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My Practice in Japan

By Norman R. Solberg

Current Legal Practice

I'm in solo practice as an American lawyer licensed in Osaka, Japan, one of its largest cities and the center of the Kansai region that includes Kyoto, Kobe, and Nara.

After a career in large multinational companies that took me all over the world and ultimately to a general counsel position, I went back into private practice with no clients but a plan to use my ties to Japan to build a roster. My connections to a top executive at Sharp Corporation led him to ask me to come to Osaka to advise the company on how to negotiate international deals. In the end I handled practically every international and high-tech deal that Sharp made over the course of several years, including those with Apple, Intel, Microsoft, IBM, Sun, Silicon Graphics, GE, and H-P. And after 19 years in Osaka, I'm still here.

Clients

The clientele has changed over the years, as might be expected in a society such as Japan's. I focus on business clients—both Japanese and those of other countries—since my background is in international transactions and litigation, M&A (mergers and acquisitions) and corporate law, and I have experience with the intricacies such matters face in cross-border situations. However, I've found that Japanese companies are generally reluctant to retain foreign lawyers unless they are in large international firms. A major reason is due to the country's social customs—managers rely heavily on group consensus and want to make decisions that all support . . . or at least ones that no one will question. A "brand name" is always easier to accept in such an environment.

Thus I also handle matters for individuals and families, such as multistate estate planning and personal issues. These often overlap with business, as most companies in Japan, according to recent surveys, are family-controlled. This is fascinating work where one can make a tangible contribution on many levels.

Often I act as local counsel for lawyers and others in the United States and other countries. The way things are done in Japan, and local expectations on business and personal issues, for that matter, tend to be quite counter-intuitive for those in other countries. Parties simply don't communicate the same way, and it is helpful to have expertise to ensure that things get done smoothly.

Here is an example. A visiting professor from Japan traveled to New York, where he deposited \$100,000 for living expenses in a prominent bank. While there he died and his widow then sought to retrieve the funds. Bank officers asked her to send authorization from the executor of the professor's estate. In Japan, wills are uncommon, so the professor died intestate. In New York, one would get a court order naming an executor, but there is no such practice in Japan, where an elaborate system of official family registers makes clear who are the heirs. It took someone who speaks the same language (i.e., a New York-licensed lawyer such as myself who could explain the issue) to get the bank to accept this.

Foreign lawyers who practice in Japan get a special kind of license from the Ministry of Justice that permits them to practice the law of their home countries but not to appear in court or before government agencies or to advise on Japanese law. Those are reserved for Japanese lawyers. (It is not particularly easy to get such a license: It took me a year to obtain mine.) In recent years, the rules have been relaxed so that foreign and Japanese lawyers may have partnerships and each can hire the other, so the restrictions are manageable and make sense.

From my perspective, this works well. I share offices with a group of Japanese lawyers (Bengoshi), administrative and judicial solicitors (Gyosei Shoshi and Shiho Shoshi), tax lawyers and accountants (Zeirishi), so we can draw upon one another's skills, both on projects and informally. This is not a partnership, but it is fine for me, since, unlike those in a firm, I also draw upon other professionals outside this group in specific cases where I want other expertise or connections.

Most Surprising Difference

Perhaps the most surprising aspect to me of law practice by Bengoshi is their heavy reliance on the "code" system. Japanese law is an amalgam of historic laws, Roman law (especially the German codes), and American law adopted in the 19th and 20th centuries. In counseling clients, Bengoshi always meet in a conference room. On each conference table is a one-volume set of the "seven codes" for ready reference. It is the

"authority," and clients seldom question the pronouncements delivered to them. Also on the table is a printed "Schedule of Fees," with tables showing the rates for the various economic values of particular cases. Clients tend not to question those either. In 2004, bar association fee schedules were abolished, but most firms simply adopted their own schedules based on the prior ones. Few lawyers charge by the hour.

Technology

My practice differs some from that of local lawyers. For example, almost everything I do is computerized. Communications, documents, research, scheduling, and billing—it is all done on (Apple) computer equipment. Japanese lawyers do this to a much lesser extent, partly, I think, because typing in kanji characters was adopted at a slower pace.

Advising to Other Solos

I was always interested in international law, and when I first joined a multinational company in Boston, that was a major attraction. It even sent me back to Columbia for a post-graduate program in foreign and comparative law, so I had good training at an early stage. Many teachers were foreigners and constantly noted the relevance of cultural assumptions and differences. As advice for those interested in such work, I'd say 1) get similar training, and, 2) learn your "trade" first, before you go abroad. One needs solid, substantive experience in order to build a useful practice in another country.

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