



30-SECOND SUMMARY

Prior to the introduction of a law school system, a one-time paper bar exam without any prior professional education determined entrance into the legal profession in Japan. With formal legal education now available, the number of newly qualified lawyers has dramatically increased. In 2006, when the first people who were trained in law school qualified, approximately 1,300 became attorneys, and in 2007, approximately 2,100 did the same. The number has been steady at around 2,000 each year since. This increase in supply has altered the legal profession in Japan. In-house careers have become more appealing to experienced lawyers, and Japanese companies are at last recognizing the value of seasoned professionals.

Development of In-house Practice in Japan

By Masahiro Homma

A Chronological Observation

A new phenomenon

In-house practice for Japanese lawyers (bengoshi) is a rather new phenomenon.¹ In 1999, when I started my in-house career as general counsel of a General Electric (GE) subsidiary in Japan, there were only about 50 bengoshis working in-house. Since then, the population has grown dramatically. As of March 2014, the number is 1,133.² In-house practice is becoming an ordinary career path for bengoshis.

This article tries to show an overall picture of the status of the in-house practice in Japan, with particular focus on the history of its development.

Due to its short history, there are very few written works that analyse in-house practice in Japan. This article builds off the discussions of various committees and gatherings I have joined or attended, such as the Corporate Counsel Subcommittee of Japan's Federation of Bar Associations (JFBA) and the Policy Committee of Japan In-house Lawyers Association (JILA), where observations and experiences have been exchanged.

The early days (1980s – 2000)

In the early days, companies that employed lawyers were primarily multinationals. The first wave of in-house employment was observed in the 1980s. Several leading financial institutions, such as Merrill Lynch, Morgan Stanley and Goldman Sachs, began to employ Japanese senior bengoshis. Also, various multinational non-financial companies, such as General Electric and Microsoft, followed the movement. Fig. 1 clearly illustrates this trend.³

These lawyers were all considered established professionals who had 10 or more years of private practice experience and thus were named general counsel or something comparable in seniority. The role and responsibilities were more or less the same as general counsel in multinationals from the United States and Europe.⁴

Still, the number of in-house counsel was rather small (probably around 50, at most), and few Japanese companies employed lawyers. Why was this?

One of the earliest surveys on the employment of lawyers was made by JFBA in 2006.⁵ Although it was conducted during the “big bang” period (described later), out of the 1,446 companies that replied to the questionnaires, 1,286 (93 percent) answered that they had no plan to employ lawyers. The primary reason was that they did not see any work for lawyers in-house; they stated, “outside counsel support is enough” or “present internal resources (i.e., non-qualified people in the legal department) sufficiently meet the necessity.”

Also, concern over compensation was another factor. Public perception in Japan is that lawyers enjoy a high-level income, which, in fact, used to be the case. In the survey, 162 companies (11 percent) mentioned compensation as a factor. Many Japanese companies hesitated to pay higher salaries to lawyers than they would their non-legal employees. Japanese companies were not only worried about the absolute level of salary,

but also concerned about disturbing homogeneity among employees.

Although unproven from statistical data, in the “free comment” sections in various surveys, respondents mentioned a “culture concern” (i.e., to have “outsiders” and, in particular, “outsider professionals”).

As widely noted, Japanese companies are generally concerned with the homogeneity of their employees. Japanese companies generally prefer to hire new graduates from schools and expect them to spend their whole career working for the company. The compensation and promotion mechanisms are also structured on this premise (i.e., based on the length of employment). Thus, the compensation and promotion mechanisms are rigidly structured. Life-time employment allows flexible internal rotation. Otherwise, an organization could not give able people new opportunities. Employees have to prepare themselves to move from one position to another (e.g., the legal people could move to other business functions, such as sales, human resources (HR), etc., and vice versa). Hiring lawyers and other legal professionals disrupts the egalitarian structure of Japanese companies. Traditional Japanese HR structures create a culture that was hesitant to accept outsiders. Various comments in the surveys show that companies had concerns about whether or not lawyers could adjust to the company culture and refrain from behaving too independently in order to work directly and effectively with coworkers.

Step board (2000 – 2005)

The situation changed in the early 2000s. Various Japanese domestic

companies started to employ bengoshis, causing a rapid increase in the population of newly qualified lawyers.

Since WWII, the number of new lawyers per year had been stable at around 300 – 400, until the late 1990s. The Bar Examination (Shi-ho Shiken)⁶ pass rate had been less than 2 percent, and the average age of successful candidates was almost 28 years old. Ten-year preparation for the exam after graduating from university was not uncommon. Consequently, Japan's population of lawyers was the smallest among major industrial nations. In 1999, for instance, Japan had little more than 16,000 lawyers.⁷

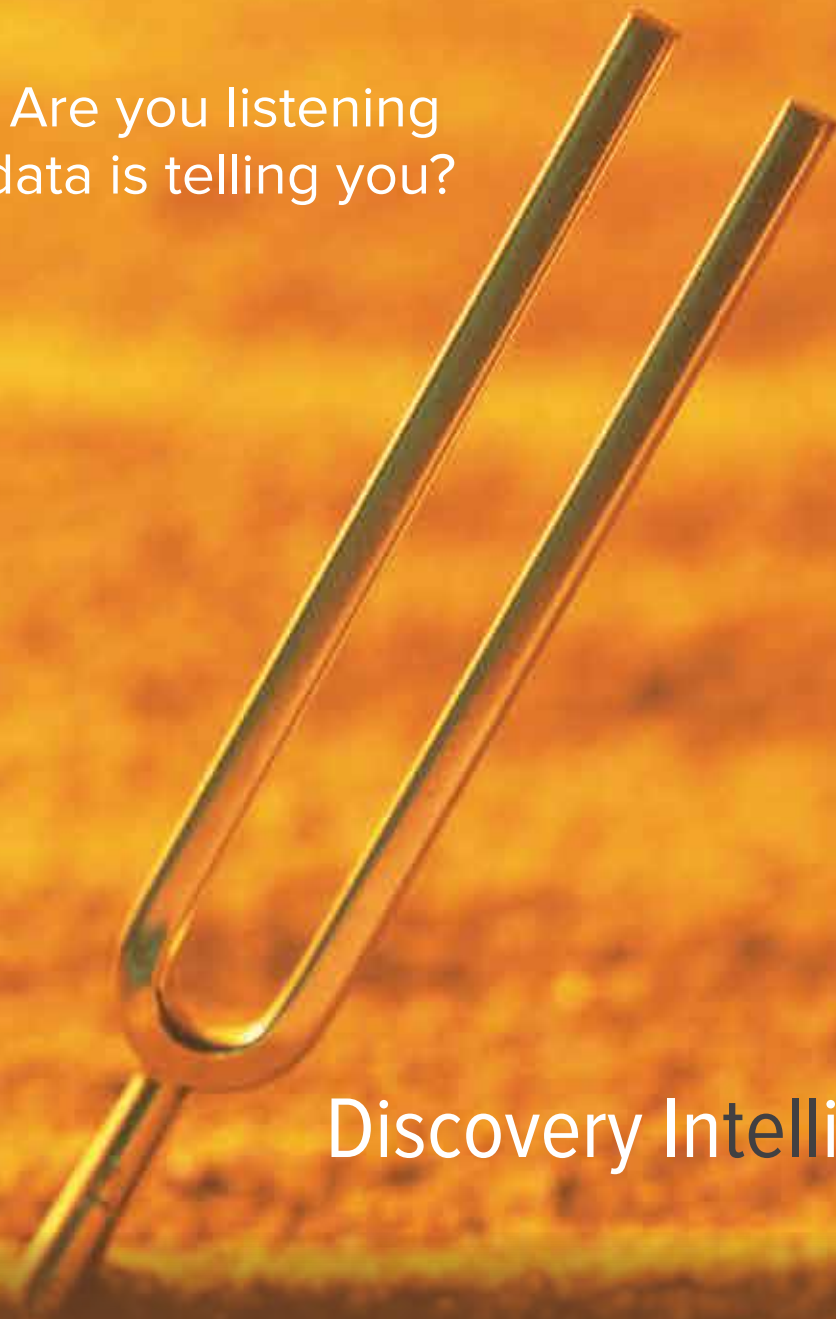
However, in the 1990s, there were movements calling for reform of the legal system in Japan. One initiative was to enlarge the size of legal services. It was argued that roughly 400 new lawyers every year was not enough. That movement increased the capacity of the Legal Research and Training Institute of the Supreme Court of Japan (Shi-ho kenshu-shu-jo).⁸ Thus, the number of successful candidates for the bar exam increased, along with the number of newly qualified bengoshi. In 1996, the number exceeded 500, and in 2001, it exceeded 700.⁹

During the growth period, one of the changes was that junior lawyers realized they had more career options. Certainly, the hope to become a lawyer quickly attracted more diversified people who, otherwise, would have abandoned the challenge. The narrow-minded view of the older generation of lawyers, who viewed the profession as only judicial practices (i.e., judges, public prosecutors and, above all, private practitioners



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in law firms), was fading away. Now, people had a much wider view of their career prospects with little hesitation. In-house practice was one such option. While few Japanese companies actively recruited lawyers, junior lawyers and new graduates proactively sought opportunities. Those pioneer-minded people approached companies in various ways: writing letters or using acquaintances to sell the value of having them in the legal department as a way to persuade the company to create exceptions to their HR system. As a result, Japanese companies, including major banks and trading companies, began to hire bengoshis. The majority of those lawyers were new graduates from the Institute or relatively junior lawyers who had a few years in private practice. Still, many companies hesitated to divert from the traditional hiring practice. This generation of in-house lawyers — the pioneers into the business society in Japan — were actively

engaged in in-house practice, gaining the respect of their companies.

The number of in-house lawyers increased from 66 in 2001, to 123 in 2005. Fig. 2 shows the list of top 10 companies employing lawyers in 2005. Some Japanese companies have appeared on the list.

Big bang (2006 – present)

In 2004, legal education was dramatically changed by the introduction of a law school system. One of the criticisms levied against the old system described above was that qualification for the legal profession almost exclusively depended on the one-time bar exam without any systematic professional education. While universities in Japan have legal faculty, they focus little on practice and more on academic education. It was understandable, however, because an overwhelming majority of their students would not take a career in the legal profession.

Arguments for the necessity of legal professional training prevailed, and thus, a new system was introduced based on the law school system of the United States. While the law faculty of the universities at the undergraduate level were still intact, new law schools were established as post-graduate schools, where professional and practical training was conducted. Law school graduates were allowed to take the bar examination, and the passing rate dramatically increased. In 2006, when the first people who studied in law school qualified, approximately 1,300 became attorneys, and in 2007, approximately 2,100 did the same. The number has been steady at around 2,000 each year since.

Discussing the pros and cons of the law school system is not the subject of this work. However, one undeniable fact is that it has accelerated the increase of the in-house bengoshi population. In 2006, the number was 146, but within two years, it increased

Fig. 1: Top companies employing two or more lawyers as of 2001

Company	No. of Lawyers
Merrill Lynch Japan Securities	8
Morgan Stanley Nippon Securities	6
IBM Japan	6
Goldman Sachs	6
General Electric	4
UBS Warburg	3
Nikko Salomon Smith Barney	2
Alps Electric*	2
Microsoft Japan	2

*SHOWS JAPANESE COMPANIES

Fig. 2: Top companies employing lawyers as of 2005

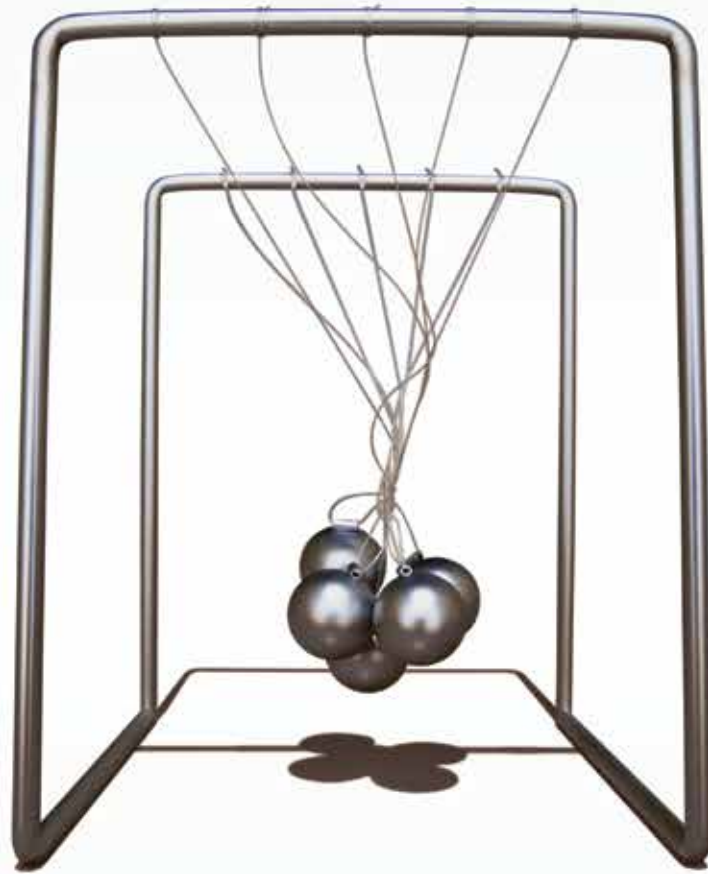
Company	No. of Lawyers
IBM Japan	9
Goldman Sachs	8
Merrill Lynch Japan Securities	7
Morgan Stanley Nippon Securities	7
Industrial Revitalization Corporation of Japan	6
UBS Securities	4
AFLAC	4
Mitsubishi Corporation*	4
Microsoft	3
General Electric	3
Panasonic*	3
Daiwa Securities SMBC*	3

*SHOWS JAPANESE COMPANIES

Fig. 3: Top companies employing lawyers as of 2013

Company	No. of Lawyers
Mitsubishi Corporation*	17
Yahoo Japan	16
Mitsui Corporation*	11
Mizuho Securities*	11
Itochu*	11
Sumitomo-Mitsui Bank*	11
Softbank Movaile*	10
Nomura Securities	10
Mitsubishi Tokyo UFJ Bank *	9
Goldman Sachs	9
SMBC Nikko Securities*	9

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to 266. Since then, more than 100 new members joined annually to the new field. As of June 2013, JILA's official count was 965; however, on 10 March 2014, I counted 1,133 lawyers on the list published by JFBA. Out of 52 local bar associations,¹⁰ only six associations have more than 1,200 members (which include in-house counsel). It's really the “big bang” of the in-house practice in Japan. It could be said that in-house practice is now an integral part of the legal practice in Japan.

There are various observations and analysis concerning how this “big bang” happened. It should certainly be true that more lawyers had an evolved view of their career paths, rather than just the traditional role represented by court work. It was a

new generation of lawyers who were genuinely interested in business and, thus, in the in-house profession. This caused more supply. Also, it should be pointed out that the precedents set by lawyers who had chosen the in-house path early on opened the eyes of various Japanese companies to the usefulness of having lawyers inside the company. Also during this time, the JFBA and JILA widely promoted in-house counsel at various symposiums and lectures as an opportunity for business leaders.

The increase of lawyers altered the balance of power in the market in favor of prospective employers. New graduates found it difficult to find a job, whether in law firms or companies. The situation has naturally led to a substantial decrease in compensation levels for young lawyers. Also, the opportunity to hire new graduates has lowered the barrier of employment for lawyers because it is compatible with the conventional HR structure of Japanese companies. Indeed, many companies hire new legal graduates with terms and conditions that are no different than those for non-qualified graduates of universities — besides, the work scope and responsibilities are not distinguished.

Today, those newly graduated in-house lawyers have come to dominate the population of in-house lawyers in Japan. According to Fig. 3, the major employers of lawyers in Japan are Japanese companies.

New sphere?

For the last year or two, the in-house market situation has altered again, or, at least, added additional factors. This is not yet proven by hard data, but rather is based on anecdotal observation. I have seen a significant number of lawyers who have substantial experience in private practice (7–10 years) apply for in-house jobs.

It is too early to draw any particular observations about this potential new trend. It could mean that the value and enjoyment of being in-house is widespread and has caught the interest of those more experienced lawyers. Or perhaps, the competition for promotion amongst partners in law firms has become much more intense and now demands an extraordinary amount of work and time. Thus, people who seek work-life balance may now want to transfer in-house. Japanese companies might have at last recognized the value of experienced professionals and the need to make HR practices more flexible.

ACC EXTRAS ON... Establishing an in-house culture

ACC Docket

An In-house Guide to Opening New Offices Without a Hitch (Nov. 2013). www.acc.com/docket/new-office_nov13

Wisdom of the Crowd — The First General Counsel (Dec. 2012). www.acc.com/docket/woc_dec12

School Days: How to Hire and Develop In-house Legal Professionals (Oct. 2012). www.acc.com/docket/schooldays_oct12

Wisdom of the Crowd — General Counsel or Chief Legal Officer (Jan. 2013). www.acc.com/woc/gc_jan13


Practice Resources

As more companies expand their legal departments' reach beyond their native borders, there are many practical issues to take into consideration as you develop your global process and workflow relating to matters and invoices. Review “*Top Ten Problems to Be Aware of When Developing Global Processes*,” written by ACC Alliance partner Thomson Reuters. www.acc.com/10global-process_jun12

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Conclusion and challenges

The in-house counsel population in Japan has experienced dramatic growth and has now established its position as a stable branch of legal practice. The expansion leaves several challenges for further development of the practice. I would note that they are inter-related but would conclude one thing: The value and role of in-house counsel has not been widely discussed and established. Indeed, the increase was so rapid that such fundamental analysis and discussion could not keep pace with it.

The reality of in-house practice varies substantially from person to person. There are general counsel or chief legal officers who are not only the head of the legal department, but also hold executive status. The vast majority of them practiced in law firms for substantial periods of time and established themselves as professionals and, consequently, were employed as such, or to similar senior positions within the companies. Thus, as professionals, they obtained respect and have the ability to influence company management.

On the other extreme, however, a growing number of new law school graduates have the roles, responsibilities and compensation that amount to little more than that of their non-lawyer colleagues.

Japanese companies' general attitude favors new law school graduates, and it is not uncommon if they are the very first lawyers the company has hired. So, they have to first struggle to learn basic legal practice by themselves before they think about professionalism as lawyers. They have no senior lawyer at the company to train them in the business of working in a legal department. Indeed, some companies, fortunately not many (yet?), refuse to pay their registration fee for the bar association. Naturally, this discourages in-house counsel to consider themselves as members of the legal profession. I should stress that a lot of

lawyers employed in-house have made considerable effort to grow as professional lawyers. In-house counsel and law firm lawyers should be considered completely different professions.

To make things even more complicated, transferring from one career path to another has not been documented. Thus far, general counsel and other senior lawyers, middle-class front-line practitioners and novice graduates have been employed for a specific, intended job, rather than promoted from one rank to another based on experience. In short, the normal career path for in-house counsel has not been established. Only five years have passed since the "big bang" — 10 years if one begins counting from when the increase started. Therefore, it may not be enough time for many in-house counsel to prepare for promotion or transfer to the next stage.

Several ideal career paths for in-house lawyers to follow include professional development and focused expertise.

A new movement has been observed to target this very issue. Recently, both JILA and JFBA have set various groups to study what in-house counsel should look like. Some major law schools are now starting a course to teach the reality of in-house practice. While those activities are not yet firmly established, fruitful results should be expected. **ACC**

NOTES

- 1 In Japan, the phrase "in-house counsel" (*soshikinai bengoshi*) often refers to those working in any organization, including the governmental organizations. However, to correspond with ACC's membership, for this article, it will deal only with lawyers working for an organization in the private sector.
- 2 This number is based on the author's count from the Japan Federation of Bar Associations.
- 3 <http://jila.jp/index.html>.

- 4 Nevertheless, it would attract interest to pursue the background as to why the multinationals took that timing to commence to employ bengoshis several decades after Japan had established its strong position in the global economy. I myself have little answer at this moment.
- 5 The Lawyer's Practice Reform Committee (ed.), "Corporate In-House Counsel" (2009, *Shoji-Homu*) p. 320 et, esq.
- 6 In Japan, to be qualified as a legal professional, one should first pass the bar examination. Upon passing the exam, the individual is appointed "Legal Apprentice" and trained at the Legal Research and Training Institute of the Supreme Court of Japan (*Shi-ho kenshu-shu-jo*). At the graduation, apprentices choose their career; some become judges or public prosecutors, but most start their careers as private practitioners. Theoretically, the bar examination is a "qualifying examination" (i.e., all applicants who meet the objective qualification should have passed the examination). However, in reality, the bar examination is, in fact, the entrance examination to the Institute, and therefore, the number of successful applicants has been controlled by the capacity of the Institute.
- 7 JFBA's website: www.nichibenren.or.jp/library/ja/publication/books/data/2013/whitepaper_suii_2013.pdf (in Japanese only).
- 8 The Bar Exam is in fact the entrance examination of the Institute.
- 9 The number mentioned is the one qualified from new graduates from the Institute. In addition to those, approximately 100 of the ex-judges, prosecutors and other people who qualified through some exceptional way are qualified as attorneys. www.nichibenren.or.jp/library/ja/publication/books/data/2013/whitepaper_nendobetsu_2013.pdf.
- 10 The Lawyer's Practice Reform Committee (ed.), "Corporate In-House Counsel" (2009, *Shoji-Homu*) p. 320 et, esq.

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