

# Introduction: Nature of the Japanese legal system

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## 1-010 Introduction: Nature of the Japanese legal system

Japan is conventionally classified as a civil law legal system based on codified law. The Constitution and the five major Codes (civil, civil procedure, criminal, criminal procedure and commercial) together form the *roppó* (six codes) or legislative core of the system. Today, however, these are nearly 1800 other pieces of legislation in force as well as thousands of regulations in the form of Cabinet ordinances (*serei*) and Ministerial ordinances (*shorei*). In every field of law there is also a very significant body of published case law that interprets legislation and effectively develops new law where the legislation is silent. In commercial law and taxation, case law is of fundamental importance and is carefully monitored by lawyers and legal academics. Moreover, much of revised legislation and many of the regulations in the fields of commercial and regulatory law is influenced by common law concepts or rules and by prevailing patterns of regulation in the EU. This can be seen in the hybridised approach to bankruptcy reform, for example. This is not surprising, given a decades-long trend for business lawyers to undertake postgraduate study in law in Australasia, the UK, the US and the EU. In this sense Japan is, like most industrialised legal systems today, a hybrid system of different legal influences — in this case grafted onto a civil law base. Japanese law continues to change and evolve rapidly, as outlined in the Introduction.

The mix of civil and common law influences in Japan is evident in contemporary approaches to finding and applying the law.

From a classical civil law standpoint, positive law is set out in a hierarchy of legal sources, beginning with the Constitution and Codes, and then proceeding down through specific legislation governing particular issues or industries to cases and academic commentaries (treatises) that provide persuasive syntheses of legislation and case law. In theory, to research a legal question start at the top — the most abstract level — and research downwards, narrowing to the special legislation or regulation or notice affecting the transaction type or question. In practice, however, a practitioner is more likely to go directly to a CD-ROM compilation of recent cases as the starting point for research. A lawyer or corporate legal affairs department staffer in a regulated industry, for example banking or insurance, is also likely to consult the relevant Ministry or Agency website for the latest circular or policy statement, because for practical purposes, the regulator is the primary lawmaker. These diverse sources of legal information and where to find them are discussed in this chapter.

### 1-020 Availability of legal information

Japan is distinguished by the availability, quantity and high quality of its legal information. Statutes, regulations, policy statements, case law and commentaries are all published by both public and private entities and are readily available. Digital legal information — predominantly government and private websites, CD-ROM and on-line services — is also proliferating.

What has not yet been developed in Japan is a comprehensive digital law library. There is no direct counterpart for the multinational commercial providers of web-based and online legal information services that are now indispensable for attorneys in the U.S and English-speaking world. It is likely that this market gap will be filled by a commercial provider in the next few years. Nor does Japan have a free access database of government legal information that brings primary sources together under one digital umbrella, such as the one developed for Australia ([www.austlii.org](http://www.austlii.org)) or for Asia ([www.worldlii.org](http://www.worldlii.org)), although the latter partially catalogs digital legal sources for Japan.

The consequence is that retrieval of legal information on Japan currently requires several strategies and a search of multiple locations, both print and digital. Those sources, location and strategies are described in this chapter.

### 1-030 Legislation in translation

The translation of Japanese legal sources into English and other languages has been a slow and sporadic process. In this chapter, concentration is primarily on English language sources. Translation remains costly: those who have the requisite linguistic skills and legal knowledge have tended to become lawyers and scholars rather than professional J-E (or J-German, J-Chinese, J-Korean or J-French) legal translators. The legal translation profession remains relatively small, given the size of the Japanese economy. Indicative of this is the fact that there is no official translation for Japanese legislation.

A commonly used source of legislation in English was the *Eibun Horei Sha* (EHS) loose-leaf print series, which tracked new legislation and legislation that had been periodically updated, but the series is neither comprehensive nor completely reliable. The University of Washington added to the utility of the EHS series by developing an index for it: *Japanese Laws in English: An Index to the EHS Law Bulletin Series* (2nd Edition)/compiled by Robert R Britt. Marian Gould Gallagher Law Library Research Study Series No 11. See: [lib.law.washington.edu/pubs/jle/index.html](http://lib.law.washington.edu/pubs/jle/index.html).

In addition to the EHS series, many government ministries and agencies, institutions and scholars have produced their own legal translations of Japanese legislation and these are located in multiple print and digital locations. Banks, insurance companies, corporations and law firms have also produced a huge volume of translated legislation, case law and transactional documentation, most of it unpublished.

The Japanese government announced in October 2004 that it would commence a year-long project in 2005 to explore production of standardised translations for key commercial laws in English. The drivers for this project are reported to be the increase in foreign investment in Japan since 1997, the integration of the Japanese and Chinese economies, and Japan's growing prominence as a provider of technical legal assistance within Asia.

In 2005, the government established the Study Council for Promoting Translation of Japanese Laws and Regulations into Foreign Languages. Professor Noboru Kashiwagi from Chuo University led the committee as the chair. The committee first published the *Standard Bilingual Dictionary* to set the standard for legal translation between Japanese and English, then successively published "unofficial" translations of Acts based on the standard dictionary (translations are available at [www.cas.go.jp/jp/seisaku/hourei/data2.html](http://www.cas.go.jp/jp/seisaku/hourei/data2.html)). This project is of significant advantage to foreign lawyers who need Japanese legal information since it is the first time that the Japanese government has taken the initiative to produce Japanese law materials in English. While these translations are unofficial, the *Standard Bilingual Dictionary* may become the standard for legal translation both in practice and academia.

Another new project is the Transparency of Japanese Law Project by Kyushu University. This project was selected for the Specified Field Research Project in 2004 by the Ministry of Education, Culture, Sports, Science and Technology (MEXT). The purpose of this project is to provide legal information on international transactions in English. The website provides English translations of legislations, regulations and court decisions. It also provides basic legal information in specific fields such as international corporate law and international civil litigation law. See [www.tomeika.jur.kyushu-u.ac.jp/index.html](http://www.tomeika.jur.kyushu-u.ac.jp/index.html).

### 1-040 Sources of law

As a civil law country, Japan's sources of law are theoretically grounded in legislation and the regulations promulgated through delegated authority; Cabinet Orders, and treaties, as set out in the Table below.

Type of Law		Citation Form
In Japanese	In English	
法律 (Hōritsu)	Statutes; Acts of the Diet	法 (Hō)
規則 (Kisoku)	Regulations; Rules	規 (Ki)
命令 (Meirei)	Order	命 (Mei)
政令 (Seirei)	Cabinet Order	政 (Sei)
条約 (Jōyaku)	Treaties	条 (Jō)

#### Supreme Court Rules (*Saikō saibansho kisoku*)

Supreme Court Rules are not strictly speaking laws. They are the Court's internal guidelines governing the actions of judges and judicial authorities. On the Supreme Court's website, these rules are presented for many detailed

subjects (such as “*Criminal Compensation Rules*”, “*Corporate Restructuring Rules*”, and “*Family Deliberation Rules*”. The many sets of court rules are listed on the website under the four broad headings Civil Case-related, Criminal Case-related, Family and Juvenile Case-related: [http://courtdomino2.courts.go.jp/E\\_procedure.nsf?OpenDatabase](http://courtdomino2.courts.go.jp/E_procedure.nsf?OpenDatabase).

In practice, case law interpreting statutes continues to grow in importance and is in reality a vehicle for making new law, as well as interpreting existing legislation. Case law, however, is limited in scope by the systemic absence of a doctrine of precedent, so that although in practice judges monitor case law throughout the system and there is policy coordination of judicial decision-making in areas such as tort compensation, decisions of individual courts — other than those of the Supreme Court — do not bind other courts or the same or lower rank in the hierarchy.

One practical effect of this is that multiple appeals of cases are permitted within the system; if the case originates in the District Court, as most commercial cases do, there is an automatic right of appeal to the High Court on both facts and law and then a further appeal to the Supreme Court on questions of law if the Supreme Court recognises these as having merit. The appeal process is discussed in more detail in the Commercial Litigation • Arbitration chapter (see 4-100 ff).

The *Types of Legal Information* table given below also lists a number of sources of legal information that are not, of themselves, sources of law but are nevertheless regarded as being of considerable importance. Notices or circulars issued by government ministries or agencies are intended to be regulatory in nature but are not actual sources of law. They are, however, particularly important in regulated industries that must maintain close contact with the government agencies with jurisdiction over their business activities or the regulator for their industry. Bureaucratic “guidance” in informal forms also has a long pedigree in Japan. This can now be challenged under the *Administrative Procedures Law* [行政手続法] (*Gyōsei tetsuzukihō*) and there is a trend toward making both informal guidance and bureaucratic policy more transparent. This is discussed below in the section on notices and circulars.

Academic writing, including multi-volume treatises on a Code or field of law are also not formally sources of law but have historically been important sources of authority on how legislation and/or case law ought to be interpreted. These are seldom cited to overtly in court decisions but they are widely studied and continue to shape the thinking of judges and lawyers in specific areas of law. Competing scholarly views are not uncommon and part of the tacit knowledge of a legal practitioner in Japan is to understand who has written what and which treatise or commentary is regarded as the leading commentary in the field.

## 1-050 Types of legal information

Types of Japanese Legal Information	Sources for Information Retrieval
Legislation 法令 [ <i>hōrei</i> ] Regulations 規則 [ <i>kisoku</i> ] Orders 命令 [ <i>meirei</i> ] Cabinet Order 政令 [ <i>seirei</i> ] Treaties 条約 [ <i>jōyaku</i> ]	Official Gazette [ <i>kanpō</i> ] Government free-access web sites Commercial loose-leaf print services [ <i>kajoshiki</i> ] Code books [ <i>roppō</i> ] Treaty compilations [ <i>jōyakushū</i> ]
Bills 法案 [ <i>hōan</i> ]	Government free-access web sites Law Journals
Ordinances 条例 [ <i>jōrei</i> ]	Local government web sites Commercial Loose-leaf services Commercial Database
Supreme Court Rules 最高裁判所規則 [ <i>saikō saibansho kisoku</i> ]	Supreme Court website
Notices 告示 [ <i>kokaji</i> ] Announcements or circulars 通達 [ <i>tsūtatsu</i> ]	Government free-access websites (although not comprehensive) Some code books eg Tax <i>Roppō</i>
Current and Prior Legislation Tables 条文の新旧対照表 [ <i>jōbun no shinkyūtaishōhyō</i> ]	Typically set out in Law Journals
Cases 判例 [ <i>hanrei</i> ] Case Digests 要約 [ <i>yōyaku</i> ] Case Commentaries 判例評釈 [ <i>hanreihyōshaku</i> ]	Case reporters for courts Court Home Pages Commercial provider internet-based databases Commercial provider case abstracts CD-Rom Court authored commentary [ <i>hyōshaku</i> ] Case Reporter Journals [ <i>hanrei zasshi</i> ] Academic law reviews [ <i>kiyō</i> ]
Academic Commentary 解説書 [ <i>kaisetsusho</i> ]	Basic learned books [ <i>kihonsho</i> ] Annotated code book [ <i>chushakusho</i> ] Practice-oriented specialist text [ <i>jitsumusho</i> ]

Types of Japanese Legal Information — <i>continued</i>	Sources for Information Retrieval
Law Journals 法律雑誌[hōritsuzasshi]	Specialised topical-focus magazines issued monthly or biweekly Some make back numbers available in DVD
Law Books 法律関連書籍 [hōritsukanrenshoseki]	Includes: <ul style="list-style-type: none"> <li>• Legal textbooks for university and bar preparation courses</li> <li>• Law books for laypeople</li> </ul>
Policy Information 政策情報 [seisakujōhō]	A newly coined term for miscellaneous information on both government and private sector websites, including self-regulatory information such as industry codes of conduct
News Sources 報道関連記事 [hōdōkanrenkiji]	Includes: <ul style="list-style-type: none"> <li>• Mass circulation print newspapers and their digital versions</li> <li>• Industry-specific newspapers and magazines</li> </ul>
Bibliographies 文献目録 [bunkenmokuoku]	CD-Rom Print versions
Dictionaries 辞書 [jisho] Glossaries 用語辞典 [yōgojiten]	Includes a wide range of specialist publications such as dictionaries/glossaries by area of law eg patent, biotechnology, commercial and consumer law; uncommon and difficult term glossaries
Foreign Language Materials 外国語文献[gaikokugobunken]	Includes foreign language-Japanese dictionaries and glossaries Books on Japanese law in foreign languages Foreign language websites on Japanese law

### 1-060 Tools for finding legislation

Depending on the information you have about the law you are looking for, different tools may be used to find it. For example, do you have the Japanese title? Do you have the law number and date? Or do you only have an English translation of the title, or perhaps only an idea of what the law is about and when it passed?