



Pro Bono Practices and Opportunities in Japan

INTRODUCTION

The Japanese legal tradition places great value on providing legal services to the indigent and ensuring access to justice. The ideals of protecting fundamental human rights and achieving social justice are specifically set forth as the mission of every practicing Japanese attorney,¹ and the Japanese national and local bar associations view the performance of public interest work as an important responsibility of all members of the bar.

Legal aid has been, and remains, the primary means of providing legal services to persons lacking access to legal representation in Japan, and bar associations and the government play a primary role in administering the legal aid system. Traditionally Japanese attorneys performing legal aid work have been compensated by local bar associations or the Japanese government, and the comprehensiveness of the legal aid system has decreased the perceived need for pro bono work among Japanese attorneys. However, domestic and international law firms in Japan have increasingly begun to perform more pro bono work in connection with a larger movement towards increased organizational social responsibility.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

The Japanese legal system is a civil law system governed by the modern Japanese Constitution adopted in 1946, which constitutes Japan's highest law.² As a civil law system, laws enacted by the Japanese government are organized into a series of legal codes including the Civil Code, Criminal Code, Code of Civil Procedure and Code of Criminal Procedure. The Attorney Act, enacted in 1949, prescribes the responsibilities of attorneys under Japanese law. The Attorney Act provides that the mission of lawyers must include the protection of fundamental human rights and the realization of social justice.³ The Attorney Act also establishes the Japan Federation of Bar Associations (the "JFBA") as the controlling body overseeing the nation's attorneys, separate from the Ministry of Justice.⁴ All Japanese attorneys are registered with and must comply with the rules and regulations of the JFBA as well as the local bar association in the judicial district where their practices are located.⁵

The Courts

Court System

The Japanese judicial system consists of the Supreme Court, eight high courts and 50 district courts, as well as family courts and summary courts. The Supreme Court located in Tokyo is the nation's highest

¹ Attorney Act, Law No. 205 of 1949, art. 1, no. 1., available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1> (last visited on September 4, 2015) "An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice."

² NIHONKOKU KENPŌ [Kenpō][Constitution].

³ Attorney Act, Law No. 205 of 1949, art. 1, no. 1., available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1> (last visited on September 4, 2015).

⁴ JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/us.html> (last visited on September 4, 2015).

⁵ The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html (last visited on September 4, 2015).



court and hears final appeals of decisions made by the high courts, or direct appeals from the district, family or summary courts in limited instances. The eight high courts, located in major cities throughout Japan, hear appeals from the courts of first instance (which include the district courts, family courts and summary courts). The 438 summary courts have original jurisdiction over minor civil claims and minor criminal cases, and family courts have jurisdiction over family and domestic relations disputes. The district courts have original jurisdiction for all other civil and criminal cases not falling under the jurisdiction of the family or summary courts.⁶

Appointment of Judges

The Emperor of Japan appoints the Chief Justice of the Supreme Court as recommended by the Cabinet, and the Cabinet appoints the other 14 Justices of the Supreme Court with the Emperor attesting to their appointment. At least ten of the Justices must be either attorneys (including judges or public prosecutors) or university professors of legal science; however, the remaining Justices are not required to be jurists. The Cabinet appoints lower court judges from a list of candidates nominated by the Supreme Court, who selects such nominees with the advice of an advisory committee designated for such purpose. No judges are appointed by direct election. The general electorate reviews the appointment of Supreme Court Justices in the first general election of members of the Japanese House of Representatives following each Justice's appointment and every ten years thereafter, but no Justice has ever been dismissed as a result of such review.⁷

The Practice of Law

Attorney (*bengoshi*) Education

In order to become an attorney (*bengoshi*), candidates must first either complete a graduate-level law school curriculum or pass a preliminary legal examination. Candidates who successfully complete law school or pass the preliminary legal examination are then eligible to sit for the full Japanese Bar Examination.⁸

With respect to continuing legal education, first year attorneys attend a mandatory lecture on civil cases held by their local bar association, and attorneys who take on criminal cases must attend an additional course on criminal defense, also provided by the local bar association.⁹ The JFBA also requires all attorneys to attend an ethics training course during their first year, third year, and fifth year of practice and every five years thereafter.¹⁰ In addition to the JFBA's required ethics training, some local bar associations impose a requirement to attend annual training provided by the local bar association.

Licensure

Attorneys (*bengoshi*)

Upon successful passage of the Japanese Bar Examination, attorney candidates must complete a one-year legal apprenticeship training at the Legal Training and Research Institute of Japan, which consists of general field training in courts, law practices and prosecutors' offices, as well as further specialized training at the apprentice's election. Apprentices elect to become a private practice attorney, judge or prosecutor during their legal apprenticeship training and generally continue in this area of practice

⁶ Overview of the Judicial System in Japan, SUPREME COURT OF JAPAN, http://www.courts.go.jp/english/judicial_sys/overview_of/overview/index.html#06 (last visited on September 4, 2015).

⁷ Id.

⁸ The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html (last visited on September 4, 2015).

⁹ See TOKYO BAR ASSOCIATION, NEWLY-REGISTERED ATTORNEY RULES.

¹⁰ JAPAN FEDERATION OF BAR ASSOCIATIONS, ETHICS TRAINING RULES, art. 2, no. 2.



throughout their professional careers. Once qualified, all attorneys may engage in the general practice of law and may appear in all courts in Japan.¹¹

Legal Para-Professionals

In addition to attorneys, a number of quasi-attorney para-professional positions exist in Japan including patent quasi-attorneys (*benrishi*), who are qualified to prepare intellectual property filings and act as counsel exclusively in intellectual property infringement cases,¹² and certified public tax accountants (*zeirishi*), who may represent clients in connection with preparation of tax documentation and provide certain assistance in tax litigation.¹³ Judicial scriveners (*shiho shoshi*) also assist in preparing certain legal documents and have the power to represent clients before summary courts.¹⁴ Attorneys are qualified to perform the services provided by such para-professionals without any additional professional qualification.

Company In-House Legal Departments

Traditionally, Japanese companies staffed their in-house legal departments (*homu-bu*) with non-professionally qualified personnel rather than qualified attorneys. Companies would either staff their legal department with permanent staff designated to handle legal matters or have their general staff serve in the legal department as part of a rotation. Although many in-house counsel possess law school degrees, they may not have successfully passed the Japanese Bar examinations. However, in recent years companies have increasingly begun to utilize their in-house legal departments for more sophisticated matters, and have therefore started to hire greater numbers of either Japanese or foreign-qualified attorneys.¹⁵ The number of in-house Japanese-qualified lawyers (*bengoshi*) has increased from 123 in 2005 to 1,179 in 2014.¹⁶

Registered Foreign Lawyers

Foreign-qualified lawyers (*gaikokuho-jimu-bengoshi*) who have practiced for at least three years, with at least two years' experience outside of Japan, may independently practice in Japan with respect to providing legal services concerning the laws of their state of primary qualification by submitting an application to the Ministry of Justice and registering with the JFBA as a registered foreign lawyer. Registered foreign lawyers may only advise clients regarding the laws of their qualified jurisdiction and may in no event appear in Japanese court or prepare legal documents to be filed with any Japanese court.¹⁷

¹¹ The Japanese Attorney System, JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html (last visited on September 4, 2015).

¹² Review of Patent Attorney (Benrishi) Law, JAPAN PATENT OFFICE, http://www.jpo.go.jp/torikumi_e/hiroba_e/hourei_e/patent_attorney_law.htm (last visited on September 4, 2015).

¹³ What is a Certified Tax Accountant?, JAPAN FEDERATION OF CERTIFIED PUBLIC TAX ACCOUNTANTS' ASSOCIATIONS, <http://www.nichizeiren.or.jp/eng/services.html> (last visited on September 4, 2015).

¹⁴ Akibumi Kawara, Judicial Scriveners Given Power of Representation Before Summary Courts, JAPAN FEDERATION OF BAR ASSOCIATIONS (2002), <http://www.nichibenren.or.jp/en/meetings/year/2002/200204192.html> (last visited on September 4, 2015).

¹⁵ See Toshimitsu Kitagawa & Luke Nottage, Globalization of Japanese Corporations and the Development of Corporate Legal Departments: Problems and Prospects 11–21 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=837906 (last visited on September 4, 2015).

¹⁶ 2014 White Paper at 53.

¹⁷ Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers, Law No. 66 of 1986, available at <http://www.nichibenren.or.jp/library/en/about/data/hls.pdf> (last visited on September 4, 2015).



Demographics

According to the most recent JFBA survey, as of 2014 there were 35,045 attorneys (*bengoshi*) in Japan (one attorney per 3,632 persons), 6,336 (18%) of which were female.¹⁸ As of 2014, 2,183 attorneys (6%) worked in Japan's nine largest law firms (with eight of these firms based in Tokyo), while there were 8,772 solo practitioners (25% of all attorneys).¹⁹ Other than the attorneys (*bengoshi*) described above, there were 386 registered foreign lawyers as of 2014,²⁰ 2,944 judges (excluding summary court judges) and 1,877 prosecutors employed by national, prefectural or other governmental subdivisions.²¹ In addition, a number of legal para-professionals exist in Japan as well as employees in Japanese in-house company legal departments.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Civil Proceedings

Japanese law does not provide for any right to civil legal assistance.

Criminal Proceedings

Japanese law provides for access to court-appointed counsel for criminal suspects and defendants. Article 37 of the Japanese Constitution provides that “[a]t all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned for his use by the State.”²² Under the Japanese Code of Criminal Procedure, prior to indictment, suspects under detention for offenses punishable by death, life imprisonment, or imprisonment for a term longer than three years who are indigent are entitled to request the appointment of court-appointed defense counsel.²³ After indictment, regardless of the gravity of the alleged offense, defendants unable to appoint counsel because of indigence are entitled to court-appointed counsel upon request.²⁴ Defense counsel appointed prior to indictment will generally be reappointed as trial counsel.²⁵

State-Subsidized Legal Aid

Within the past two decades, the Japanese government and JFBA have come to recognize access to justice as an important social issue in Japan. In particular, the concentration of attorneys in large urban

¹⁸ JAPAN FEDERATION OF BAR ASSOCIATIONS, WHITE PAPER ON ATTORNEYS 12, 19 (2014), available at <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2014.pdf> (last visited on September 4, 2015) [hereinafter 2014 White Paper].

¹⁹ Id. at 27.

²⁰ Id. at 30.

²¹ Id. at 23.

²² NIHONKOKU KENPŌ [Kenpō][Constitution], art. 37.

²³ CODE OF CRIMINAL PROCEDURE art. 37-2, available at <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).

²⁴ CODE OF CRIMINAL PROCEDURE art. 36 available at <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).

²⁵ CODE OF CRIMINAL PROCEDURE art. 32-1, available at <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last visited on September 4, 2015); translation available at JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/law/detail/?id=2283&vm=04&re=02> (last visited on September 4, 2015).



areas such as Tokyo has led to a recognized shortage of attorneys in rural areas, and the small number of attorneys generally relative to the population of Japan has tended to limit access to legal services.²⁶ In response to this justice gap, the Japanese government and JFBA have initiated a series of legal aid programs over the past several years in order to better facilitate individuals' access to attorneys.

JLSC Aid Programs

Currently, the primary vehicle for administering state-sponsored legal aid (including the appointment of court-appointed defense counsel as required by law), is the government-sponsored incorporated administrative agency Japan Legal Support Center ("JLSC"), established in 2006 under the Comprehensive Legal Support Act enacted in 2004.²⁷

With respect to civil legal aid, the JLSC offers support to low-income households by providing initial legal consulting without charge, loans for attorney's fees for preparation of documents to be submitted to the court, and loans for attorney's fees for legal representation in civil cases, including family-related cases and administrative cases. The JLSC awards loan-based aid based on (i) the financial condition of the applicant, (ii) the possibility of success in the pending civil legal matter, and (iii) the consistency of the matter with the purposes of the civil legal aid system.²⁸ The JLSC may ultimately waive repayment of the loan amount if the recipient is a welfare recipient at the time of application and remains a welfare recipient at the repayment date.²⁹

With respect to criminal legal aid, in criminal cases in which a criminal suspect in detention or defendant is entitled to court-appointed counsel as discussed above, the JLSC will select candidates for defense counsel based on a list of attorneys registered with the JLSC. Attorneys willing to take on criminal defense legal aid cases may voluntarily add their name to the defense attorney list managed by the JLSC, and the JLSC will allocate stand-by days to the attorneys on the list. Attorneys allocated to a certain stand-by day will represent suspects or defendants who request court-appointed defense counsel on that day in the attorney's region.³⁰ The JLSC pays for all legal fees and expenses for such court-appointed defense counsel with public funds. The JLSC also provides attendants for juveniles in juvenile cases through a similar procedure.³¹

Additional Aid Provided by the JFBA and Local Bar Associations

In addition to the legal aid provided by the JLSC, the JFBA and local bar associations facilitate a number of legal aid programs for providing assistance to the indigent or other individuals in need of legal services.

One of the primary forms of legal aid organized by the JFBA and local bar associations is the Duty Attorney (*Toban Bengoshi*) System. While suspects detained under a detention warrant for serious

²⁶ See Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, available at <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

²⁷ History of the JLSC, JAPAN LEGAL SUPPORT CENTER, http://www.houterasu.or.jp/en/about_jlsc/history.html (last visited on September 4, 2015).

²⁸ JAPAN LEGAL SUPPORT CENTER 31 (2014), available at <http://www.houterasu.or.jp/cont/100578349.pdf> (last visited on September 4, 2015); see also JAPAN LEGAL SUPPORT CENTER, http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html (last visited on September 4, 2015) (Japanese only).

²⁹ JAPAN LEGAL SUPPORT CENTER, http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html (last visited on September 4, 2015) (Japanese only).

³⁰ JAPAN LEGAL SUPPORT CENTER, PRACTICAL GUIDE TO PUBLIC DEFENSE WORK (2011), available at <http://www.houterasu.or.jp/cont/100179991.pdf> (last visited on September 4, 2015) (Japanese only).

³¹ JAPAN LEGAL SUPPORT CENTER 12 (2014), available at <http://www.houterasu.or.jp/cont/100578349.pdf> (last visited on September 4, 2015); see also JAPAN LEGAL SUPPORT CENTER (Japanese only), http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/kokusenbengo/index.html (last visited on September 4, 2015).



crimes and indicted criminal defendants have access to court-appointed counsel assigned by the JLSC as discussed above, criminal suspects detained (for a period not exceeding 72 hours) prior to the issuance of a formal detention warrant, or detained for minor offenses, are not entitled to court-appointed counsel. Such suspects may, however, request the JFBA or local bar association to dispatch a duty attorney on their behalf. The JFBA or local bar association will dispatch registered duty attorneys to represent requesting suspects, and such duty attorneys may continue their representation throughout the suspect's criminal proceedings.³² The first consultation with a duty attorney is free of charge to the suspect, with the duty attorney's fees borne by the JFBA, who collects special dues from its members to support the system.³³ If a suspect wishes to receive further assistance, the suspect may appoint the duty counsel as his or her defense attorney at his or her own expense (with the JLSC providing attorney-fee aid for individuals eligible for court-appointed counsel legal aid).³⁴

The JFBA and local bar associations also operate special bar-funded law offices and legal counseling centers in order to improve access to justice. There are some areas of Japan where the number of attorneys is particularly low relative to the population. To provide access to legal services for these areas, the JFBA and local bar associations have founded "Himawari Fund Law Offices" staffed by local attorneys but funded by the JFBA and local bar associations, on the condition that the attorneys provide a specified level of public service through participation in the JLSC court-appointed counsel and civil legal aid programs as part of their practice.³⁵ Local bar associations also establish low-cost legal counseling centers nationwide which provide local inhabitants with access to attorney consultations regarding a wide variety of issues including consumer debt and family matters in addition to traditional civil and criminal legal disputes.³⁶

The JFBA has also recently established programs for legal insurance working in cooperation with local insurance companies. Under these programs, an insurance company and the local bar association will match insured persons of moderate income not otherwise qualifying for legal aid programs with an attorney, with the insurance company covering legal fees pursuant to the insured's insurance policy.³⁷

Assignments to Legal Aid Matters

Staffing for JLSC legal aid consists of a combination of full-time staff attorneys and private practice attorney volunteers. With respect to JLSC staff attorneys, the JLSC publicly seeks staff attorney applicants, and any attorney can apply to obtain an available position at the local offices established by the JLSC. Staff attorneys at local JLSC offices hold terms based on the experience of the attorney, and the compensation of JLSC staff lawyers is equivalent to that of judges and public prosecutors of similar experience.

With respect to private practice attorney volunteers, both the JLSC and local bar associations actively seek such volunteers to contribute to legal aid service, and private practice attorneys may coordinate with the JLSC or local bar association to take on legal aid matters on a case-by-case basis. Private practice attorneys who engage in legal aid service are compensated by the JLSC or local bar association based on the difficulty of the case and the time required to complete it. Traditionally, Japanese attorneys do not engage in legal aid work for the JLSC or the local bar association on a pro bono basis.

³² 2014 White Paper at 38–39.

³³ Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

³⁴ See 2014 White Paper at 38–39; see also JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/activity/criminal/reforming/kokusen_touban.html (last visited on September 4, 2015) (Japanese only).

³⁵ Efforts to Improve Access to Justice, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/activities/justice.html> (last visited on September 4, 2015).

³⁶ Id.

³⁷ Id.



PRO BONO ASSISTANCE

The concept of offering pro bono legal services is often unfamiliar to Japanese attorneys, particularly with respect to traditional attorney litigation-related services such as court appearances, for which attorneys are generally culturally recognized as being entitled to compensation. However, opportunities for performing pro bono work are available in Japan. Private practice attorneys may engage in public interest activities through coordination with their local bar association, and while attorneys have conventionally been compensated for many of these services, attorneys could theoretically perform this work pro bono. In addition, law firms and law students have recently begun to engage in certain pro bono matters independently from government and bar association legal aid programs.

Public Interest Service Requirements for Japanese Attorneys

Japanese attorneys are not subject to a formal requirement to offer free pro bono legal services. They are, however, often subject to a public interest service requirement as determined by their local bar association. “Public interest activities” include activities traditionally regarded as pro bono work; however, public interest activities also typically include other activities such as serving on local bar association committees, performing educational activities for law schools and universities, and performing compensated legal aid work for the JLSC or local bar association through their legal aid programs as described above.³⁸ In some more progressive districts, such as Tokyo, Yokohama and Osaka, the local bar associations have adopted rules requiring their members to perform mandatory public interest service. In other regions, while practicing attorneys may coordinate with the local bar association to voluntarily participate in public service activities, the bar association imposes no mandatory requirement. Japanese attorneys may elect to satisfy their public interest service requirement through the performance of pro bono work.

As an example of a mandatory public service requirement, the Daini Tokyo Bar Association, one of the three local bar associations in Tokyo with some 4,800 members as of 2015, compels its members to perform at least ten hours of public interest activities each year. Attorneys may opt out of this requirement, however, by choosing to pay a penalty of up to ¥50,000 per year.³⁹ The Tokyo Bar Association, the largest local bar association in Japan, has a similar rule to the Daini Tokyo Bar Association, and requires attorneys who do not engage in any public interest activities to pay a ¥50,000 charge to the bar association in lieu of performing such public interest activities.⁴⁰ The ratio of members of the Tokyo Bar Association who opt to pay a charge to the bar association rather than engage in any public interest activities is relatively low, approximately 11% to 13% of members for the eight years from 2007 to 2014. This ratio had maintained a consistent downward trend for the last four years (2011 to 2014), falling from 13.35% to 11.34% of registered members.⁴¹

³⁸ See, e.g., TOKYO BAR ASSOCIATION, RULES ON ACTIVITIES OF ASSOCIATION MEMBERS(KAIMUKATSUDŌTŌ NI KANSURU KAIKI).

³⁹ See DAINI TOKYO BAR ASSOCIATION, RULES REGARDING PUBLIC INTEREST ACTIVITIES OF MEMBERS, available at <http://niben.jp/pdf/public/kisoku2.pdf> (last visited on September 4, 2015) (Japanese only).

⁴⁰ See TOKYO BAR ASSOCIATION, RULES ON ACTIVITIES OF ASSOCIATION MEMBERS(KAIMUKATSUDŌTŌ NI KANSURU KAIKI).

⁴¹ The number of attorneys who opted to pay a charge in lieu of engaging in public interest activities was calculated for the years 2007 – 2014 by dividing the total revenue received from public interest charges, as stated in the Tokyo Bar Association annual report for each year, by ¥50,000 (the amount of the charge for each attorney failing to engage in public interest activities). This figure was divided by the total number of member attorneys in the Tokyo Bar Association as of April 1 of each corresponding year (as stated in each year’s April edition of the Tokyo Bar Association monthly periodical *Libra*) to determine the ratio of attorneys opting to pay a charge for that year.



Pro Bono Opportunities

JLSC and Local Bar Association-Related Opportunities

The 52 local bar associations in Japan are the primary vehicle through which Japanese attorneys engage in public interest activities. Private practice attorneys may voluntarily participate in the JLSC court-appointed counsel program or local bar association legal aid programs for criminal or civil cases or general legal consultation.

Attorneys from both foreign and domestic law firms are among those actively contributing to JLSC and local bar association-led public interest activities. Attorneys from large local law firms in Japan actively serve on government councils or internship posts at government offices, and offer their services teaching at Japanese law schools, universities or other educational institutions.⁴² The extent to which attorneys are currently compensated for these public interest activities varies, but there are no formal restrictions preventing law firm attorneys from engaging in such activities on a pro bono basis.

Other Law Firm and Legal Department Opportunities

In addition to participation in JLSC and local bar association activities, a number of law firms have also contributed their services to the community and engaged in pro bono opportunities on an independent basis. Since there are still many cases not covered by local bar association activities and JLSC-provided services (particularly in areas such as immigration and refugee proceedings and non-profit organization assistance), pro bono services independently provided by private law firms are generally aimed at filling this gap. For example, some multinational western law firms with local branch offices in Japan have engaged in fundraising campaigns for charitable causes and work with humanitarian and entrepreneur organizations, such as the Japan Association for Refugees and Ashoka Japan.⁴³

After the Great East Japan Earthquake and tsunami of March 11, 2011, law firms and other companies and professional organizations mobilized to cooperate with nongovernmental organizations and volunteer groups to deliver pro bono services to the Tohoku region of Japan. Such services have contributed to obtaining direct relief for victims as well as economically revitalizing the region in the aftermath of the disaster.⁴⁴ Attorneys from private law firms have also participated in various relief programs in connection with the earthquake led by the JFBA and local bar associations, including assistance with legal claims and the provision of pro bono telephone and in-person legal consultations for victims.⁴⁵ As the ultimate economic recovery of Tohoku will take many years to complete in light of the extensive damage to the

⁴² See, e.g., NAGASHIMA OHNO & TSUNEMATSU, <http://www.noandt.com/data/work/index/id/550/> (last visited on September 4, 2015) and MORI HAMADA & MATSUMOTO, <http://www.mhmjapan.com/en/probono/index.html> (last visited on September 4, 2015).

⁴³ Latham & Watkins is a leader among those western law firms working with such humanitarian and entrepreneurial organizations. See our 2014 Pro Bono Annual Review, available at http://www.lw.com/admin/Upload/Documents/2014PBAR_web_final.pdf (last visited on September 4, 2015).

⁴⁴ For a few examples of the many ways in which law firms and other companies have contributed to the Tohoku relief effort, see, e.g., MORRISON & FOERSTER, MoPROBONO 11 (2014), available at <http://media.mofo.com/docs/pdf/MoProBono-2014-Fall-Winter/#?page=10> (last visited on September 4, 2015); Nomura Holdings, Inc., Nomura holds corporate citizenship speaker event: Leveraging your skills to contribute to society (Jan. 16, 2014), available at <http://www.nomuraholdings.com/csr/news/news55.html> (last visited on September 4, 2015); Mitsui & Co., Our Response to the Great East Japan Earthquake, MITSUI & CO., LTD. SUSTAINABILITY REPORT 2014, available at http://www.mitsui.com/jp/en/csr/csrreport/pdf/en_csr_detail_2014-10.pdf (last visited on September 4, 2015); J.P.Morgan Chase & Co., J.P. Morgan Supports Makoto to Empower Entrepreneurs in Tohoku Area (Mar. 9, 2015), available at http://www.jpmorgan.co.jp/cm/BlobServer/150309_Makoto_Grant_E.pdf?blobkey=id&blobwhere=132066889440&blobheader=application/pdf&blobheadername1=Cache-Control&blobheadervalue1=private&blobcol=urldata&blobtable=MungoBlobs (last visited on September 4, 2015).

⁴⁵ See 3.11 Great Earthquake, JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/earthquake.html> (last visited on September 4, 2015).



region, pro bono services for the area offered by law firms and other organizations will continue to be essential over the coming years.

In-house counsel have limited opportunities to participate systematically in pro bono work as they are not members of nor registered with Japanese bar associations, being not registrable “attorneys” under the relevant legislation. Associations for in-house counsel, such as the Japan In-House Lawyers Association (“JILA”), are voluntary membership organisations and primarily focused on networking and educational opportunities. There is however potential scope for an association such as the JILA to mature and grow in the future into a body that could administer pro bono and public interest service offerings by its members in a coordinated and organised fashion, more in keeping with the Japanese culture and approach to handling such matters.

For individuals with no formal legal qualifications such as traditional personnel serving in in-house legal departments in Japan, certain pro bono work clearing houses exist to match employees in Japanese companies with nongovernmental organizations and other public service groups in order to facilitate company employee social contributions. These clearing houses include Service Grant,⁴⁶ Probonet,⁴⁷ and *Nimaime-no-Meishi*.⁴⁸

Law Student Opportunities

Many law schools in Japan have legal clinics that allow law school students to provide free legal consultation to local citizens under the supervision of licensed attorneys. These legal clinics handle only civil cases rather than criminal cases. Further, some law schools prepare internship programs where students have opportunities to work at local JLSC offices for a short period and provide legal services to the indigent or people in underpopulated areas. These law student programs offer opportunities for pro bono or public interest work for aspiring Japanese lawyers.

Historic Development and Current State of Pro bono

As discussed previously, the concept of engaging in pro bono work has not significantly developed in Japan as a responsibility for attorneys. Historically, through coordination with the JFBA and local bar associations, Japanese attorneys have maintained a tradition of serving in public interest activities such as participation in court-appointed counsel programs, bar association committee activities and civil legal aid programs; however, either the client, the JLSC or the local bar association ultimately compensates attorneys for their participation in such legal aid programs.

Legal aid in Japan has made significant progress in the last several decades. For example, the JFBA began its promotion of the Duty Attorney (*Toban Bengoshi*) system for criminal suspects prior to indictment in 1990,⁴⁹ and this system has gradually expanded to cover all of Japan. The establishment of the JLSC in 2006 further increased government funding and involvement in the provision of court-appointed counsel and civil legal aid. The JFBA, JLSC and local bar associations have been proactive in soliciting private attorneys to participate in these legal aid programs, and these recent efforts have made engaging in public interest work a common activity for Japanese attorneys.

In contrast to Japanese attorneys’ history of engaging in legal aid and public interest activities, a tradition of law firms regularly engaging in and promoting pro bono work has been relatively slow to develop as compared to other similarly developed countries. Japanese attorneys have traditionally viewed their public service obligation as an individual obligation of each attorney as part of his or her admission to the bar and service for the local bar association, rather than a responsibility at the firm-wide level for law firms to perform pro bono work. Further, law firms have viewed the strength of Japan’s public legal aid

⁴⁶ See <http://www.servicegrant.or.jp/> (last visited on September 4, 2015).

⁴⁷ See <http://www.probonet.jp/> (last visited on September 4, 2015).

⁴⁸ See <http://nimaime.com/> (last visited on September 4, 2015).

⁴⁹ Prior to 1990, criminal suspects had no access to publicly provided legal counsel prior to formal indictment.



organizations such as the JLSC and local bar associations in providing legal aid services as obviating the need for pro bono work by law firm attorneys, and law firms have not traditionally viewed engaging in pro bono work as part of their primary responsibilities. The government and local bar associations' compensation of volunteer attorneys for their legal aid service further diminishes the perceived need for pro bono work. To the extent that large law firm attorneys engage in public interest activities, such attorneys have often elected to serve in positions on government administrative research groups or advisory panels, serve on local bar association committees, or perform teaching activities for law students or legal apprentices, rather than perform activities more traditionally considered pro bono work.

This attitude, however, is changing as both law firms and traditional companies in Japan have come to place an increasing emphasis on making social contributions in cooperation with Japan's significant network of governmental and nongovernmental public service organizations. Law firms in Japan have generally come to adopt standards of social responsibility reflective of changes in the larger international business community and are placing an increasing emphasis on promoting and engaging in proactive pro bono work.⁵⁰ Still, strong cultural resistance remains in Japan regarding the performance of traditional litigation work by Japanese attorneys on a pro bono basis, as the bar and the public generally perceives attorneys as being entitled to compensation for the performance of such services.

For Japanese-qualified attorneys (*bengoshi*), the key barriers to participation in pro bono work are primarily cultural (as described above) rather than systemic regulatory or political factors. For foreign-qualified attorneys, however, the practice restrictions on registered and unregistered foreign lawyers in Japan with respect to matters related to Japanese law serve as a significant regulatory impediment to the performance of pro bono work. Foreign lawyers in Japan also do not have similar access to the local bar associations' matching systems for public interest opportunities available to Japanese-qualified attorneys. Despite these restrictions, however, opportunities remain available to foreign lawyers, particularly in the areas of immigration and refugee assistance, nongovernmental organization support and other general public interest and volunteer efforts not requiring a formal law license.

Pro Bono Resources

In general, Japan currently offers a wide variety of pro bono opportunities for both Japanese-qualified and foreign-qualified attorneys. Attorneys have increasingly been taking advantage of such opportunities as an emphasis on social responsibility among employees in large organizations has continued to develop in recent years.

A list of organizations that interested attorneys, companies and nongovernmental organizations may contact to become involved includes the following:

- Japan Federation of Bar Associations
- Address: 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
Phone: +81.3.3580.9741 Fax: +81.3.3580.9840
Website: <http://www.nichibenren.or.jp/en/> (last visited on September 4, 2015)
- Tokyo Bar Association
- Address: 6F Bar Association Bldg., 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.2201
Fax: +81.3.3581.0865
Website: <http://www.toben.or.jp/english/> (last visited on September 4, 2015)
- Dai-ichi Tokyo Bar Association (Japanese only)
- Website: <http://www.ichiben.or.jp/> (last visited on September 4, 2015)

⁵⁰ For example, a number of domestic Japanese and foreign law firms have recently become official law firm pro bono partners of the Japan Association for Refugees. See, e.g., Japan Association for Refugees, Anderson, Mōri & Tomotsune becomes a Pro Bono Partner (Jun. 22, 2015), available at https://www.refugee.or.jp/jar/postfile/20150622_probono%20partner.pdf (last visited on September 4, 2015) (Japanese only); Japan Association for Refugees, TMI Associates becomes a Pro Bono Partner (Jan. 19, 2015), available at <https://www.refugee.or.jp/jar/release/2015/01/19-0001.shtml> (last visited on September 4, 2015).



- Daini Tokyo Bar Association
- Address: 9F, 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.2255
Website: <http://niben.jp/english/index.html> (last visited on September 4, 2015)
- Osaka Bar Association
- Phone: +81.6.6364.0251
Website: <http://www.osakaben.or.jp/web/english/index.php> (last visited on September 4, 2015)
- Aichi Bar Association (Japanese only): <http://www.aiben.jp/> (last visited on September 4, 2015)
- Japan Association for Refugees
- Phone: +81.3.5379.6001 Fax: +81.3.5379.6002
Website: <http://www.refugee.or.jp/en/> (last visited on September 4, 2015)
Email: info@refugee.or.jp
- Service Grant (Japanese only): <http://www.servicegrant.or.jp/> (last visited on September 4, 2015)
- Probonet (Japanese only): <http://www.probonet.jp/> (last visited on September 4, 2015)
- *Nimai-me-no-Meishi* (Japanese only): <http://nimaim.com/> (last visited on September 4, 2015)

CONCLUSION

The legal aid and other public interest activities led by the JLSC, JFBA and local bar associations function as the primary drivers of legal aid activities in Japan, and meet the need for free or reduced-cost legal services for a substantial portion of Japan's population. While a culture of performing pro bono legal services has been slow to develop among Japanese attorneys, law firm and in-house Japanese attorneys can meaningfully contribute public interest service or pro bono efforts by working through the programs offered by the JFBA, JLSC and local bar associations, as well as through other avenues such as relationships with nongovernmental organizations offering public services. While regulations on foreign lawyers restrict the range of pro bono activities that foreign attorneys may conduct in Japan, there are also still many ways that foreign lawyers and non-lawyers can become involved in pro bono work in Japan and serve the public interest.

September 2015

Pro Bono Practices and Opportunities in Japan

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