bar association. This is not an acceptable option for the Japanese legal profession because self-regulation is considered necessary to properly safeguard the independence of legal professions.

The international activities of Japanese bars may also be viewed from these three perspectives.

- i. *The regulatory role*: The bars manage the registration and supervision of foreign lawyers. Recently, legal services have become an issue of international trade negotiations such as the World Trade Organization and Free Trade

---

---

Agreements. The US government has always been an advocate for free trade of legal services and demanded that other countries, including Japan, open their legal markets to foreign lawyers. The government and bar association of Japan have been passive in this regard and played a defensive role against the pressures of lawyers from exporting jurisdictions. The current number of Japanese lawyers practicing abroad is increasing and this defensive model needs to be reviewed.

- ii. *The representative role:* The JFBA supports lawyers advising clients on cross border matters, and supports lawyers practicing abroad. These activities are also relatively new. I will introduce these activities in detail below.
- iii. *The role as civic organization:* The JFBA has been active in this area. In coordination with Japan International Cooperation Agency, JFBA members provided legal technical assistance to developing jurisdictions, mainly in Asia. JFBA publishes its opinion or statement on matters relating to independence of the legal professions in foreign jurisdictions. For example, on September 30, 2016, JFBA released a statement from its president opposing amendments to the Legal Profession Act in Malaysia, in concert with the other national and international bars.<sup>33</sup>

Now I will look into the activities of the JFBA in the context of globalization of business lawyers and globalization of public interest lawyers.

---

3. *Statement on Proposed Amendments of the Legal Profession Act in Malaysia*, JAPANESE FED'N OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/document/statements/year/2016/160930.html> (last visited on 20 March 2018).

---

---

## II. Globalization of Business Lawyers and Bar Association

### 1. Globalization of Japanese Business Lawyers

**Table 3** shows the overseas offices of the big five Japanese firms.<sup>4</sup> It is only in the past several years that Japanese firms have started to expand outside of Japan. In my view, they are expanding internationally because their clients are expanding internationally, and not with the assistance of the bars. The role of the bars in the expansion of large firms is not visible.

Most of the destinations of Japanese firms are in Asia, and not in North America or Europe. However, the outbound investments of Japanese companies have been active not only in Asia but also in North America and Europe. In my view, sophisticated Japanese companies already have access to international law firms that provide legal services to these jurisdictions with Japanese language capabilities. Japanese law firms are likely to have pursued opportunities in Asia for two reasons. The first reason is the sophistication of clients. Companies investing in Asia are not necessarily experienced in instructing foreign lawyers. The second reason is the sophistication of local legal services. There is a demand for quality legal advice in the Japanese language, which has not been satisfied by local firms in Asia.

### 2. The Role of the Bar Association

**Table 4** shows the regulatory framework of legal practices in the major Asian jurisdictions.<sup>5</sup> These jurisdictions are popular

---

4. The author prepared this table based on the information available at the websites of these laws

5. See *Offices*, NISHIMURA & ASAH, <https://www.jurists.co.jp/en/offices>. (last visited on 28 March 2018); *Location*, ANDERSON MŌRI & TOMOTSUNE, [https://www.amt-law.com/en/office3\\_a.html](https://www.amt-law.com/en/office3_a.html). (last visited on 28 March 2018); *Offices*, MORI HAMADA & MATSUMOTO, <http://www.mhmjapan.com/en/offices/> (last visited on 28 March 2018); *Locations*, NAGASHIMA OHNO & TSUNEMATSU, <http://www.noandt.com/en/locations/index.html> (last visited on 28 March 2018); *Overseas Offices*, TMI ASSOCIATES, <http://www.tmi.gr.jp/english/global/office.html> (last visited on 28 March 2018). The author prepared this table based on the survey conducted by the International Bar Associations entitled “IBA Global

destinations for Japanese law firms. However, there remain restrictions to market access by foreign lawyers. For example, China does not allow local law practices. Likewise, the regulatory authority in Singapore issues only a limited number of local practices licenses. Indonesia does not allow foreign law firms to operate and India does not allow foreign lawyers to practice. Unlike North America or Europe, Asian jurisdictions have not tried to streamline cross border legal service markets. Therefore, the regulatory frameworks are fragmented within the area. In the past, neither the Japanese government nor the JFBA had been mindful of access to foreign legal markets. Now both the government and JFBA understand that it is their mission to assist Japanese lawyers' access to foreign legal markets.

The JFBA and the government recently initiated projects aimed to support small medium sized enterprises (SMEs) venturing abroad. These initiatives are not motivated by a desire to support the business of law firms. These are motivated by the immediate demands of SMEs for access to legal services. Japanese SMEs have started to move their operations from Japan to jurisdictions where manufacturing costs are less expensive. They do not have sufficient experience using lawyers, even in Japan, unless contentious matters arise. There are numerous cases where SMEs have invested substantial money into a new market without legal advice, and suffered losses. SMEs now realize that legal advice is useful or necessary before investing substantial money into a new market. However, they do not have connections to lawyers with international experience, and many companies operating outside of Tokyo do not have connections with international lawyers at all. In 2012 the JFBA started a pilot project, in coordination with Japan External Trade Organization, the government agency known as JETRO, the Tokyo Chamber of Commerce and Industry and Japan Finance Corporation, which is a governmental agency, to refer lawyers to SMEs which need legal advice.<sup>6</sup> JFBA developed a

---

Cross Border Legal Services Report 2014.” See *IBA GlobalCross Border Legal Services Report 2014*, INTERNATIONAL BAR ASSOCIATION. The author also interviewed lawyers working in these jurisdictions. However, the information is not verified by the regulatory authority of these jurisdictions.

6. *JFBA Launches System to Introduce Support Attorneys to Help Small and Medium-*

program for general practitioners to learn basic knowledge about outbound investments so that SMEs may access lawyers from their home town without travelling to Tokyo. After the trials, the JFBA started referral services in May 2015. Until July 1, 2016, there have been approximately 180 consultations using this scheme. This is one area of JFBA's initiative to deal with the globalization of business lawyers.

Recently lawmakers discussed this issue as a policy agenda. On June 1, 2017, the Research Commission on the Judiciary System of the Liberal Democratic Party, which is the current ruling party, published its policy recommendations. The recommendations include the following phrase, "*Introducing Regime to Allow Japanese Legal Professions to Act in Asian Jurisdictions.*"

Japanese corporates including SMEs are active in South East Asian countries. The government will request these countries to liberalize the regulations to foreign lawyers so that Japanese lawyers may provide a broad range of legal services flexibly...."<sup>7</sup>

### **III. Globalization of Public Interest Lawyers and Bar Associations**

Now let us turn to the globalization of public interest lawyers. Compared to business lawyers, there have been few advancements in the globalization of public interest lawyers. Public interest lawyers need the active support of the bar. The JFBA has been active in supporting public interest lawyers. The White Paper of 2016 featured "International Activities of Lawyers and the Role of Bar Associations" and introduces these activities.<sup>8</sup>

---

*Sized Enterprises Do Business Overseas*, JAPANESE FED'N OF BAR ASS'NS, <http://www.nichibenren.or.jp/en/meetings/year/2012/120601.html> (last visited on 28 March 2018).

7. [https://jimin.ncss.nifty.com/pdf/news/policy/135089\\_1.pdf](https://jimin.ncss.nifty.com/pdf/news/policy/135089_1.pdf) (Japanese only) (last visited on 28 March 2018)

8. English translation is available at JAPANESE FED'N OF BAR ASS'NS *supra* note 7, at 1-29.

## 1. Technical Legal Assistance

Since 1994, JFBA has been involved in providing technical legal assistance to developing jurisdictions. Since 2001 JFBA participated in development programs of the Japan International Cooperation Agency (JICA), which is a government agency. The following table shows the major jurisdictions where the JFBA members have been seconded as long-term experts (as of July 1, 2016).

Cambodia	10
Vietnam	9
Nepal	5
Laos	3
Mongolia	3
People's Republic of China	2
Indonesia	2

Their projects, illustrated in detail in the White Paper 2016, include:

- Lawyers training program, drafting Civil Code and Civil Procedural Code in Cambodia;
- Legislation of Civil Code and training of legal professions in Vietnam; and
- Capacity development of conciliation center in Mongolia.

These projects not only provided assistance to the recipient countries, but also opportunities for public interest lawyers working abroad. These lawyers worked in the recipient countries for one to three years. An ongoing challenge for the public interest lawyers is that there are not sufficient legal positions to continue or further

---

---

develop international public interest legal practices.

## 2. International Public Legal Services

Legal positions in international organizations is a very common career path for public interest lawyers. We often hear from the legal departments of international organizations that they need to diversify their legal officers by countries of origin and that Japanese lawyers are less represented in their legal departments than common law lawyers or native-speaking English lawyers. For the sake of diversification, they may wish to hire talented lawyers from civil law jurisdictions and non-native English speakers. The JFBA has devoted substantial resources to assist Japanese public interest lawyer's applications for positions at international organizations. However, the number of Japanese lawyers who have successfully gained jobs at international public legal services is still small. This can be partly attributed to language problems but also to cultural differences. It is said that job applicants should demonstrate their abilities without hesitation, while it is not considered elegant in Japan to boast about your abilities.

## 3. Lawyers Referral Services for International Child Abduction Cases

JFBA has launched another lawyer referral project for international child abduction cases. More than 40,000 couples of Japanese and foreign nationals get married each year. There are numerous cases where Japanese mothers residing in foreign countries, upon divorce, take their children to go back to Japan without the consent of the fathers. Those mothers do not know or understand the term "abduction" and do so unintentionally because such practices are not uncommon in Japan. In 2013, Japan ratified the *Hague Convention on the Civil Aspects of International Child Abduction*. Foreign fathers may now seek legal remedies to have their children returned from Japan. These cases have created a demand for legal services which require not only the knowledge of international family

---

---

laws and procedures, but also require foreign language capabilities.<sup>9</sup> The JFBA developed training programs for general practitioners, so that they may gain the basic knowledge necessary to handle these cases. These trained lawyers are referred to clients who do not have connections with lawyers.<sup>9</sup>

#### 4. Policy Agenda

The policy paper of the Research Commission of the Judicial System of the Liberal Democratic Party referred to in II 2 above includes a number of recommendations, including;

- Assigning legal professionals to governmental positions which require legal expertise;
- Assigning capable legal professionals to developing countries to meet demands for technical assistance in specialized practice areas such as intellectual property and economic laws; and
- Encouraging Japanese legal professionals to take positions at international organizations and assist them in pursuit of career paths as international public lawyers.

One of the objectives is to enhance legal literacy in the society of Japan by providing international exposure to Japanese legal professions. The JFBA worked closely with members of the Research Commission and supports the foregoing recommendations.

#### **IV. Conclusion - Expectations of U.S. Law Schools**

In this paper, I outlined the activities of the JFBA to deal with the globalization of legal practices. In summary, large law firms have expanded abroad without the assistance of the bar and JFBA has committed to facilitate access to international legal services by SMEs

---

<sup>9</sup> *Lawyer Referral Service for Hague Convention Cases*, JAPAN FED'N OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/legalinfo/hague.html>. (last visited 28 March 2018).

and individual clients.

I would like to conclude this article by introducing the JFBA programs to facilitate its members studying abroad. JFBA has developed a visiting fellow program for public interest lawyers. The program of New York University started in 1997 and UC Berkley in 1999. The program expanded to include the University of Illinois and University of Essex. Applicants must have experience in public interest matters. They should study a public interest theme during a one-year program and report the result of their study in the publications of the JFBA. As of 2015, 50 *bengoshi* have studied abroad through these programs. The programs have worked well and the alumni of the programs are active in the public interest area, including one member of the House of Councilors. UC Hastings offers an attractive program for public interest lawyers; successful students may earn an LLM degree with a reduced amount of tuition.

There are also programs which do not require public interest experiences. U.S. law schools have been, for many Japanese lawyers, gateways to international legal practice. The benefits of attending U.S. law schools include learning about a different legal system, meeting lawyers from different social and cultural backgrounds, and English language training. Japanese bars will be required to assist Japanese business or public interest lawyers expanding into global legal markets, and they will continue to encourage young lawyers to seek opportunities to attend U.S. law schools.

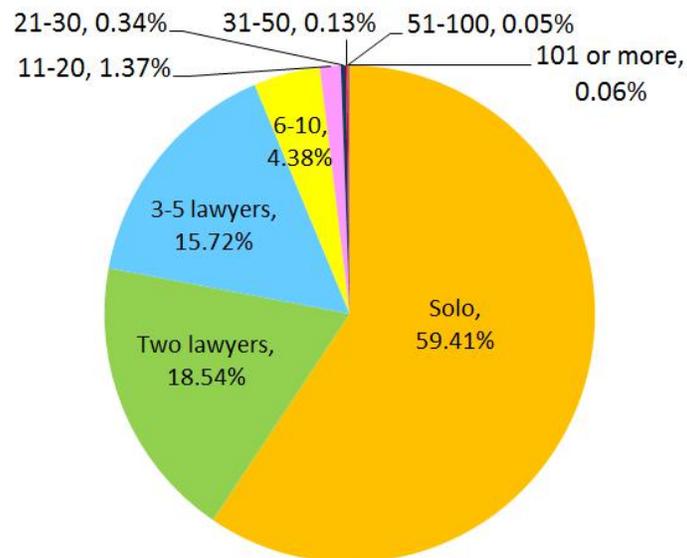
**Table 1 Overview of Legal Market - *Bengoshi*****■ Large Law Firms**

as of March 3

Nishimura & Asahi	508
Anderson Mori & Tomotsune	396
Mori Hamada & Matsumoto	360
Nagashima Ohno & Tsunematsu	353
TMI & Associates	350
Adire Legal Professional Corporation	162
City-Yuwa Partners	136
Oh-ebashi LPC & Partners	122
Baker & McKenzie	111
Verybest Law Offices	105

**■ Percentage of Offices by Size**

as of March 31, 2016



**Table 2 Overview of Legal Market - Foreign Lawyers**

■ Home Jurisdictions

	as of April 1, 2016
US	220
New York	110
California	49
Others	61
UK	65
China	35
Australia	23
Canada	9
Germany	6
France	6
Brazil	5
Total	392

■ Foreign Law Joint Partnerships

Number of foreign registered lawyers and *Bengoshi* as of April 1, 2016

Baker & McKenzie	121
Atsumi & Sakai	100
Kitahama Partners	81
Jones Day	46
Clifford Chance	35
Okuno & Partners	31
Squire Gaikoku Kyodo Jigyo	29
Linklaters LLP	27
Orrick, Herrington & Sutcliffe LLP	25
Freshfields Bruckhaus Deringer	23

**Table 3 Japanese Law Firms outside of Japan**

	Tokyo	Nagoya	Osaka	Kobe	Fukuoka	Beijing	Shanghai	Singapore	Chicago	Hanoi	Bangkok	Yangon	Jakarta	Phnom Penh	Valley Forge	New York	Hong Kong
Nishimura & Asahi	o	o							o	o	o						o
Anderson Mori & Tomotsune	o	o				o	o	o		o		o					
Mori Hamada & Matsumoto	o	o			o	o	o			o		o	o				
Nagashima Ohno & Tsunematsu	o								o	o	o	o				o	
TMI Associates	o			o		o	o	o	o			o	o				

\*Affiliation with local firms

**Table 4 Regulatory Framework of Foreign Jurisdictions**

	Nationality Requirement for Local Lawyer	Commitment to open legal services market	Establishment of Foreign Firms	Handling of Local Law by Foreign Firms	
China	Yes	WTO	Yes	No	
Vietnam	Yes	WTO	Yes	Yes*	* Except for representations before the courts
Thailand	Yes	WTO	Yes*	Yes	*Foreign investors allowed up to 49%, except for USA and ASEAN member states
Singapore	No	No	Yes	Yes*	*Subject to license of QFLP, FLA or JLV
Indonesia	Yes	No	No*	No	*Foreign lawyer may practice as an employee or consultant of local firm
India	Yes	No	No	No	