

裘索/著

# 日本国 律师制度



上海社会科学院出版社



# 日本国 律师制度

裘索 / 著

上海社会科学院出版社

## 图书在版编目(CIP)数据

日本国律师制度/裘索著. —上海:上海社会科学院出版社, 2000. 3

ISBN 7-80618-691-3

I. 日... II. 裘... III. 律师制度-概况-日本  
IV. D931.365

中国版本图书馆 CIP 数据核字(2000)第 12351 号

## 日本国律师制度

---

著 者: 裘 索

责任编辑: 周 河

封面设计: 阿 敏

---

出版发行: 上海社会科学院出版社

(上海淮海中路 622 弄 7 号 电话 53060606 邮编 200020)

经 销: 各地新华书店

印 刷: 上海社会科学院印刷厂

---

开 本: 850 × 1168 毫米 1/32

印 张: 9.5

字 数: 250000

版 次: 1999 年 12 月第 1 版 1999 年 12 月第 1 次印刷

印 数: 0001-3000

---

ISBN 7-80618-691-3/D·197

定价: 25.00 元

---

版权所有 翻印必究



作者与应邀访日的中华全国律师协会会长任继圣先生在日本律师联合会于法曹会馆举办的欢迎宴会上合影。



作者与率团前往日本招商的上海市市长徐匡迪先生在东京交谈后合影。

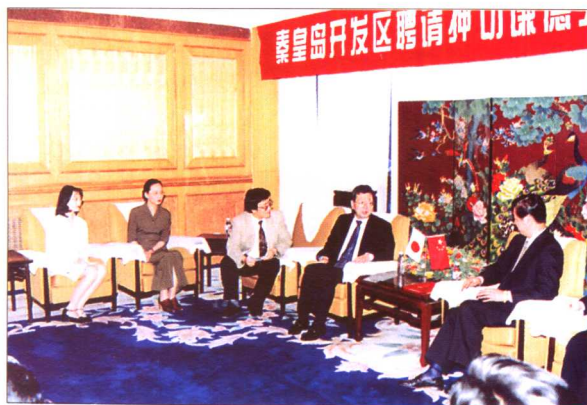


作者留影于早稻田大学校园。



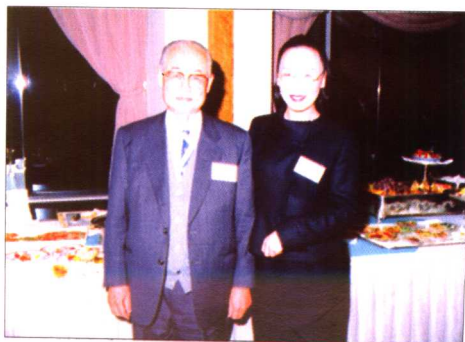


兼任联合国(NGO)亚洲刑政财团调研员的作者随同该财团理事长、国际检察官联合会首任副会长敷田稔先生与华东政法学院的法律专家就国际犯罪等问题进行交流。(右二为原华东政法学院院长、现最高人民法院副院长曹建明)



作者随同日本著名律师仲切谦德先生与秦皇岛市市委书记陈来立先生等洽谈有关秦皇岛市开发的合作项目。(右一为陈来立先生)

作者在亚洲民事法律问题学术交流会上与东京大学名誉教授、前日本法务大臣三ヶ月章先生合影。



## 致 读 者

### (代序)

古今中外的国家,以及在当前的不论是发达国家还是发展中国家,都必须具有与其发展相适的法律规范,因为国家产生后,人类社会及其成员的活动与存在必须依据特定的行为规则。律师是受委托人的委托而运用法律规范来维护委托人合法权益的专业人员。由此,有关律师制度的法律规定及其发展与完善程度,是衡量一个国家或一个社会民主与法制发展水平的重要标志之一。我国在实行改革开放政策的同时,执行了依法治国的方针,十分重视律师在依法治国中的重要地位。在改革开放伊始,恢复了我国的律师制度,1980年制定了《中华人民共和国律师暂行条例》,并以此为依据制定与公布了一系列行政法规与规章,使我国律师在较短的时间内在数量上高速发展,在质量上快速提高。在总结上述发展的基础上,1996年我国制定并公布了《中华人民共和国律师法》。我国极为重视律师制度的发展与完善,也十分重视了解、学习、对照与借鉴外国,特别是发达国家律师法的规定在完善我国律师制度中的重要作用,因为“他山之石,可以攻玉”。

裘索女士所著的《日本国律师制度》，就是一本学习、了解外国律师法的优秀著作。

裘索女士 1988 年经考试取得中国律师资格，由司法行政官员转为专职律师。后去日本留学，在日本早稻田大学攻读民商法，取得法学硕士学位。毕业后在日本城山综合律师事务所工作，主要从事有关中国法的业务。在日本工作期间，裘女士积极从事于中日法学交流事业，被推选为留日的中国律师和法学研究人员组成的社会团体——“中华法友会”的秘书长。裘女士精于中日两国的法律和语言，得到了日本律师与法学界的赞扬，于 1998 年 10 月 19 日获得了由日本法务大臣批准的在日本从事外国法律事务律师的资格。这个资格在日本的地位很高，极难取得。裘女士是取得这个资格的第六位中国律师。她所著《日本国律师制度》系统、详细地介绍和论述了日本的律师制度沿革、律师概况、律师资格取得、律师权利和义务、律师管理制度、律师惩戒制度、律师的广告管理和兼职管理，以及日本对从事外国法律事务律师的管理。最后该书还附印了《日本律师法》和《日本律师职业道德》等法律的中文译文。

《日本国律师制度》一书是近年来介绍外国律师制度各著作中最好写作之一。它对我们了解日本律师制度，对中日两国法学交流，对中日律师交流，对我国自然人、法人及其他组织聘用日本律师和在日办理诉讼或其他法律事务，都具有重要的参照价值，甚至导向作用，是律师、经贸界人士、司法界人士以及法学研究工作人员

应读的著作。

有鉴于此,应作者之邀,敬作此序。

任继圣

中华全国律师协会会长

一九九九年四月于北京



## TO THE READERS

*— Preface by the Secretary General of the  
National Association of Attorneys of China*

All countries, ancient or modern, developing or developed, require laws and regulations. This is because members of human society have to follow certain behavior rules deemed appropriate at the time. Attorneys are professionals who defend the clients' legal rights and legal benefits. Therefore, the laws governing attorneys' activities and behaviors have been one of the leading indicators for the development in social democracy and legal system.

In China, the governments have been paying special attention to the attorneys' role in establishing and perfecting the legal systems in the midst of economical, political and social reforms. In as early as 1980, "The Temporary Act of Attorneys in the People's Republic of China" was published, based on which a series of administrative regulations and laws have been established. In a relatively short period of time the number of attorneys has skyrocketed, while maintaining the high quality. In 1996, "The Act of Attorneys in the People's Republic of China" was published, which summarized the new developments since 1980.

While maintaining a fast pace in domestic developments, we have been trying to keep up with the developments abroad, especially those in developed countries, in order to learn from their experiences. For that purpose, Ms. Qiu Suo's new book – "The Attorney System in Japan" – is an excellent reference for learning from a foreign country.

Ms. Qiu received her law license after passing highly restrictive exams in 1988, when she turned herself into a full time attorney from a juristic administrator. Afterwards, Ms. Qiu went to Japan to study at the Waseda University, majoring in the Civil Merchandise Laws. After receiving her Masters of Arts in Law, she joined the Shiroyama Sogo Law Office, with a focus on practicing Chinese Laws. While working in Japan, Ms. Qiu has been actively involved in promoting the communications between the Chinese and Japanese legal societies, and has been voted as the Secretary General of the Chinese Friends of Legal Academy, which is consisted mostly of the Chinese attorneys and legal scholars. Ms. Qiu is a master in both Chinese and Japanese languages (especially the legal portion), and has been highly regarded by the Japanese legal society. In 1998 the Minister of Justice in Japan granted Ms. Qiu permission to practice Chinese laws in Japan. This is a special honor received by only six Chinese Nationals thus far.

Ms. Qiu's book introduces the Japanese attorney systems in a very systematical way, with details on its history and present. In addition to an overview, her book discusses important and practical topics. For example, it covers such a wide variety of topics as

❖ How to obtain a legal license in Japan

- ❖ How the Japanese attorneys are organized
- ❖ What are attorneys' rights, responsibilities and penalties
- ❖ How Japanese attorneys' advertisements and moonlighting activities are monitored
- ❖ How the Japanese governments regulate foreign attorneys.

As appendices, the book includes the Chinese translation of “Japanese Law of Attorneys” and “The Ethics of Japanese Attorney Professionals”.

“Japanese Attorneys System” – This is one of the best – written books recently on the introduction of a foreign attorney system. For individuals – both natural persons and juristic persons alike – as well as organizations, companies, and communities, this book will become a very important reference or a guide book for understanding the Japanese attorney systems, for promoting the communications between Japanese and Chinese legal societies, for employing and administering Japanese attorneys. It is highly recommended that every attorney, every businessman, and every legal scholar possess a copy.

The honor is mine to present this book to you.

**Ji – Sheng Ren**

## 目 录

致读者(代序) .....	任继圣(1)
第一篇 日本律师制度的沿革 .....	(1)
一、代言人时代 .....	(1)
二、第一部律师法时代 .....	(6)
三、第二部律师法时代 .....	(8)
四、现行律师法的诞生 .....	(10)
第二篇 日本律师资格的取得 .....	(12)
一、司法考试 .....	(12)
二、司法修习 .....	(16)
三、取得律师资格的特例及无资格者的规定 .....	(20)
第三篇 日本律师的管理制度 .....	(23)
一、律师协会 .....	(24)
二、日本律师联合会 .....	(25)
第四篇 日本律师的权利和义务 .....	(28)
一、有关设立律师事务所的权利和义务 .....	(28)
二、律师必须履行遵守“会则”的义务 .....	(31)
三、律师在执业过程中享有的权利和承担的义务 .....	.....
.....	(33)

<b>第五篇 日本律师的职业道德</b> .....	(44)
一、《律师职业道德》的产生 .....	(44)
二、《律师职业道德》的内容 .....	(47)
<b>第六篇 日本的国选辩护人制度</b> .....	(52)
一、国选辩护人制度概况 .....	(52)
二、国选辩护人制度在实际运作中存在的问题 .....	(54)
<b>第七篇 日本的企业内律师</b> .....	(61)
一、企业设置法务部的原因及其业务范围 .....	(61)
二、企业与企业法律顾问 .....	(65)
三、企业内律师的地位与作用 .....	(67)
<b>第八篇 日本的律师与企业监事</b> .....	(70)
一、日本律师担任企业外部监事的规定 .....	(70)
二、律师担任监事与企业法律顾问之间的区别 .....	(73)
<b>第九篇 日本律师协会的仲裁机构</b> .....	(77)
一、律师协会仲裁特色 .....	(77)
二、律师协会仲裁前景展望 .....	(84)
<b>第十篇 日本律师兼职及从事营业活动</b> .....	(87)
一、律师法对律师兼职的规定 .....	(87)
二、律师法对律师从事营利活动的规定 .....	(91)
<b>第十一篇 日本的律师业务广告</b> .....	(95)

一、律师业务广告的法律规定 .....	(95)
二、律师业务广告事项 .....	(97)
三、律师业务广告前景展望 .....	(101)

## 第十二篇 日本的法律援助制度..... (106)

一、日本法律援助制度演变 .....	(106)
二、法律援助协会的业务内容 .....	(107)
三、免费法律咨询 .....	(111)
四、法律援助协会的财政 .....	(112)
五、与美英等国家法律援助制度比较 .....	(113)

## 第十三篇 日本对妨碍律师业务的对策 ..... (115) |

一、律师业务妨碍对策委员会的任务 .....	(115)
二、律师受到业务妨碍时采用的对策 .....	(118)

## 第十四篇 日本的律师惩戒制度..... (124)

一、律师法规定的惩戒事由 .....	(125)
二、惩戒的种类 .....	(126)
三、惩戒的程序 .....	(128)
四、律师惩戒制度的特色 .....	(130)

## 第十五篇 日本律师赔偿责任保险 ..... (134) |

一、律师赔偿责任保险制度概况 .....	(134)
二、律师赔偿责任保险范围 .....	(136)
三、律师承担损害赔偿原因探析 .....	(139)

## 第十六篇 日本的律师收费制度..... (145)



一、律师收费种类及其收取方式 .....	(145)
二、律师收费的减免或增加 .....	(150)
<b>第十七篇 日本的外国法事务律师制度 .....</b>	<b>(152)</b>
一、外国法事务律师制度演变 .....	(152)
二、外国法事务律师制度展望 .....	(157)
<b>第十八篇 WTO 体制下日本律师业的变化 .....</b>	<b>(161)</b>
一、WTO 体制下日本律师业面临的问题 .....	(161)
二、巴黎研讨会上日本律师联合会的观点 .....	(167)
三、美英等国对日本律师业务提出的要求与日本律师 联合会的对策 .....	(172)
<b>第十九篇 合伙制律师事务所的经营 .....</b>	<b>(176)</b>
一、律师事务所经营的目的 .....	(176)
二、合伙制律师事务所经营资源的使用 .....	(177)
三、森综合律师事务所的变迁 .....	(198)
<b>附录: .....</b>	<b>(205)</b>
一、律师法 .....	(205)
二、律师职业道德 .....	(229)
三、司法修习生规则 .....	(240)
四、外国律师从事法律事务特别措施法 .....	(246)
<b>参考文献 .....</b>	<b>(273)</b>
<b>后记 .....</b>	<b>(277)</b>

# CONTENTS

TO THE READERS ..... JI - SHENG REN

## CHAPTER ONE: THE EVOLUTION OF JAPANESE ATTORNEY SYSTEM

1. The Era of Representatives
2. The First Attorneys' Law
3. The Second Attorneys' Law
4. The Modern Attorneys' Law

## CHAPTER TWO: QUALIFICATIONS

1. The Tests
2. Preparations
3. Rules Governing Special Cases and Uncertified Personnel

## CHAPTER THREE: THE ADMINISTRATION OF ATTORNEYS

1. Bar Associations
2. The Japan Federation of Bar Associations

## CHAPTER FOUR: PRIVILEGES AND OBLIGATIONS

1. Privileges and Responsibilities Relevant in Setting Up Law Offices

2. Attorneys Must Observe "Rules of Union"
3. Professional Privileges and Responsibilities of Attorneys

## **CHAPTER FIVE: PROFESSIONAL ETHICS**

1. The Birth of "Attorneys' Professional Ethics"
2. The Contents of "Attorneys' Professional Ethics"

## **CHAPTER SIX: COURT – APPOINTED LAWYERS**

1. An Overview of the Court – Appointed Lawyers
2. The Practical Issues Regarding Court – Appointed Lawyers

## **CHAPTER SEVEN: ENTERPRISE ATTORNEYS**

1. The Origin and Functions of Enterprise Attorneys
2. The Relationship Between Enterprises and Enterprise Attorneys
3. Positions and Roles Played by Enterprise Attorneys

## **CHAPTER EIGHT: LAWYERS AND INDEPENDENT COUNSELORS FOR JAPANESE ENTERPRISES**

1. Rules On Lawyers As Independent Counselors for Enterprises
2. Differences Between Independent Counselors and Legal Consultants

## **CHAPTER NINE: INSTITUTIONS FOR THE ARBITRATION IN BAR ASSOCIATIONS**

1. Characteristics of the Arbitration in Bar Associations
2. Outlooks for the Arbitration in Bar Associations

## **CHAPTER TEN: MOONLIGHTING BY JAPANESE ATTOR-**