

# Meet Notaries in Japan\*

## I Overview of Notary System in Japan

- 1 Notary system and notarial functions are subjects prescribed mainly in the Notary Law of 1909 and its subordinate regulations. There are also pertinent sporadic provisions in other laws including the Civil Law, the Company Law, and the Civil Procedure Law.

According to these laws, the system is classified as one that belongs to civil notary system. Actually, the Notary Law of 1909, which remains to be the basic law with intervening alternations up to present, was enacted with strong influence by German law.

- 2 Notaries are appointed by the Minister of Justice from among those who are qualified as judge, public prosecutor, or attorney at law. In reality, most notaries in urban areas have been appointed from retired judges and retired public prosecutors.

There is another group of notaries who are not lawyers in a narrow sense of the word. But they are deemed equivalent to lawyers because they are selected by a special committee from among those who possess academic and practical skills similar to those of qualified lawyers and who have been engaged in legal affairs for substantial years.

Japanese notaries make up notarial deeds at the request of clients, and they are responsible for making the deeds legally valid. Therefore, they may and should give legal advice to clients whenever they think it necessary.

- 3 Relatively small number of notaries is another characteristic of Japanese notary system. There are about 510 notaries for entire nation with 126,000,000 population. Generally, however, small number of

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The original is archived by NNA at:

<http://www.nationalnotary.org/intlforum/index.cfm?text=forum> , as:

[http://www.nationalnotary.org/intlforum/pdf/enotarization\\_kato.pdf](http://www.nationalnotary.org/intlforum/pdf/enotarization_kato.pdf) (PDF)

lawyers characterizes Japanese legal system. There are only 23,000 practicing attorneys, and 3400 judges including summary court judges.

## **II Functions of Notaries in Japan**

Notaries in Japan perform several functions, including the following:

- 1 Making up notarial deeds
- 2 Authentication of private documents
- 3 Attaching officially-attested dates to private documents
- 4 Other functions specified by law, including e-notarization

### **1 Making up notarial deeds**

- (1) Notaries are authorized to make up notarial deeds for any kind of legal acts, including sales contracts, lease contracts, loan contracts, surety contracts, and others.

A will is one of the legal acts that can be made up as a notarial deed.

- (2) If a notarial deed is one pertaining to payment of specific amount of money, the deed may be executed without judgment by the court.
- (3) Notarial deeds are made up not only for legal acts, but also to certify facts that a notary personally eye-witnessed. The latter type of notarial deeds are named as notarial deeds for witnessed facts, and have been utilized, among others, to preserve facts of evidential value for later use in the legal litigation with regard to intellectual property.
- (4) It should be noted, however, that in Japan legal acts may be concluded in any other form than notarial deeds. Even a sale or ordinary lease of real property concluded orally or in private writing is legally valid.

Further, in the Japanese system, notaries are not involved in registration or recording process of real property transactions. The parties may apply for the registration by themselves, usually entrusting to paralegals called "Shiho-shosi" (or registration scrivener.)

### **2 Authentication of private documents**

The types of authentication include acknowledgment, signature witnessing, affidavit (jurat), and copy certificate. Articles of association of corporations must be authenticated by a notary before registration.

It should be noted here that there is another way of authentication

for private documents: Seal Certificate or "*Jitsu-In*" system.

Once a company has registered its establishment with the registration office of a legal affairs bureaus, or once a resident has registered his/her domicile with the municipal office, the company or the resident can register the company's or the resident's seal with the registration office or the municipal office respectively. The registered seal is called "*Jitsu-In*." Then the respective offices issue a seal certificate carrying a photo-copy of the registered seal and give it to the registrant. The registrant keeps the registered seal in such a way that can protect it from unauthorized use by other persons. The registrant executes the registered seal on a deed whenever the deed is of importance, and attaches the seal certificate to the deed. The document on which the registered seal is executed is legally presumed authentic.

### **3 Attaching officially-attested dates to private documents**

A notary attaches the official stamp which includes the date of the execution to the private documents at the request made by the party.

This attachment makes it clear that the document existed on that day.

### **4 Other functions specified by law.**

Certificate of protest

e-Notarization

Others

## **III e-Notarization in Japan**

1 The Notary Law was amended in April 2000 to introduce e-notarization in Japan, and e-notarization practice started in January 2002. There were several amendments during the following years, and at present e-notarization is performed by about 350 designated notaries throughout the country.

2 e-notarization is available for the following five notarial acts.

(1) Authentication of e-documents

This includes authentication of articles of associations prepared in digital form.

(2) Attaching officially-attested dates to e-documents

- (3) Preservation of notarized e-documents
- (4) Certifying identity compared to preserved e-document
- (5) Making copies of preserved e-documents

### **3 Characteristics of Japanese e-notarization**

- (1) e-Notarization is performed through a system which is called e-Notarization Center.

The Center uses a Virtual Private Network service (VPN) offered by NTT.

Japan National Notaries Association, which consists of all the notaries in Japan, and whose expenditure is covered only by membership fees, owns the Center.

Technical maintenance of the Center is entrusted to Hitachi Corporation by JNNA on a contractual basis.

The System is built on a PKI infrastructure.

- (2) A client prepares an e-document as a PDF document, and executes a digital signature on the e-document.

At present, the Ministry of Justice approves the following 5 types of digital certificates for the clients.

- (i) Digital certificates issued by the Tokyo Legal Affairs Bureau to the companies that have officially registered their establishment with the registration office of the local legal affairs bureau throughout the country.
- (ii) Digital certificates issued by the local governments to the residents who have registered their domiciles within the jurisdiction.
- (iii) Digital certificates issued by approved private certifying entities.

So far, 3 private entities have been approved as issuing authority.

- (3) A request for e-notarization is made on-line on the Internet.

For this purpose, the Ministry of Justice provides a reception page on the Ministry's homepage for clients of e-notarization, and the application accepted on this page is then transferred to the JNNA e-Notarization Center for notarization by a notary.

- (4) A notary downloads the e-document from the server of the Center to his/her personal computer in his/her office, and examines it to see if it satisfies the necessary requirements for notarization.
- (5) The notary then takes acknowledgement of the e-signer (i.e., client).  
This means that at this time the client must appear in person before

the notary (in this way, modern technology gives way to the traditional personal appearance at the last stage of e-notarization.)

When the notary is satisfied with the acknowledgement, he/she attaches an acknowledgement certificate in PDF format with his/her digital signature to the e-document, and save them in a FD or other media for storage to give then back to the client (Digital certificates for notaries have been issued by the Minister of Justice.)

- (6) Making up of notarial deeds in e-notarization is not made available in Japan.

#### **4 Reality of e-Notarization**

Statistics show a sharp increase in the number of authentication of digitally prepared articles of associations. In 2007, the total number was 39,775, about 70 times larger than that in 2004 (655).

One may easily realize the reason for it if one comes to think about stamp tax.

Revenue stamp duty is altogether exempted in the case of e-articles of association, whereas revenue stamps of as much as ¥40,000 (\$400) must be attached to the paper articles of association. This exemption has been a significant incentive to the incorporators of the prospective companies.

#### **5 Issues to be addressed**

- (1) Introduction of making up notarial deeds in e-notarization

As stated above, making up notarial deeds is not available in e-notarization.

It seems because notaries were so inexperienced in handling e-documents that making up electronic notarial deeds was reserved for the time being.

Another reason seems, however, that there had been relatively less need for e-notarial deeds in the business world. As stated earlier in this handout, legal acts may be concluded in any form in Japan other than notarial deeds. Even transactions regarding real property may be concluded orally or in private writing. Further, in the Japanese system, notaries are not involved in registration or recording process of real property transactions. These are reasons, among others, for relatively small demand for notarial deeds in ordinary commercial transactions.

Given this situation, it is probable that making up notarial deeds in e-notarization system will not be realized in the near future.

(2) Appearance before e-notary

Personal appearance of a client before a notary has been deemed indispensable for e-notarization just as ordinary notarization.

In civil reconciliation procedures before the court in Japan, however, a party need not personally appear before the judge on condition that the absentee expresses its intention in a written document and its authentication is proved in a certain procedure, and that the other party personally appears before the judge and accepts the proposed conciliation. This reconciliation procedure may suggest that there might emerge an appropriate measure to ascertain identity, volition and other necessary requirements for e-notarization even if the client does not personally appear before the notary. In this sense the issue seems partly to depend on the progress of the information technology.

#### IV Legal Framework for e-Commerce

Legal framework for e-Commerce in Japan was basically established by 2004.

The following are important components of the framework, most of the English versions of which are found at:

<http://www.cas.go.jp/jp/seisaku/hourei/rink.pdf>

<http://www.cas.go.jp/jp/seisaku/hourei/data2.html>

1 Amendment of April 2000 to the Notary Law

This amendment introduced e-notarization, and the practice actually began in January 2002 as described before.

2 Electric Signature Law of May 2000 ("Law Concerning Electronic Signatures and Certification Services")

This law includes such provisions as the definition of terms for e-signatures, presumption of the authenticity of electro-magnetic records, the provisions for accreditation with regard to designated certification services and the prescription of other necessary matters concerning e-signatures.

① The definition of electronic signature is given as a measure taken with

regard to electro-magnetic record and to which both of the following requirements applies:

- (i) is a measure to indicate that the information was created by the person who performed the measure; and
- (ii) is a measure that can confirm whether or not any alteration of the information has been performed.

② As for presumption of authenticity, this law provides to the effect that an e-document is presumed to be authentic **if** an e-signature is performed by the principal, **and if** the e-signatures, based on the proper control of the codes and objects necessary to perform the signature, only that person can substantially perform.

A digital signature under PKI infrastructure is deemed as the only e-signature of this nature at present (advanced e-signature).

3 IT-Paper Blanket Law of December 2000 (“Law Concerning Use of Information Technology for Delivery of Documents”)

This law is a general law which recognizes e-documents as substitutes for preparing statutorily required paper documents if the receiving party agrees.

4. Electronic Consumer Contracts Law of June 2001 ("Law on Special Provisions to Civil Code Concerning Electronic Consumer Contracts and Electronic Notice")

This law provides special provisions to enhance consumer protection in transactions executed as electronic contracts.

5 Service Provider Liability Law of November 2001 ("Law Concerning Limitation of Damages to Specific Telecommunication Service Provider and Disclosure of Sender Information")

This law sets forth the limitation of liability for damages of specified telecommunications service providers and the right to demand disclosure of identification information of the senders in case of infringement of the rights through information distribution by specified telecommunications services.

6 Information Protection Law of May 2003 ("Law on the Protection of Personal Information")

This law was enacted to protect the rights and interests of individuals by clarifying the responsibilities of the Governments and by prescribing the duties to be observed by entities handling personal information.

7 e-Document Law of December 2004 ("Law Concerning Use of Information Technology for Preservation of Document in Private Sector)

This law is a general law which recognizes archiving of e-documents as substitute for preserving paper documents.

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