

# **Empirical Support for Redefining the Legal Profession and New Roles for Lawyers in Japanese Corporations**

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*This article introduces the current legal needs, role and image of lawyers in Japanese corporate society, based on three questionnaire surveys conducted by a research group at Osaka University. It provides empirical evidence to help clarify some of the reasons why Japanese corporations do not utilise lawyers for daily business activities. It also considers the future of lawyers in Japan. It argues that the increased number of corporate in-house lawyers will drive change in corporate legal culture in Japan and suggests factors that may accelerate these changes.*

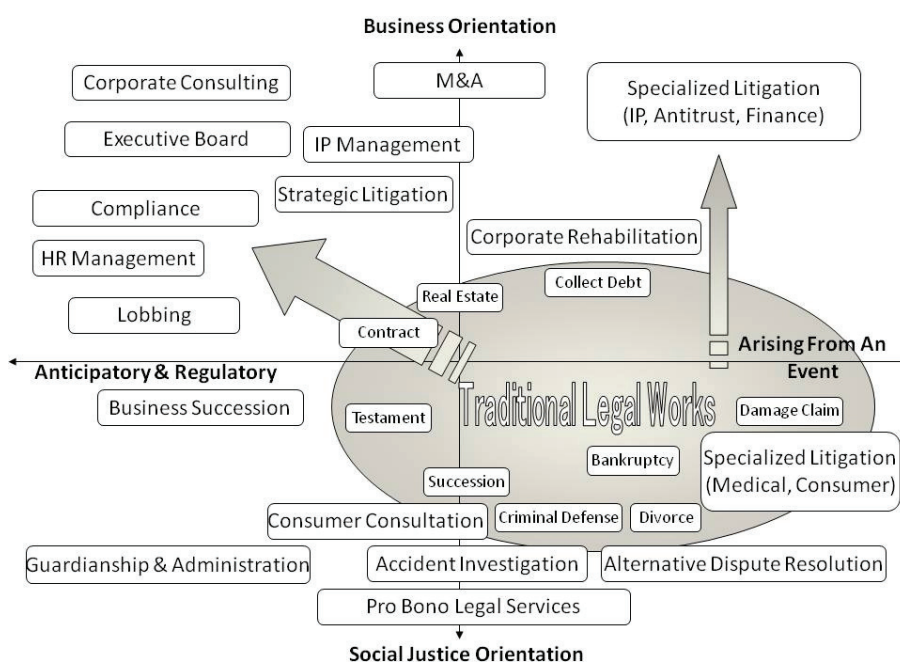
Criticism of the Japanese legal system and a desire for structural reform brought about by Japan's economic malaise culminated in the establishment of the Justice System Reform Council (JSRC) by the Cabinet of Japan on 27 July 1999.<sup>1</sup> One of the key issues the JSRC was asked to consider was the 'redefinition of the legal profession and reinforcement of its function' (*Ronten Seiri*, 1999). In June 2001, JSRC released its recommendations (*Ikencho*, 2001). JSRC's fundamental findings for the creation of the ideal legal profession to 'support Japan in the 21st Century' included that the 'legal population' be 'substantially increased'; training for potential lawyers<sup>2</sup> should be comprehensively reformed; lawyers should be encouraged to focus on social responsibilities ('public interest' lawyering), business law and international transactions; and the status of people engaged in corporate legal affairs who have not been admitted to practice should be reviewed (*Ikencho*, 2001: Chapter III).

A decade after the JSRC's final report, this article argues that the roles and perceptions of lawyers in Japanese corporations are changing as a result of the JSRC's watershed final report.<sup>3</sup> We also argue, however, that other reforms and developments in Japan's society and economy may bring about further and more fundamental change for lawyers working in corporate legal affairs departments. Our findings are based on empirical evidence collected by way of three questionnaire surveys conducted over the course of 2007-08. Our research was made possible by a grant from the Japan Society for the Promotion of Science.<sup>4</sup> We were particularly

interested in the roles given to lawyers in Japanese corporations and the perceptions of the need for lawyers held by corporate managers and lawyers themselves, given the complicated and controversial debates about the population of lawyers in Japan.<sup>5</sup>

Our main hypothesis is that the image of lawyers' roles is changing dramatically, influenced by increasing new legal needs of corporations. Accordingly, we conducted a questionnaire survey on corporations' legal needs, as well as questionnaires on the type of legal work currently performed by private practice lawyers and corporate in-house lawyers, which provided us with data to conduct a comparative analysis. We focused on the corporate legal needs fulfilled by lawyers because Japanese corporations are generating new needs for lawyers in response to global business competition.<sup>6</sup> The fields of legal work being performed for corporations are expanding due to internal and external pressure from 'corporate compliance' demands and 'corporate social responsibility (CSR)' requests, now common in the Japanese business world. Figure 0-1, the 'Mapping of the formation of legal works', maps many typical fields of legal work.

**Figure 0-1: Mapping of the formation of legal works**



The horizontal axis relates to the temporal stages of legal work (Anticipatory and Regulatory/ Arising from an Event), and the vertical axis relates to the orientation of the legal work (Social Justice Orientation/ Business Orientation). The map helps plot the situation of legal work as of today and for the future.

Before conducting the questionnaire surveys, we assumed that the main fields for legal practice are shifting into both the upper left and upper right quadrants (more specifically, the upper left), which reflected a business-oriented shift from the lower right, which is the traditional jurisprudence zone.<sup>7</sup> The lower right quadrant is still very important, but it is essential to analyse the movement toward the upper quadrant carefully, in light of our hypothesis that the increasing legal needs of corporations and the lure of lucrative work will see more lawyers engaged in that type of legal work.

The survey results, however, led us to slightly different conclusions. According to the data, Japanese corporations were still largely expecting lawyers to play traditional roles related to litigation or dispute settlement.<sup>8</sup> Further, few think that they even need to employ in-house lawyers. The data suggested that the need for lawyers in Japanese corporations is still located in the lower right quadrant in Figure 0-1. Our data also showed that roles mainly connected to corporate compliance matters (new to many Japanese corporations) were under consideration by Japanese corporations. We believe that the role-images of lawyers in Japan are in a transitional phase, in which new fields of legal work, including compliance, may lead to an increase in in-house lawyers.

## **Number of Lawyers in Japan and the Ideal of the ‘*Bengoshi*’ Lawyer**

### **Recent Reforms to the Number of Lawyers who Qualify Each Year**

The results of the questionnaire surveys help to frame debate for future reforms and developments in light of the increase in lawyers precipitated by the JSRC, which has often been at the heart of public interest, media reports and academic commentary relating to the JSRC’s reforms. To date, debates about Japan’s need for more lawyers have generally not been informed by specific empirical evidence.<sup>9</sup>

Although there have been many iterations of the ‘legal profession population’ debate in relation to Japan, protagonists may be divided into two major camps: those who oppose any increase in the number of lawyers, for example, traditionally, the Japan Federation of Bar Associations (JFBA); and those who argue for an increase in the number of lawyers, for example Setsuo Miyazawa (Miyazawa, 2007a).

When JSRC was established in 1999, the total number of Japanese lawyers was about 16,500;<sup>10</sup> approximately one lawyer for every 6000 people in Japan. This was perceived to be very low by comparison with other developed countries.<sup>11</sup> The population of Japanese lawyers was also kept low because the Ministry of Justice set a small quota for successful candidates passing the compulsory bar examination for admission to practice, but no restrictions were placed on the number of potential candidates. Further, various vested interests, including lawyers, lobbied the Japanese government to keep the number of qualified lawyers to a minimum.<sup>12</sup> The JSRC recommended the introduction of graduate law schools, which would limit the number of candidates sitting the bar examination by requiring them to have obtained a juris doctor (JD) degree before sitting the examination. It also recommended, however, that the pass rate of the bar examination be increased, thereby increasing the population of lawyers. JSRC wanted to increase the number of successful candidates to 3000 per year by 2010, thus initially anticipating a pass-rate of approximately 70%. The difficulties and successes of the new system introduced in response to JSRC's recommendations in April 2004 have been well documented.<sup>13</sup> Despite only achieving a pass-rate of no more than 30%, the ultimate goal of the reforms, to produce more qualified lawyers, is being achieved.

#### Definition of a 'Lawyer' in Japan

According to the law governing the legal profession in Japan, a person who has qualified as a lawyer is authorised to deal with a wide range of legal matters.<sup>14</sup> Traditionally, however, the role of lawyers has been regarded as a barrister-like, specialised function, where lawyers exclusively deal with court-related matters.<sup>15</sup> Lawyers have also been regarded as highly independent professionals who do not work under the supervision of non-lawyers. Further, functions that would generally be performed by lawyers in other developed countries are traditionally ascribed to other qualified professionals in Japan. The population of Japan's so-called 'legal profession' would swell if it were to include professionals such as judicial scriveners (*shihō shoshi*),<sup>16</sup> administrative scriveners (*gyōsei shoshi*),<sup>17</sup> tax accountants (*zeirishi*),<sup>18</sup> public consultants on social and labour insurance (*shakai hoken rōmushi*),<sup>19</sup> and patent attorneys (*benrishi*).<sup>20</sup> In the absence of a large number of qualified lawyers, these professionals fulfil important legal needs, including conveyancing work, property registration, preparation of legal or administrative documents, income tax returns, social and labour insurance submissions, and patent filings. If the number of these specialist professionals were added to the population of lawyers in Japan, the so-called 'legal professional'

population would be approximately 200,000, which would bring Japan into line with other developed countries.<sup>21</sup>

There is also a general acceptance in Japan that employees in corporate legal departments may conduct legal matters concerning their employers' business in the course of their employment. Article 72 of the Attorney Act (*bengoshi hō*) prohibits the provision of legal services by non-qualified lawyers for the purpose of obtaining compensation, except where permitted by the Attorney Act itself or other laws.<sup>22</sup> Based on the prevailing understanding of art 72, however, legal work conducted by such employees does not contravene the Act, because they do not receive compensation for their legal work from an external source. Their legal work does not generate any independent profit as it would if they were to establish their own firm. The quality of work produced by these employees is high. They are often tertiary-trained law graduates and have passed one of the examinations relating to the professions mentioned above, such as the patent attorneys (*benrishi*) examination, or have a business qualification(s), such as in financial planning (*fainansharu purannā*), or small and medium enterprise (SME) management consulting (*chūsho kigyō shindanshi*).<sup>23</sup> In some cases, they are certified public accountants (*kōnin kaikeishi*).<sup>24</sup> Therefore, traditionally, Japanese corporations have managed their own legal matters, without the need to hire external or in-house lawyers. In the 1990s, however, the Japan Federation of Economic Organizations (*keidanren*) changed its attitude, and came to support the recommendations of JSRC. It perceived a need for more lawyers to enable Japan to compete globally. Our survey results suggest, however, that the tendency to manage their own legal affairs remains intact in most Japanese corporations.

### **Empirical Research into Japanese Corporations' Legal Requirements**

To discuss whether the population of lawyers in Japan is sufficient to meet corporations' legal requirements, empirical research is required to understand those requirements. In addition to asking users and potential users about their need for lawyers, we also asked them about the expected role of lawyers. This is what we call 'role-image'. A corporation's need for lawyers is intrinsically related to their expected role. To further clarify the need for lawyers, we also asked corporations about their need for other law-related professionals. The need for lawyers will be affected by their relationship with other law-related professionals, as some lawyers' roles are performed by other law-related professionals in Japan. Our user-side empirical research is supported by recent empirical research from the supplier side, for example, research by lawyers themselves.<sup>25</sup>

### **Questionnaire Survey on the Need for Lawyers in Japanese Corporations, 'Survey A'**

This questionnaire survey was conducted in February 2007. We distributed 2000 questionnaires to corporations from all over Japan selected randomly using *Teikoku* Data Bank, the biggest corporate data bank in Japan. We selected 1000 corporations which had over 100 employees and 1000 corporations which had less than 100 employees. The standard of 100 employees is a simple standard to classify relatively large companies and SMEs in Japan.<sup>26</sup> The questionnaires were delivered by post. We received 320 responses; a response rate of 16%.

### **Questionnaire Survey on the Legal Work of Private Practice Lawyers Belonging to the Osaka Bar Association, 'Survey B'**

This questionnaire survey was distributed in August 2008 to 1500 members of the Osaka Bar Association (OBA); almost half of the private practice lawyers registered with the OBA. We selected private practice lawyers randomly by using the lawyers search engine on the website of the OBA. The questionnaires were delivered by post. We received 194 responses, a response rate of 12.9%.

We conducted the questionnaire survey of private practice lawyers based on the OBA<sup>27</sup> membership because we assume that lawyers in Osaka are broadly representative of Japanese lawyers. Osaka also has characteristics associated with a global metropolis, but retains aspects of a local city culture.<sup>28</sup> Our results from this questionnaire survey also provide a contrast to Tokyo-centric research, which would be more likely to focus on Tokyo's special needs as a major global metropolis.<sup>29</sup>

### **Questionnaire Survey on the Legal Work of Corporate In-house Lawyers in Japan, 'Survey C'**

This questionnaire survey was delivered in August 2008 to 259 corporate in-house lawyers in Japan,<sup>30</sup> which we believe to be the entire population of corporate in-house lawyers at that time.<sup>31</sup> We identified corporate in-house lawyers by using the lawyer search engine on the website of the JFBA,<sup>32</sup> inserting keywords such as 'Corporation (*kaisha*)', 'Inc (*inku*)', 'LLC (*eruerushī*)', 'Ltd (*kabu*)' and so on. We received 68 responses, a response rate of 26.3%. The number of corporate in-house lawyers has risen to about 410 in 2010. This is a large increase from 2008, but still a relatively small number.

The response rate of these three questionnaire surveys is arguably quite low and, therefore, we also use some assumptions when analysing the data. Despite the low response rates, given that this is one of the first

empirical studies of its type, we believe that it is still useful to examine and present the results.

### **Use of Lawyers in Japanese Corporations: Findings from the Questionnaire Survey on the Need for Lawyers in Japanese Corporations, 'Survey A'**

#### **Use of Lawyers in Japanese Corporations**

First, we asked respondents whether they retain their own external consultant lawyer by way of a retainer fee (*komon bengoshi*).<sup>33</sup> According to the result, half of the respondents (50.5%) answered this question positively. However, there were few corporations with staff of less than 10 employees that retain their own external consultant lawyer by way of a retainer fee (17.1%).<sup>34</sup> As the number of employees per corporation increased, more respondents answered that they did so. Most of the corporations with more than 300 employees (83.3%) retain their own external consultant lawyer by way of a retainer fee. Accordingly, the size of the corporation is one of the drivers behind engaging lawyers on a retainer basis (Kitagawa and Nottage, 2007: 211–12).

Although corporations are retaining their own external consultant lawyer by way of a retainer fee, there are very few respondents who employ in-house lawyers – just 2.2%. This rate is the same for both large corporations and SMEs.<sup>35</sup> Although seemingly low, 2.2% is actually a high rate considering that the total number of in-house lawyers in Japan was less than 200 as of February 2007 (see also JILA Statistics, 2009b). One possible reason for the high percentage is the effect of sampling. We distributed the questionnaire survey to 1000 large and 1000 small corporations as discussed above. There are many more small corporations in Japan than large corporations, so the proportion of the larger corporations in our survey is considerably higher than the proportion of larger corporations in Japanese business life generally. This may be one reason for the high rate of respondents indicating that they employ in-house lawyers. Another reason may be that respondents hire outside lawyers as temporary staff on a project basis. When we conducted this questionnaire survey, there was a lot of new legislation, including the new codification of the Companies Act (*kaisha hō*) and the Financial Products Transaction Act (*kinyū shōhin torihiki hō*);<sup>36</sup> accordingly, legal specialists would have been in high demand. Further, it may be that corporations with in-house lawyers were more likely to respond to a survey about in-house lawyers and legal needs, as they are generally more aware of the issues surrounding the emerging in-house market in Japan. We also contend that

2.2% is indicative of a change in Japanese corporate legal culture towards hiring more in-house lawyers.<sup>37</sup>

### **Reasons for not Utilising Lawyers**

As discussed, many Japanese corporations do not use lawyers in their daily business activities, because non-lawyer personnel are permitted to deal with legal matters relating to the corporation. We hypothesised, however, that this was not the only reason. We asked the corporations that answered that they do not need to use lawyers about why this is so.<sup>38</sup> We asked this question separately regarding two types of lawyer use: first, hiring an external consultant lawyer by way of a retainer fee; and, second, employing an in-house lawyer. The top reason in both cases was that 'There is no work which requires a lawyer's help' (as to the external consultant lawyer: 45.9% and as to the in-house lawyer 46.2%), followed by the reasons: 'There is no preparedness to use lawyers' (28.7% and 30.1%), 'Lawyers' fees are too high' (24.8% and 25.1%) and 'Difficult to calculate costs and benefits of lawyer's work' (22.3% and 27.4%). The rank order of the answers in the two questions is very similar, especially in the top five responses, except that the rankings of 'The standards of fees for work are unclear' and 'Lawyers' fees are too high' are exchanged. To summarise, most Japanese corporations that do not utilise lawyers say that they have no work which requires a lawyer's help and they have no preparedness to use lawyers.

We interpret these results to mean that most Japanese corporations do not know how to use lawyers profitably in daily business activities, which may be directly related to the fact that Japanese corporate managers have no fixed role-image of lawyers in daily business activities. Further, because they do not know how to use lawyers, they answered that they have no preparedness to do so. We also extrapolate reluctance on behalf of corporate managers to supervise lawyers, because lawyers are regarded as highly independent professionals.

### **Relationship between the Need for Lawyers and Other Law-related Professionals**

As discussed, there are various kinds of law-related non-lawyer professionals in Japan who support corporate business activities. To better understand the divide between lawyer and non-lawyer work, we asked corporations what work they each perform and how they use, and want to use, law-related professionals and lawyers in their daily business activities. The most often used law-related professional excluding lawyers is the tax accountant (76.3%), followed by the judicial scrivener (57.3%), the public consultant on social and labour insurance (42.8%) and the



certified public accountant (42.2%). We sorted the rate of use of law-related professionals including lawyers according to size of corporation. As may be expected, lawyers, certified public accountants and public consultants on social and labour insurance are used in larger corporations and tax accountants and SME management consultants are utilised in small and middle size corporations.

The use of lawyers and other law-related professionals is clearly influenced by the division of work in Japanese corporations generally. In larger corporations, taxation and business diagnosis (matters that tend to fall into the professional fields of tax accountant and SME management consultant) are dealt with by the corporation's own employees who specialise in those types of work. Court-related matters, business accounting review and social insurance matters (which belong to the professional field of the lawyer, the certified public accountant and the public consultant on social and labour insurance) are generally not dealt with in-house. One reason may be that corporations do not maintain this type of professional speciality on an ongoing basis. Another may be that these fields are seen as being limited by legally sanctioned service-monopolisation.<sup>39</sup> Even larger corporations with ongoing legal matters, however, appear likely to outsource certain legal work to external lawyers, certified public accountants, and public consultants on social and labour insurance.

### **Preference to Use Law-related Professionals in Japanese Corporations**

We also asked respondents about their preference for using law-related professionals, including lawyers, when it comes to major law-related work. If the law-related work also related to business consulting, corporations first seek advice from a certified public accountant (36.6%), second, a tax accountant (32.2%), third, a lawyer (30.9%) and, fourth, an SME management consultant (28.4%).

As expected, if the law-related work also relates to human resource management, corporations first turn to public consultants on social and labour insurance (72.2%) and then to lawyers (34.4%). As we also expected, the ranking of the law-related professionals whom corporations want to utilise for law-related work involving financial management was: first, tax accountants (63.4%) and second certified public accountants (52.2%). The ranking of the lawyer (11.6%) is lower than that of the financial planner (24.1%).

Corporations did not appear to perceive brand value management as a law-related issue, telling us that they did 'not want to use any one in this list' for such work (30.3%), although lawyers ranked second (29.1%), followed by certified public accountants (18.8%) and SME management

consultants (17.5%). Once again, tax accountants were the first priority in relation to law-related general assistance for corporate management (49.1%), followed by lawyers (47.8%), certified public accountants (44.1%), public consultants on social and labour insurance (26.6%) and SME management consultants (22.2%).

Comparing these answers to the questions about the relationship between lawyers and other law-related professionals, the perceived need for lawyers in Japanese corporations is relatively high when considered from the perspective of law-related work. However, corporations tend to seek the assistance of law-related professionals other than lawyers in the first instance. One reason may be the perceived specialisation required to perform the work, which corporations attribute to law-related professionals who are not lawyers. The more specialised professionals become, the higher the barriers to entry into their field. Every law-related profession in Japan has constructed its own niche and segregated its own field from the other profession's niches. In some cases, professional associations even have agreements on the segregation between professional fields.<sup>40</sup> In light of this entrenched professional segregation, corporations have come to regard lawyers as a specialist professional with their own niche; that is, court-related legal work.

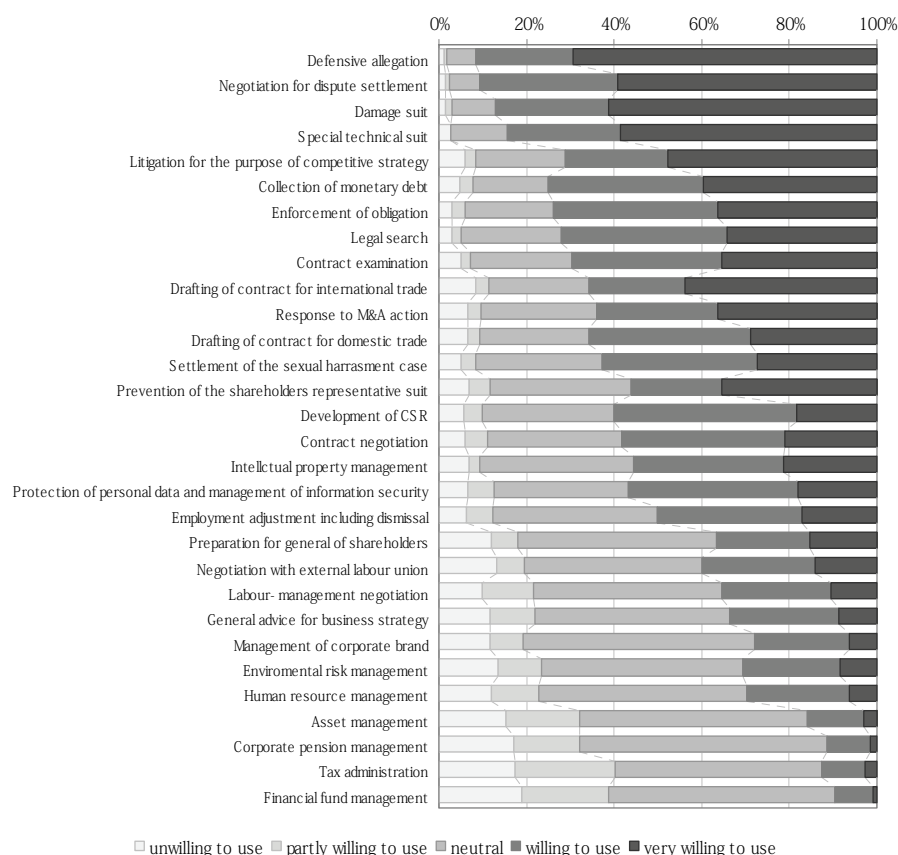
### **The Need for Lawyers in Japanese Corporations under 'Ideal Conditions'**

We also asked corporations about the need for lawyers under 'ideal conditions'; that is, whether corporations are able to engage lawyers on suitable occasions for reasonable fees. By asking corporations about their need for lawyers under 'ideal conditions', we hoped to clarify the need for lawyers in daily business activities – all other factors being equal. We asked the respondents to rate their level of willingness to use lawyers in relation to 30 typical fields of legal work in corporations from 1. 'not willing to use', through 2. 'rather not willing to use', 3. 'neutral', and 4. 'rather willing to use', to 5. 'willing to use' (see Figure 2-1).

In 'ideal conditions', corporations said that they were most likely to use lawyers for the following types of legal work, in order of highest to lowest popularity: 'defensive allegation', 'negotiation for dispute settlement', 'damage suit', 'special technical suit', 'litigation for the purpose of competitive strategy', 'collection of monetary debt', and 'enforcement of obligations'. All these fields are ex-post reactive legal practices relating to litigation or disputes. 'Special technical suit' and 'litigation for the purpose of competitive strategy' are ranked at fourth and fifth, which suggests that corporations are concerned about new types of litigation. After the litigation/dispute work, the second highest type of

**Figure 2-1 Levels of willingness of 30 typical legal works under the ideal condition**

n=320



work is 'legal search' and 'contract examination', 'drafting of contract for international trade', 'response to M&A action', 'drafting of contract for domestic trade', 'settlement of the sexual harassment case', 'prevention of the shareholders representative suit', 'development of CSR' and 'contract negotiation', which mainly reflect preventive legal work. This second highest group is noteworthy, because it mostly involves important legal work which is also performed by employees of corporations. Conversely, the types of work for which corporations are least likely to use lawyers even in 'ideal conditions' relate to 'human resource management', 'asset management', 'corporate pension management', 'tax administration' and 'financial fund management'. Corporations simply do not expect lawyers to deal with this type of work, because it is traditionally dealt with by non-lawyer sections of the corporation or outsourced to law-related professionals other than lawyers, such as tax accountants or public consul-

tants on social and labour insurance. Accordingly, Japanese corporations still mainly expect lawyers to deal with ex-post reactive legal work concerning disputes, reflecting the traditional barrister-like role-image of lawyers in Japan. The corporations' need for preventive legal work and management support work, however, is fairly high in 'ideal conditions', and there is concern about new types of litigation. Finance and accounting-related work is still not expected of lawyers.

### **Relationship between Japanese Corporations and Lawyers: Findings of the Questionnaire Survey on the Legal Work of Private Practice Lawyers**

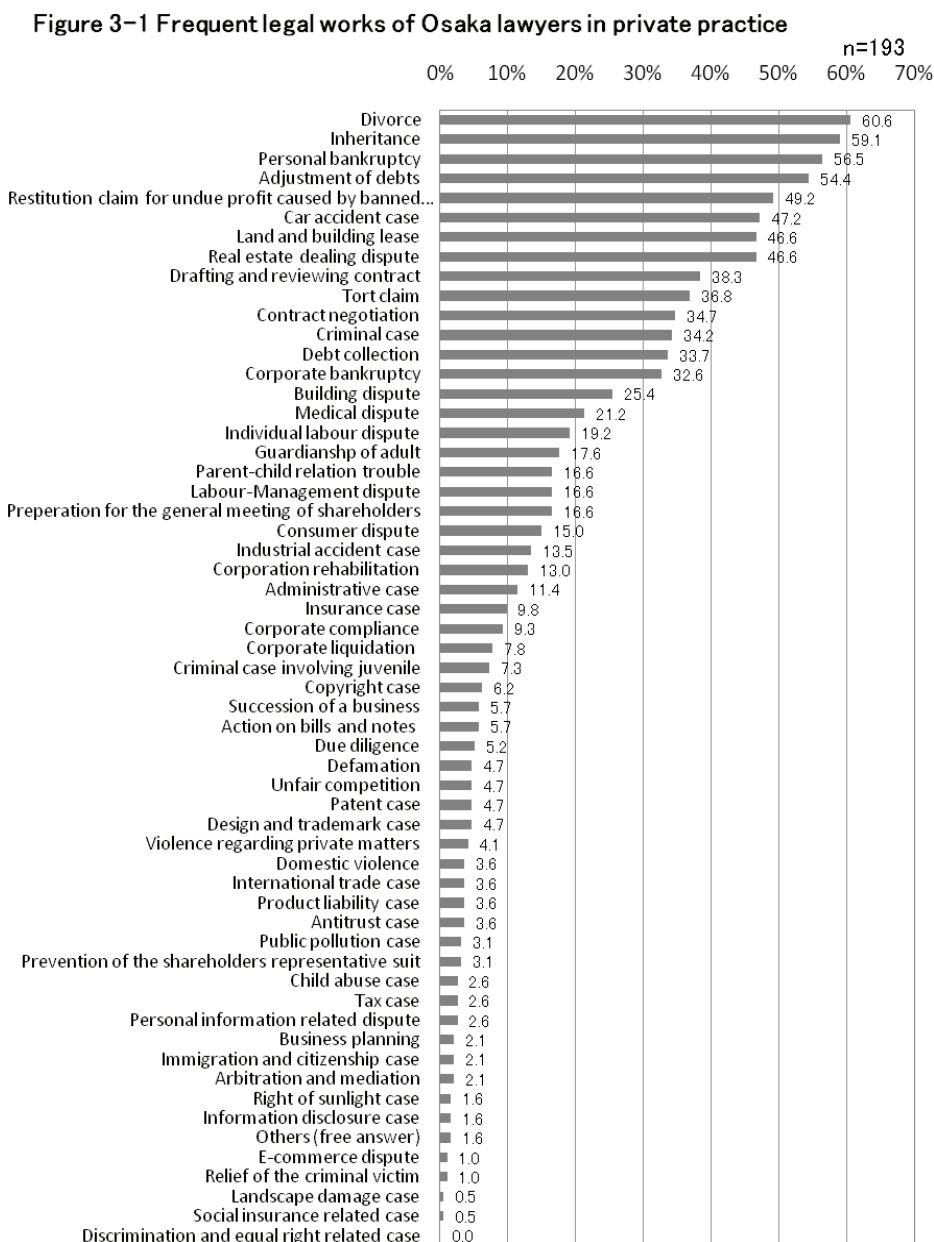
#### **Profile of the Respondents in Survey B**

The purpose of questionnaire Survey B was to find out more about the type of work being performed by private practice lawyers and their required quality and vocational awareness. Although the survey was sent to a random selection of Osaka Bar Association (OBA) members, we found some interesting trends in the profiles of our respondents. These are important to bear in mind when considering the data. We received responses from many senior lawyers (older than 60 years old: 43.8%),<sup>41</sup> who graduated from the Supreme Court's Legal Training and Research Institute (LTRI: a compulsory requirement for admission in Japan) many years before the respondents to Survey C, which focused on corporate in-house lawyers (the graduates of the 1st [1947] to 29th term [1975] of the LTRI course: 38.1%).

Further, we received only a few responses from female lawyers (17%).<sup>42</sup> Almost half of the respondents answered that their annual incomes were between 10 million and 30 million yen (AUD\$120,400–\$361,200: 48.4%). Respondents were almost equally divided between single-lawyer offices and those from joint-operation offices (single-lawyer offices: 50.6% and joint-operation offices: 48.5%). Associate lawyers<sup>43</sup> made up one-quarter of all the respondents (24%). In other words, three-quarters of respondents were solo practitioners or partners at a law office.<sup>44</sup> The annual income per law office (in 2007 fiscal year) was around 50 million yen (AUD\$602,000).

#### **Lawyers in Private Practice**

We asked the lawyers of OBA in private practice about the most common legal work that they performed, using a list of 58 types of legal work. We wanted to contrast the type of legal work being performed by private practice lawyers to those lawyers working in-house. Respondents could choose as many that applied, as set out in Figure 3-1. The items are sorted according to the number of responses; the items located at the top being the most common type of work performed by private practice lawyers.



Private practice lawyers mainly deal with ‘divorce’, ‘inheritance’, ‘personal bankruptcy’, ‘adjustment of debts’, ‘restitution claim for undue profit caused by prohibited high interest rate’,<sup>45</sup> ‘car accident’, ‘land and building lease dispute’, ‘real estate dealing dispute’, ‘drafting and reviewing contract’, ‘tort claim’ and so on. Most of these are regarded as typical personal

legal issues, involving court procedures. In relation to corporate-related legal work, only 'drafting and reviewing contracts' is ranked in the top 10. These results reflect the status of most of the lawyers in OBA in private practice; that is, solo practitioners or lawyers in small law offices.

We also specifically asked OBA private practice lawyers about the most common legal work performed for corporations, which was the main purpose of Survey B. We showed them a list of 33 types of legal work, and asked them about the frequency of their work experiences. Respondents answered the question at five levels of frequency (see Figure 3-2).

The five most common types of legal work within the field of corporate practice were, from the top, 'defensive allegation', 'contract examination', 'negotiation for dispute settlement', 'damage suit' and 'collection of monetary debt', followed by the next five most frequent types of work 'drafting of contract for domestic trade', 'enforcement of obligation', 'legal search', 'legal consultation' and 'contract negotiation'. These are mostly ex-post reactive types of legal work concerning disputes, except for 'contract examination', which is important preventive legal work for corporations. The next five most common types of legal work are mostly preventive and relate to the daily business activities of a corporation. Conversely, the ranking of legal work which relates to corporate management is low; financial and tax management work was ranked at the lowest level. These results correspond to the findings from Survey A (see Figure 2-1). Private practice lawyers mainly do ex-post reactive legal work concerning disputes even in the field of corporate practice, but they also deal frequently with preventive legal matters. We extrapolate that private practice lawyers themselves also adhere to the traditional role-image of lawyers. They do not seem willing to deal with corporate legal matters which do not relate to court work or dispute settlement – however, when pushed by the corporate needs, they deal with some preventive legal work for corporations.

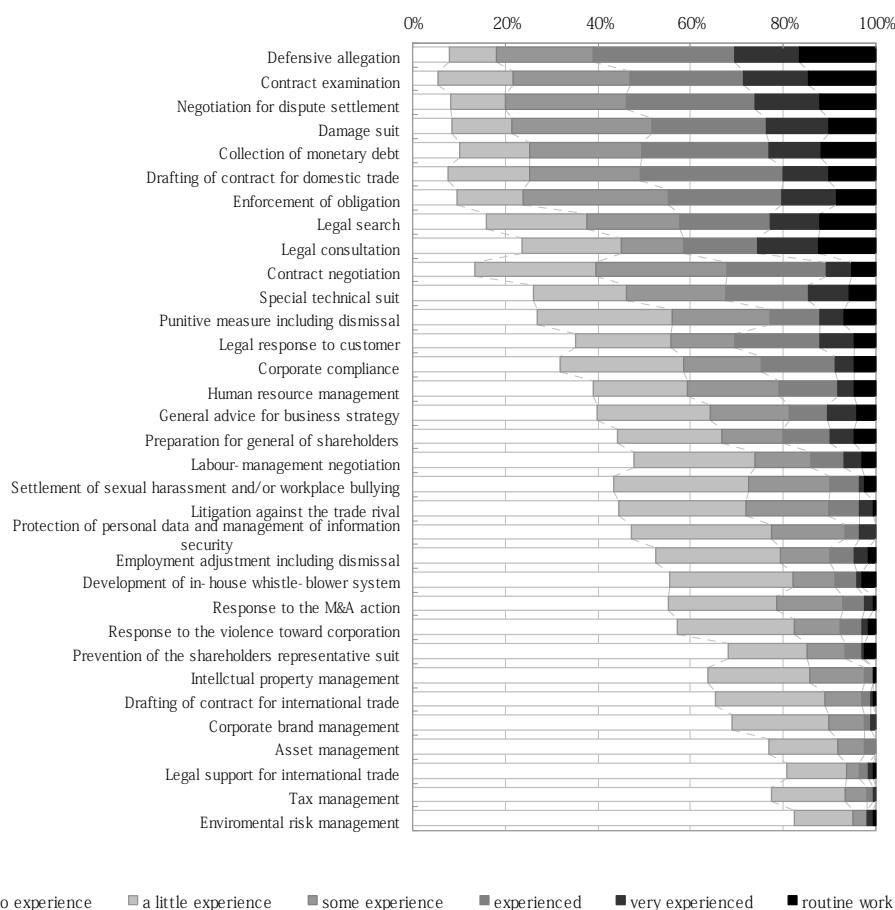
## **Relationship between Corporations and Lawyers: Findings of the Questionnaire Survey on the Corporate In-house Lawyers**

### **Profile of the Respondents in Survey C**

The purpose of questionnaire Survey C was to find out more about the type of work being performed by in-house lawyers<sup>46</sup> and their required quality and vocational awareness. In comparison with respondents to Survey B, in-house lawyers were much younger; 82.4% of the respondents were 30-50 years old<sup>47</sup> and most were much more recent graduates of the Supreme Court's Legal Training and Research Institute 50th [1996] to 60th term [since 2006] of the LTRI course (70.6%). Further, the percentage of female lawyers was higher than for Survey B (39.7%).<sup>48</sup>

**Figure 3-2 Frequent corporate legal works of Osaka lawyers in private practice**

n=195



Three-quarters of respondents (73.5%) have been in service less than three years, and more than one-quarter of them less than one year (35.3%). The group of respondents whose annual salary is between 10 million and 30 million yen was the largest (44.6%). Almost two-thirds of respondents belong to corporations who employ more than 1000 people (64.7%). The majority of in-house lawyers are the only lawyer in their own corporation (55.2%), but a significant number said that their corporation had 'more than two lawyers' (44.6%). Where we received responses from more than one lawyer in the same corporation we have counted them as separate responses.

Many in-house lawyers are employed in 'finance and insurance' (32.4%), followed by 'manufacturing industry' (22.1%). Significantly, one-third of their corporate employers (35.3%) were Japanese subsidiaries of foreign corporations.<sup>49</sup>

### **Work Experience of Corporate In-house Lawyers**

We asked corporate in-house lawyers about the most common type of work that they perform, using a list of 37 types of typical corporate legal work. The frequency of work was asked at 6 levels from 0: 'no experience', 1. 'a little experience', 2. 'some experience', 3. 'experienced', 4. 'very experienced', 5. 'routine work'. In Figure 4-1, we set out the types of legal work according to their score.

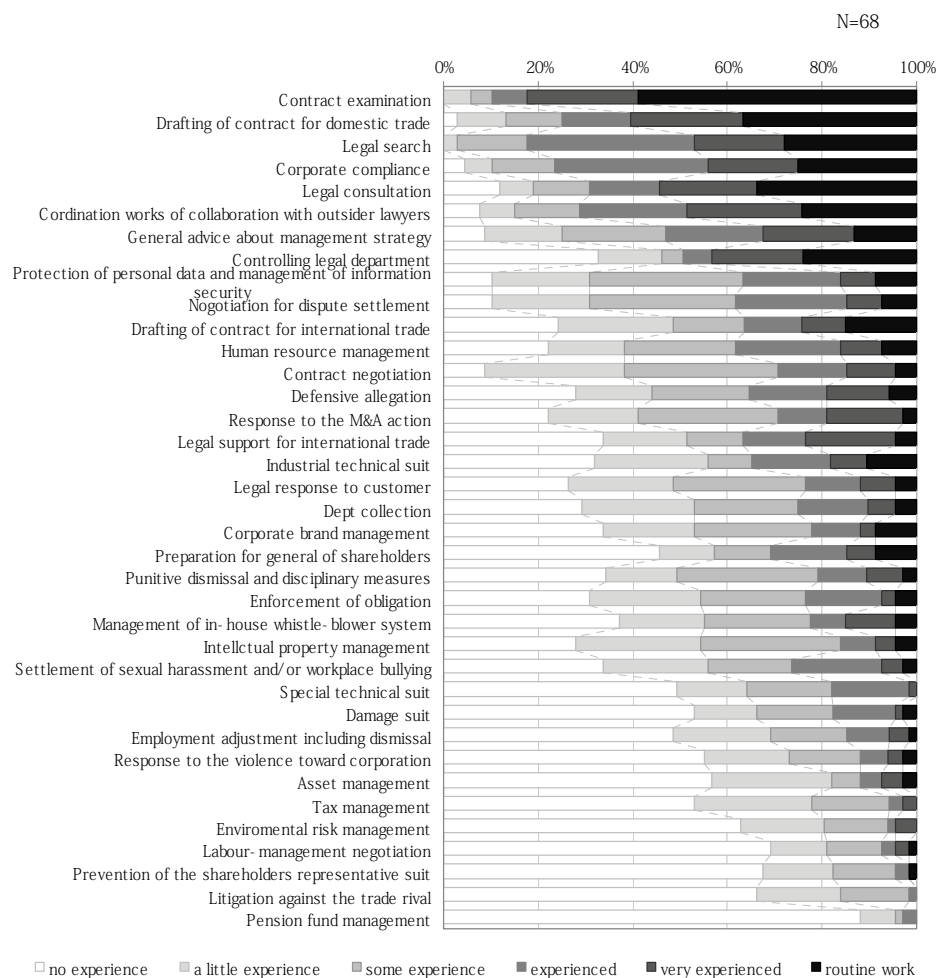
The most frequent five types of work performed by in-house lawyers, from the top, are 'contract examination', 'drafting of contract for domestic trade', 'legal search', 'corporate compliance' and 'legal consultation', which are mainly general preventive legal work. The next group ranked 5 to 10 is 'coordination of work with external lawyers', 'general advice about management strategy', 'controlling legal department', 'protection of personal data and management of information security' and 'negotiation for dispute settlement', which are management-type work also performed by legal or other departments of corporations (excepting 'negotiation for dispute settlement').

According to the data, while the most common type of legal work performed by private practice lawyers is ex-post reactive work concerning disputes supports the findings in Survey A and Survey B (see Figures 2-1 and 3-2 respectively). In other words, the major work of in-house lawyers is mostly preventive legal work or management work for the organisation. Notably, in-house lawyers also coordinate the work of outside lawyers (see Figure 4-1, sixth ranked type of work).

In summary, private practice lawyers are unavoidably reactive, because they provide legal services to clients only after accepting a commission. The position of corporate in-house lawyers is obviously different. Their work is not only reactive, but also sometimes proactive. Further, corporate in-house lawyers are also expected to be able to organise personnel.



Figure 4-1 Frequent corporate legal works of in-house lawyers in Japan



## Conclusion: The 'Proper' Population of Lawyers in Japan

The results from Survey A suggest that the rate at which lawyers are used in Japanese corporations is very low, driven by the traditional barrister-like role-image of lawyers who are independent and only concern themselves with court procedure or dispute settlement. Japanese corporations regard lawyers as one of many specialised independent professionals who provide law-related professional services. They still do not have a fixed image to use lawyers profitably in daily business activities.

Survey B confirms the findings in Survey A. According to Survey B, lawyers in private practice still mainly practise old style ex-post legal work concerning court procedure or dispute settlement, and the same

tendency is also true of their corporate-related work. Private practice lawyers themselves also adhere to the traditional role-image of lawyer and they seem unwilling to deal with corporate legal matters that do not relate to court work or dispute settlement. Although the senior age of the respondents from private practice may have intensified this vision of lawyering amongst respondents, so long as lawyers themselves foster a traditional role-image, they will continue to share the legal market with other law-related professionals with no competition between them.

Accordingly, the traditional role-image of lawyers held by corporations and lawyers does not leave much room for expanding the population of lawyers in Japan. To change this situation and expand the market for more lawyers, this traditional role-image of lawyers in corporate society in Japan must change.

As indicated in Survey C, in-house lawyers play a quite different role from the traditional role-image of lawyers in Japanese corporations. In-house lawyers usually perform preventive legal work and support management. They perform preventive legal work efficiently using the wide range of legal knowledge and skills fostered by court-related training at the Legal Training and Research Institute, and support management by their confidentiality privilege and their network of lawyers belonging to the bar association. According to the results of Survey A, the potential corporate need for preventive legal work and lawyers who can support management is high. Accordingly, we expect that the number of in-house lawyers will increase rapidly. If in-house lawyers become popular, the role-image of lawyers in corporations will be dramatically changed and, affected by this, the lawyers themselves may successfully sell a new role-image to Japanese corporate society.

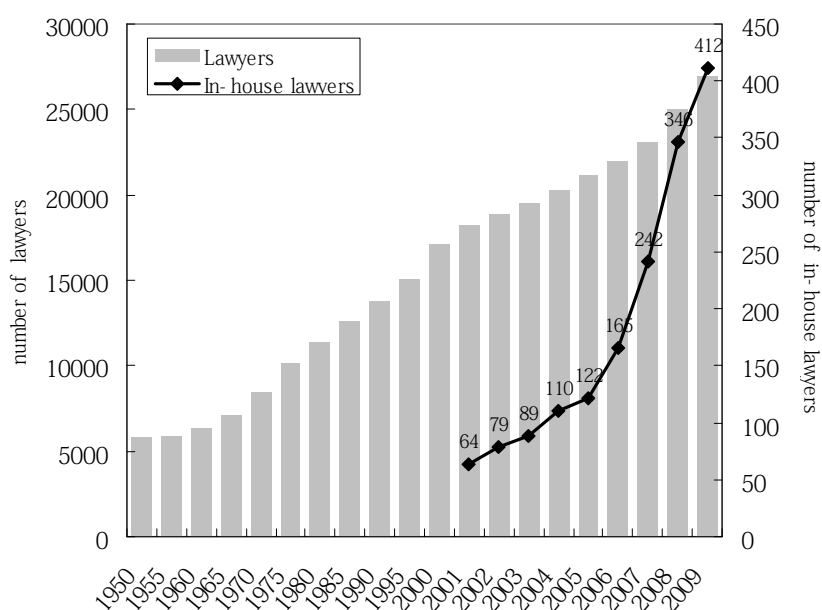
The lawyer's image of the 'independent professional' is also an obstacle to increasing the number of in-house lawyers in Japanese corporations. According to the powerful image of the independent professional, corporations are not likely to hire in-house lawyers for daily corporate legal work. However, according to Survey C, in-house lawyers play an important role as loyal employees in top corporations in Japan. Once smaller corporations hire an in-house lawyer, it is likely that managers will recognise that lawyers can play a useful role as an employee. Their population could then expand to a number that better corresponds to their potential needs.

Our three questionnaire surveys also raise further research questions. A high rate of corporations in Japan with in-house lawyers, for example, are foreign; and almost 40% of in-house lawyers are women. We plan to conduct additional surveys to analyse these trends further. We

also plan to survey lawyers in large law firms and non-lawyers working in legal departments.

The number of Japanese corporate in-house lawyers has been increasing rapidly since 2000 (see Figure 5-1<sup>50</sup>), now over 400.<sup>51</sup> Many more lawyers who belong to a private law firm are working at corporations temporarily on a project basis, possibly as a result of the current high awareness of corporate compliance and CSR. If the number of corporate in-house lawyers increases and their presence is much enlarged, more Japanese corporations will begin to recognise the usefulness of lawyers for daily business activities. These tendencies are likely to change the role-image of lawyers in Japanese corporate society greatly and this could generate a greater need to use external lawyers. This will create jobs for the larger population of lawyers generated by the recent legal system reforms in Japan.

**Figure 5- 1 Number of corporate in- house lawyers and lawyers in Japan**



In the future, Japanese corporations will be unable to avoid enlarging their legal compliance and CSR. Corporate in-house lawyers are likely to be needed as reliable advisers on these types of legal work. The legal

education in Japanese law schools will also need to change to keep up with these trends and a new demand for corporate in-house lawyers.

## Notes

- \* Professor of Law, Graduate School of Law and Politics, Osaka University. The empirical data presented in this article was used in an earlier publication in Japanese (Fukui and Fukui, 2010). Regarding this original paper, the preface and the final part were written by Kota Fukui, and the main empirical-analytical part of the paper was written by Yusuke Fukui. The main translator from Japanese to English is Kota Fukui, with corrections and comments by Yusuke Fukui. The figures were translated by Yusuke Fukui. For the purposes of this article we have substantially revisited the data with the assistance of our editor, Stacey Steele. We are also grateful for the support of our colleagues at Osaka University who assisted us with this research.
- \*\* Adjunct Project Researcher, Graduate School of Law and Politics, Osaka University. He is also a Part-time Lecturer of Sociology at Nishinohon Junior College.
- † Associate Director (Japan), Asian Law Centre, Melbourne Law School, University of Melbourne.
- 1 On the establishment of the JSRC, see *Ronten Seiri*, 1999, citing art 2 of the Law concerning Establishment of Justice System Reform Council (*shihōseido kaikaku shingikai setchi hō*).
- 2 As discussed in more detail in this article, we use the English term 'lawyer' to refer to the concept of a '*bengoshi*', that is, a person admitted to practise law in Japan. The term 'attorney' is also sometimes used. The Ministry of Justice uses 'attorney', but 'attorney' is arguably US-centric. Unless otherwise noted, translations of legislation in this article are taken from Japanese Law Translation.
- 3 The ideas and recommendations published by the JSRC in relation to the legal profession were not necessarily new, but the authority of the JSRC, having been appointed by the Cabinet and promoted as a key reform initiative by the Liberal Democratic Party, and the high level of public awareness of its role gave its recommendations a new impetus. See, for example, Rokumoto, 2005.
- 4 Our research project is titled 'The Construction of the Grand Design of New Fields of Legal Profession'. Further details of our funding, data and analysis may be accessed in Japanese at Osaka University, <<http://legalprofession.law.osaka-u.ac.jp>>. We collected information on various issues, but this article focuses on the perceived problem of the small legal population in Japan.
- 5 The 2008 election campaign for the president of the JFBA provided a recent example of the passionate debate about the population of lawyers in Japan. See, for example, JFBA, *Kinkyū Teigen*, 2008.
- 6 An increase in the number of lawyers in Japan has also been supported on the basis of social justice reasons. See, for example, Miyazawa, 2007a.
- 7 For a discussion of how to measure the change brought by the legal reforms, see Aronson, 2009. Aronson adopts the expansion of the role of (elite) lawyers as a standard for the transformational change brought by the legal reforms in the field of corporate legal practice.
- 8 The first formal regulation of lawyers (*bengoshi*) in Japan may be traced to February 1876, when the Attorney Rules (*daigen nin kisoku*) were promulgated. '*Daigen nin*' was a private court advocate in early *Meiji* era. As to this point, see Japan Federation of Bar Association, <<http://www.nichibenren.or.jp/en/about/profile.html>>.
- 9 The number of Japanese lawyers as of 1 August 2010 is 28,769: see JFBA Statistics, 1950-2009.
- 10 For information about the increasing population of lawyers from 1950 to 2009, see JFBA Statistics, 1950-2009.

- 11 For example, in 2000 in the United States of America there were 1,066,328 lawyers, one lawyer for every 264 people in the country: Carson, 2000. In 2006, France had 45,686 lawyers and the United Kingdom had 151,043: Council of Bars and Law Societies of the European Union, 2010.
- 12 On the relationship between the small number of lawyers and the low pass rate of the bar examination, see Rokumoto, 2005: 9.
- 13 See, for example, Anderson and Ryan, 2010; Aizawa, 2006; Kashiwagi, 2010; and Yoshida, 2006.
- 14 See Attorney Act (*bengoshi hō*, art 3(1)): 'The duties of an attorney, upon the request of the party or the concerned parties, or upon the entrustment of public agency, shall be to engage in acts relating to lawsuits, non-contentious cases, and objections, request for re-examination, appeals, and other petitions against administrative agencies and other general legal services'.
- 15 On the changing image of lawyers in Japan since the 19th century, see Hamano, 2002.
- 16 A specialised legal profession for conveyance and property registration, legal documentation and submission for judicial agencies. By the amendment of the Judicial Scrivener Act in 2002, they can deal with court work limited to the summary court if they obtain special certification by the Ministry of Justice. They call themselves 'shihoshoshi lawyer' on their website in English. See Japan Federation of Shihoshoshi Lawyers Association, <<http://www.shiho-shoshi.or.jp/english/>>.
- 17 A specialised legal profession for administrative documentation and submission to administrative agencies. See the official website of administrative scriveners, <<http://www.gyosei.or.jp/>> (only in Japanese).
- 18 We use the term 'tax accountant' for *zeirishi*, which is a specialised law-related profession for documentation and submission of income tax returns, tax consultation and consultation for tax review. See Japan Federation of Certified Tax Accountants Association, <<http://www.nichizeiren.or.jp/eng/>>.
- 19 A specialised law-related profession for documentation, consultation and submissions relating to social and labour insurance. See the official website of the association of public consultants on social and labour insurance, <<http://www.shakaihokenroumushi.jp/>> (only in Japanese).
- 20 A specialised law-related profession for submission and consultation of patent, design and trademark filings. See Japan Patent Attorneys Association, <<http://www.jpaa.or.jp/english/>>.
- 21 As of 1 August 2010, the number of judicial scriveners is 19,706, administrative scriveners is 40,475, tax accountants is 71,672, patent attorneys is 8715 and public consultants on social and labour insurance is 33,849. In total the number of lawyers as of 1 August 2010 is 28,769 and the total number of 'legal professionals' is 203,186. See each legal professionals' association homepage (see notes 9, 16, 17, 18, 19, 20).
- 22 See art 72 of the Attorney Act (*bengoshi hō*): 'No person other than an attorney or a Legal Professional Corporation may, for the purpose of obtaining compensation, engage in the business of providing legal advice or representation, handling arbitration matters, aiding in conciliation, or providing other legal services in connection with any lawsuits, non-contentious cases, or objections, requesting for re-examination, appeals and other petitions against administrative agencies, etc, or other general legal services, or acting as an intermediary in such matters; provided, however, that the foregoing shall not apply if otherwise specified in this Act or other laws'.
- 23 A public qualification for SME diagnosticians and operational consultants. Although they are corporate management consultants, they sometimes give law-related advice. See Japan Small and Medium Enterprise Management Consultants Association, <[http://www.j-smeca.jp/contents/018\\_english\\_contents.html](http://www.j-smeca.jp/contents/018_english_contents.html)>.
- 24 A certified professional performing accounting and financial audits. Although they are corporate management consultants, they sometimes give law-related advice. See Japanese Institution of Certified Public Accountants <<http://www.hp.jicpa.or.jp/english/index.html>>.

- 25 Recently, some questionnaire surveys have been conducted by JFBA. See the website of JFBA, <[http://www.nichibenren.or.jp/ja/committee/list/gyoumu\\_suishin.html](http://www.nichibenren.or.jp/ja/committee/list/gyoumu_suishin.html)>.
- 26 In art 2 of Basic Act on SMEs (*chushō kigyō kihon hō*), the standard of less than 100 employees is used for defining a middle size enterprise in the field of wholesale trade and service business.
- 27 The OBA is a local bar association in Osaka prefecture. In Japan, there are 52 local bar associations, one for each district court region (basically defined along prefectural lines, plus three bar associations in Tokyo for historical reasons and four bar associations in Hokkaido because there are four district court jurisdictions in Hokkaido).
- 28 Osaka prefecture is located in the middle western region of Japan. Osaka is the largest business area in western Japan. As of July 2010, the population of Osaka prefecture is 8,839,418, the third largest behind Tokyo prefecture (13,039,875) and Kanagawa prefecture (9,028,302). As of 2009, Osaka prefecture's GDP was the second largest in Japan at about 39 trillion yen (AUD\$469.6 billion) (cf Tokyo prefecture, about 92 trillion yen, AUD\$1.1 trillion). The number of the lawyers in Osaka Bar Association is 3577 (as of 1 August 2010). From the point of view of its population, GDP and number of lawyers, Osaka is a metropolitan area. Almost all large Japanese corporations have their headquarters in Tokyo; most of the corporations that have their headquarters in Osaka are SMEs. From this point of view, Osaka also has the character of a local area. See Osaka Prefecture Government, <<http://www.pref.osaka.jp/en/introduction/>>.
- 29 If we conducted a questionnaire survey on the legal work of private practice lawyers in Tokyo, we may speculate that their work is much more business oriented than the work performed by lawyers in Osaka. In this regard, however, we believe that Tokyo is the outlier; excepting Tokyo, the tendency of lawyers' work remains in the very traditional style.
- 30 Survey C does not include administrative in-house lawyers who work at government or other public offices, because the purpose of the survey was to better understand the need for lawyers in Japanese corporations. According to *Bengoshi Hakusyo*, 2009, as of 1 June 2009, there were 81 administrative in-house lawyers. Since the establishment of the Japan Legal Support Center (*hōterasu*) in 2006, about 200 lawyers are working as in-house lawyers for the Center. See the website of the Japan legal Support Center, <[http://www.houterasu.or.jp/content/kaiken\\_shiryo100412\\_2.pdf](http://www.houterasu.or.jp/content/kaiken_shiryo100412_2.pdf)>.
- 31 For information on the changing number of corporate in-house lawyers, see JILA Statistics, 2009b.
- 32 All of Japan's 52 local bar associations are affiliated with the Japan Federation of Bar Associations (JFBA). Lawyers in Japan cannot provide legal services if they aren't registered with the JFBA (see art 9 of the Attorney Act (*bengoshi hō*)). Accordingly, the lawyer search engine on the website of the JFBA covers all of the lawyers who are registered with the JFBA.
- 33 A lawyer who is not employed by the client but retained by it by way of payment of a regular fee. *Komon bengoshi* give legal advice when the client experiences difficulties. Japanese corporations retain *komon bengoshi* as a precaution. The market price retainer is said to be from 50,000 yen (AUD\$600) to 200,000 yen (AUD\$2400) per month.
- 34 From 2006 to 2007, the JFBA also conducted a questionnaire survey on the legal needs of Japanese SMEs. Its results suggest that only 19.5% of the respondents retain their own external consultant lawyer by way of a retainer fee, and 16.2% of the respondents answered that they do not retain their own consultant lawyer but can get legal advice from a lawyer they know, if required. 61.5% of the respondents (SMEs) answered that they do not get any legal advice from a lawyer even when they have a legal problem. The results of this JFBA questionnaire survey for Japanese SMEs correspond with the results from our Survey A. As to this survey, see the JFBA website, <[http://www.nichibenren.or.jp/ja/committee/list/data/chusho\\_chousakekka.pdf](http://www.nichibenren.or.jp/ja/committee/list/data/chusho_chousakekka.pdf)>.
- 35 To our surprise, while some small sized corporations hire in-house lawyers, no respondent corporations with staff of more than 300 answered that they have hired in-house lawyer. We know that super large global corporations hire in-house lawyers. For

further information about corporations which hire in-house lawyers see the JILA Statistics, 2009a. One reason for this anomalous result may be the small number of respondents who answered that they hire in-house lawyers. Further, large corporations with over 300 employees are more likely to have their own non-lawyer legal departments which satisfy their legal needs.

- 36 Translation of these Acts are based on Japanese Law Translation.
- 37 From October to November 2006, the JFBA also conducted a questionnaire survey on the hiring of in-house lawyers in major domestic and foreign corporations in Japan. They sent questionnaires to 3795 domestic and 1457 foreign corporations and collected answers from 1446 corporations. According to this survey, 3.9% of the respondents employ in-house lawyers, and 6.7% of them were accepting applications from lawyers, currently planning or discussing to recruit in-house lawyers. We understand from this JFBA survey that the desire for lawyers in corporations in Japan is high. As to this questionnaire survey, see the JFBA website, <[http://www.nichibenren.or.jp/ja/committee/list/data/soshikinai\\_bengoshi\\_torikumi.pdf](http://www.nichibenren.or.jp/ja/committee/list/data/soshikinai_bengoshi_torikumi.pdf)>. Contrary to this, the JFBA's questionnaire survey on the legal needs in Japanese SMEs, conducted from 2006 to 2007, shows that only 1 in 3214 respondents hired a qualified lawyer. As to this questionnaire survey, see the JFBA website, <[http://www.nichibenren.or.jp/ja/committee/list/data/chusho\\_gaiyou.pdf](http://www.nichibenren.or.jp/ja/committee/list/data/chusho_gaiyou.pdf)>. The difference between the results of these two surveys suggests a gap between a lawyer's role in a major corporation versus SMEs, which also reflects the results from our Survey C.
- 38 The reasons we suggested are as follows: 'there is no work which requires a lawyer's help', 'there is no preparedness to utilise lawyers', 'lawyers' fees are too high', 'difficult to calculate costs and benefits of lawyer's work', 'the standards of fees for work are unclear', 'anxious about lawyer's integrity', 'already utilising non-lawyer staff worker(s)', 'anxious about lawyer's ability', 'lawyers lack in flexibility' and another reason (free answer).
- 39 Article 72 of the Attorney Act (*bengoshi hō*) prohibits the provision of legal services by non-lawyers for the purpose of obtaining compensation. Other law-related professionals have their own legislation permitting them to provide their own limited, specialised legal services, though lawyers can also provide the services which they provide according to the Attorney Act.
- 40 The professional associations' agreements on segregation between the professional fields might seem an unreasonable restraint of trade from the point of view of free competition and it might be regarded as illegal according to art 3 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (*dokusen kinshi hō*). These agreements have been supported, however, by the relevant governmental ministry (law-related professionals other than lawyers have their own relevant governmental ministry) and, in some cases, are backed up by legislation.
- 41 According to the JFBA Census 2008, lawyers over 61 years old accounted for 34.4% of lawyers; the rate of senior age lawyers over 60 years old in our survey was 43.8%. One reason for the high percentage of senior aged lawyer respondents may have been that middle aged lawyers are generally busier, and senior lawyers have more time to answer the questionnaire.
- 42 According to the JFBA Census 2008, the female lawyer rate in the JFBA is only 12.2%. Accordingly, the rate of 17% female respondents to our Survey B is relatively high. The rate of female lawyer respondents in our Survey C, which is conducted on in-house lawyers, was very high at 39.7%.
- 43 '*Kinmu bengoshi*' is similar to the position of a young associate lawyer in countries such as Australia or the United States of America, but, in some rare cases, a senior lawyer with a lot of experience may work as a *kinmu bengoshi* in a law firm to control their workload.
- 44 In Osaka and other areas excepting Tokyo most of the law offices are small law offices with less than five lawyers. Therefore, most of the respondents who answered that they were a partner in a law office are still likely to be part of a sole or small practitioner firm. In Japan, there are only seven law firms with more than 100 lawyers according to

the lawyer search engine on the website of the JFBA. In Osaka, only Oh-Ebashi LPC & Partners, with 94 lawyers (61 in Osaka Office, 33 in Tokyo Office, as of 4 July 2010), is in the top 10 law firms by size (ranked 8th). See the official website of Oh-Ebashi, <[http://www.ohebashi.com/index\\_en.html](http://www.ohebashi.com/index_en.html)>.

- 45 'Restitution claim for undue profit caused by prohibited high interest rate' (*kabaraikin henkan seikyū*) relates to recent amendments to consumer credit law in Japan. See Kozuka and Nottage, 2007.
- 46 In addition to 'employment', there are other types of labour contracts used to engage lawyers, including 'authorisation' or 'business commission'. 89.7% of the respondents to Survey C have 'employment' contracts, 5.9% have 'authorisation' contracts, and 4.4% have 'other' types of arrangements.
- 47 According to the JFBA Census 2008, 37.3% of lawyers are 31-50 years old; accordingly, 82.4% of respondents being 30-50 years old is an extremely high percentage.
- 48 Compared to the JFBA Census 2008 figure of only 12.2%, the percentage of female lawyer respondents of 39.7% is high.
- 49 These results correspond to JILA Statistics, 2009a.
- 50 Figure 5-1 reflects the transition of the total number of lawyers in Japan since 1950 and that of corporate in-house lawyers in Japan since 2001 based on JFBA Statistics, 1950-2009 and the JILA Statistics, 2009b.
- 51 According to the most recent data on the website of the JILA (as of December in 2009), 412 in-house lawyers are working in corporations in Japan. See the JILA Statistics, 2009a.

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### Laws (Japan)

- Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (*dokusen kinshi hō*)
- Attorney Act (*bengoshi hō*)
- Basic Act on SMEs (*chushō kigyō kihon hō*)
- Companies Act (*kaisha hō*)
- Financial Products Transaction Act (*kinyū shōhin torihiki hō*)
- Judicial Scrivener Act in 2002
- Law concerning Establishment of Justice System Reform Council (*shihōseido kaikaku shingikai setchi hō*)