

Executing Contracts in Japan

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- I. Seals and Signatures
- II. Japan's Stamp Tax
- III. Notarizing Contracts
- IV. Conclusion

On March 31, 2015, Japan's Cabinet Legislation Bureau submitted to the Diet for approval major revisions to the Law of Obligations portion of the Civil Code.¹ One revision is a new article stating that contracts may, absent special legislation otherwise, be concluded without any writing or any formal requirements for executing the contract.²

Executing a contract in Japan, however, routinely involves steps that are foreign to law practitioners trained or working in other jurisdictions. The first is affixing a personal or company seal to the contract in order to execute it. The second is payment of a stamp tax when executing certain contracts. The third, albeit less-common step, involves use of a Japanese notary. This short article will address each in turn.

I. SEALS AND SIGNATURES

Japan has a long history of using seals in lieu of signatures to conduct both private transactions and business with the government. Some of the early Meiji reforms dealt with the issue. In 1871, the new Meiji government promulgated an order establishing a system for individuals and companies to register imprints of their seals with the government.³ In 1878, authority for registering seals was transferred to local governments,⁴

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1 See NAIKAKU HŌSEI-KYOKU [Cabinet Legislation Bureau], *Teishutsu riyū* [Explanation of Submission], http://www.clb.go.jp/contents/diet_189/reason/189_law_063.html; HŌMU-SHŌ [Ministry of Justice], *Minpō no ichibu kaisei suru hōritsu-an* [Draft Law Revising a Portion of the Civil Code], http://www.moj.go.jp/MINJI/minji07_00175.html.

2 Draft Law Revising a Portion of the Civil Code, *supra* note 1, at art. 522.

3 See, e.g., ODAWARA-SHI [Odawara City], *Inkan tōroku to wa* [Understanding Seal Registration], <http://www.city.odawara.kanagawa.jp/field/resident/impression/inkan.html>, citing *Meiji 4 nen Daijō-kan fukoku no. 456* [Edict no. 456/1871 of the Grand Council of the State],

and, in 1900, Japan passed a law specifically to allow foreigners to sign documents where the use of a seal was otherwise required.⁵

With larger foreign populations living in Japan and increased Japanese experience conducting business abroad, the use of signatures in Japan has gained acceptance. Current law recognizes both signatures and the use of a seal as valid forms of evidencing the party's intent.⁶ However, use of a seal in lieu of or in conjunction with a signature remains common practice. "Hanko", the common term used for seals, are used for everything from registering receipt of a package, to registering a marriage, to executing a contract.⁷

The seals, more formally referred to as *inkan* or *inshō*, come in a variety of shapes and sizes and their usage varies. Both individuals and companies will often have and use at least three different seals: (1) a registered seal (*jitsu'in*) for "important" documents and transactions; (2) a common seal (*mitome'in* or *sanmon-ban*) for "regular" transactions; and (3) a bank seal (*ginkō'in*) for bank transactions.⁸

Individuals and companies typically purchase a seal for registration that has an individual's surname or the name of the company hand-carved onto it. Individuals register their personal seals with the local government office; legal entities register theirs with the local Ministry of Justice office.⁹ Local ordinances prescribe the size of the seal and registration process for individuals; Ministry of Justice regulations do the same for company seals.¹⁰ Following registration, the users receive a Seal Registration Document

Shohin baibai torihiki kokoroe-kata sadafume-gaki [Book on the Way to Understanding Sale of Goods Transactions].

- 4 *Id.* Citing *Meiji 11 nen Daijō-kan fukoku no. 32 Fuken kanshoku-sei kaitei* [Edict no. 32/1878 of the Grand Council of the State, Revision of the Prefectural Government Service System].
- 5 *Gaikoku-jin no shomei natsu'in oyobi mu-shiryoku shōmei ni kansuru hōritsu* [Law Concerning Foreign Signatures, Seals, and Proof of Insolvency], Law No. 50/1900, art. 1, <http://law.e-gov.go.jp/htmldata/M32/M32HO050.html>.
- 6 "A private document, if it is signed or sealed by the principal or his agent, shall be presumed to be authentically created." *Minji soshō-hō* [Code of Civil Procedure], Law No. 109/1996, art. 228(4), <http://www.japaneselawtranslation.go.jp>.
- 7 N. DAIMON, *Sugu ni yakudatsu keiyaku-sho, inkan, ryōshū-sho, tegata, kogitte no hōritsu chishiki* [Useful Legal Knowledge for Contracts, Seals, Receipts, Promissory Notes, and Checks] (Sanshū-sha, Tōkyō 2008) 36.
- 8 *Id.* at 42–43.
- 9 See, e.g., TŌKYŌ HŌMU-KYŌKU [Ministry of Justice, Tōkyō Branch], *Shōgyō, hōjin tōki ni kansuru yoku aru shitsumon* [Commonly Asked Questions regarding the Registration of Businesses and Legal Entities], <http://houmukyoku.moj.go.jp/tokyo/static/kaisyahou-qanda.html>; KŌBE-SHI [Kobe City], *Inkan tōroku* [Seal Registration], http://www.city.kobe.lg.jp/life/registration/inkan/01_toroku.
- 10 See, e.g., KŌBE-SHI [Kobe City], *Inkan jōrei* [Seal Municipal Regulation], Municipal Regulation No. 52/1972, art. 4, http://www.city.kobe.lg.jp/information/data/regulations/rule/reiki/reiki_honbun/k302RG00000197.html; *Shōgyō tōki kisoku* [Commercial Business Registra-

(*inkan tōroku-shō*) and, thereafter, may request the local government office issue a Proof of Seal Registration (*inkan tōroku shōmei-sho*) confirming registration of the seal, the owner's name, address, and an imprint of the seal.¹¹

Use of a registered seal, or its Proof of Seal Registration is required by law for some transactions, e.g. to register a car or real property, or to execute a notarized will.¹² More commonly, use of a registered seal is required in practice when executing "significant" contracts, i.e. contracts involving a large sum of money or the modification of legal rights.¹³ Some parties will demand or expect use of a registered seal. Some parties, and some government filings, will require a party to attach to the contract, or filing, a Proof of Seal Registration issued within the past three or six months. The intent in each case is to confirm the intent of the parties by requiring use of government-registered seals and, at the same time, minimize the risk of fraud.¹⁴

Any seal that is not registered is classified as a common seal, or *mitome'in*. Common seals will also show the name of the individual or company, but they are often mass produced and, hence, more easily duplicated. Apart from those few instances where required by law, the choice of whether to use a common seal or a registered seal in a transaction is left to the discretion or demands of the parties. Statutory law does not afford greater evidentiary weight to the use of a registered seal, but practice does.¹⁵ People think a registered seal carries greater weight. Its use suggests that the transaction is a more serious undertaking and the parties' intent to be bound is confirmed and evidenced by their use of a registered seal.

The bank seal (*ginkō-in* or *todokede-in*) is a seal that has been registered with the bank at which the individual or company does business. Assuming the account has not been opened with a signature, banks will require a bank-registered seal to change ad-

tion Rules], Ministry of Justice Regulation No. 23/1964, <http://law.e-gov.go.jp/htmldata/S39/S39F03201000023.html>.

- 11 See, e.g., SHINAGAWA-KU [Shinagawa City], *Inkan tōroku shōmei-sho no seikyū no hōhō* [How to Request a Proof of Seal Registration], <http://www.city.shinagawa.tokyo.jp/hp/page000001500/hpg000001424.htm>.
- 12 See, e.g., NIHON KOSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Igon* [Wills], <http://www.koshonin.gr.jp/index2.html>; MAIZURU-SHI [Maizuru City], *Inkan tōroku ni tsuite* [About Seal Registration], http://www.city.maizuru.kyoto.jp/modules/shiminp/index.php?content_id=76.
- 13 See, e.g., *Dattai mōshi'ide-sho* [Application to Withdraw (from a lawsuit)], http://www.courts.go.jp/kyoto/vcms_lf/30305009.pdf; CHŪSHŌ KIGYŌ TAISHOKU-KIN KYŌSAI JIGYŌ HONBU [Headquarters for the Small and Medium-Sized Business Mutual Aid Pension Fund], *Taishoku-kin seikyū tetsuzuki no nagare (jūgyō-in)* [Procedure for Requesting Retirement Payout (for employees)], http://chutaikyo.taisyokukin.go.jp/tetuduki/tetuduki04_2.html (Requiring use of the registered seal and proof of seal registration only if the payout is over 300,000 Yen).
- 14 See DAIMON, *supra* note 7, at 42.
- 15 Japan's Code of Civil Procedure makes no distinction between the types of seal affixed to the document. See Code of Civil Procedure, *supra* note 6, at art. 228(4).

dress, execute promissory notes, tender checks, and conduct other business with the bank. For business entities, the bank seal is often smaller in size than its registered seal in order to distinguish between the two.¹⁶

A business entity will register and use as its official seal the seal of its representative director. Also called a *maru'in* because of its round shape, the representative director's seal commonly consists of two concentric circles with the name of the company identified on the outer ring of the seal and the inner circle identifying it as the seal of the representative director.¹⁷ Larger companies will use additional seals: seals for corporate officers (*yakushoku-in*), department heads (*buchō-in*), and branch managers (*shitenchō-in*) and the like for those with a grant of authority to bind the company.¹⁸

The signature block of a contract in Japan may take different forms. It may include only signature lines (*jisho*). It may include a signature line and space for affixing a personal or company seal (*shomei-ō'in*). Or it may consist of the printed names of the parties, with space for affixing a personal or company seal (*kimei-ō'in*). Each is legally valid, though some practitioners suggest that use of a printed name plus seal is more common because, in the event of a dispute, a party's use of a seal is in fact accorded greater evidentiary weight.¹⁹ Its use is deemed stronger proof of the party's intent to be bound.

Apart from use of the seal on the signature block of the contract, the parties' seals are often used in preparing the contract for execution. Contracts may be printed and stapled together or bound. If the contract is bound, the individual pages are fixed with an adhesive along the left-hand margin, and the parties' seals are then affixed to the intersection between each pair of pages in the booklet (*kei'in*). The intent is to prevent, after execution, substitution of any pages to the original contract. Similarly, where the contract is executed with multiple originals, the original copies are laid on top of each other so that a small portion of the top, front page of each contract is showing, and the parties' respective seals are affixed to the intersection so that a portion of each seal is visible on each copy of the contract (*wari'in*). If contested, the originals can then be confirmed by lining up the seal imprints. Finally, seals are also used to denote acceptance of handwritten changes made to the printed contract (*teisei-in*). If language in a contract is crossed-out or modified, the parties will affix their seals to that portion of the contract as opposed to initialing any of the changes.²⁰

16 DAIMON, *supra* note 7, at 48.

17 *Id.* at 48–49.

18 *Id.* at 49.

19 *Id.* at 40–41.

20 *Id.* at 55.

II. JAPAN'S STAMP TAX

The act of executing a contract, in and of itself, can have tax ramifications. Japan's Stamp Tax Act (*Inshi-zei hō*) was originally enacted in 1873 and revised, most recently, in 2014.²¹ It currently enumerates twenty categories of documents, including a number of types of contracts that when executed must have affixed to them a stamp denoting payment, as tax, of a designated sum of money.²² The original act is reported to have been enacted to provide a stable financial base for the new Meiji government as it transitioned the country from an agrarian to a commerce-based economy.²³ In 2011, the act is reported to have generated 1.1 trillion Yen in taxes.²⁴

The stamp (similar to a postage stamp) can be purchased at post offices and some convenience stores. The amount of the tax, i.e. the required stamp value, depends on the type of document being executed and, in some cases, the value of the goods or services described.²⁵ For example, Category One documents include contracts transferring real estate title or intellectual property rights; contracts leasing land; and the loaning of fungible goods, including money.²⁶ The stamp tax for these contracts currently ranges from 200 Yen for a contract with a face value of less than 100,000 Yen, to 600,000 Yen for a contract with a value exceeding 5 billion Yen.²⁷ Category Two documents, contracts for the provision of services by independent contractors, follow a similar schedule.²⁸ In contrast, the act assigns flat fees to things like certificates of deposit, bank deposit registers, and consumer loan registers of 200 Yen.²⁹ Umbrella agreements providing for the provision of goods or services extending beyond three months are subject to a flat tax of

21 *Inshi-zei hō* [Stamp Tax Act], Law No. 54/1873 as revised by Law No. 83/2014, <http://law.e-gov.go.jp/>.

22 *Id.* at arts. 2 & 3.

23 See MINISTRY OF ECONOMY, TRADE AND INDUSTRY (METI), *Inshi-zei no arikata no kentō* [A Study of the Current State of the Stamp Tax] (2014), http://www.mof.go.jp/tax_policy/tax_reform/outline/fy2014/request/medi/26y_medi_k_14.pdf; *Inshi-zei, shūnyū inshi* [Stamp Tax and Revenue Stamps], *Inshi-zei no kihon* [The Basics of the Stamp Tax], <http://www.inshi.biz/kihon/rekisi.html>.

24 KEI'EI HAKKA [Management Hacker], *Sekai to nihon, inshi-zei no rekishte, go-zonji desu ka* [Are You Familiar with the History of the Stamp Tax in Japan and Abroad?], <http://keiei.freee.co.jp/2014/09/19/inshi/>.

25 Stamp Tax Act, *supra* note 21, at Appendix Chart 1.

26 *Id.*

27 *Id.*; see also KOKU-ZEICHŌ [National Tax Agency], *Inshi-zei no tebiki* [A Guide to the Stamp Tax] (Sept. 2014), at 31, <https://www.nta.go.jp/shiraberu/ippanjoho/pamph/inshi/tebiki/pdf/2609inshitebiki.pdf>.

28 Stamp Tax Act, *supra* note 21, at arts. 2–5, 7, 11, 12 and Appendix Chart 1.

29 *Id.*

4,000 Yen.³⁰ Articles of Incorporation for a corporation, a limited or unlimited partnership are subject to a flat tax of 40,000 Yen.³¹

The tax is imposed on the drafter preparing the taxable document,³² and separate stamps are required for each official copy.³³ As a result, a contract executed with multiple originals in order for each party to possess an original, signed document (a common practice in Japan) will require payment of a separate stamp tax for each.³⁴ As an alternative to purchasing stamps, the preparer may pay the local tax office directly and receive an imprint on the document, or, with advance approval of the tax office, pay tax in the aggregate on the documents prepared during the course of the year as part of filing regular tax returns.³⁵

Failure to purchase and affix the stamp to the contract will not invalidate the contract, but it will result in the National Tax Agency (NTA) assessing a penalty of two times the amount of stamp tax originally due, plus collection of the original tax.³⁶ The penalty is reduced to ten percent if the preparer of the document petitions the NTA regarding the oversight and the NTA determines the failure to pay the tax was unintentional.³⁷

III. NOTARIZING CONTRACTS

Notarizing a contract in Japan changes it. Notarization gives it greater evidentiary weight and may allow for summary enforcement of a debt.³⁸

Japan's notary system was established in 1886, based on the French model but with additional influence from Dutch law.³⁹ Notaries in Japan are public servants appointed by the Ministry of Justice. They are limited in number: there are approximately 500

30 NATIONAL TAX AGENCY, *supra* note 27, at 32.

31 *Id.* Additional categories of documents subject to the Stamp Tax are described, in English, in the Ministry of Finance's Comprehensive Handbook of Japanese Taxes (2010), http://www.mof.go.jp/english/tax_policy/publication/taxes2010e/index.htm.

32 NATIONAL TAX AGENCY, *supra* note 27, at 32.

33 *Id.* at 11.

34 *Id.*

35 *Id.*

36 NATIONAL TAX AGENCY, *supra* note 27, at 15.

37 *Id.*

38 M. K. YOUNG/C. HAMILTON, The Legal Profession, in: M. Matsushita (ed.), Japan Business Law Guide, ch. 7, para. 7-900 (CCH Australia Ltd., Sydney 1988). Basic information in English regarding notarizing contracts can also be found at the NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], How to Make Good Use of Japan's Notaries, <http://www.koshonin.gr.jp/pdf/en.pdf>.

39 NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Kōshō-nin [...] toraburu wo mizen ni fusegu tame ni [...] [Notaries [...] Preventing Trouble Before It Happens [...]]*, <http://www.koshonin.gr.jp/tmp/pdf/kousyou1.pdf>.

nationwide, and they are typically retired judges or prosecutors or, in a few cases, retired attorneys.⁴⁰

In order for a notary to notarize a contract, all parties to the contract, or their agents, must appear in person before the notary, provide proof of person with their registered seal and Proof of Seal Registration, and request that the document be notarized. The document is authenticated when notarized. Thereafter the notarized date (officially-attested date) is conclusively recognized as the date of execution for the purposes of establishing when rights and obligations incidental to the execution of the contract arise. Following amendments in 2000 to the Notary Law, “e-Notarization” of certain documents is possible.⁴¹ Parties may authenticate electronic documents including contracts and articles of incorporation by completing the documents, along with the required electronic signatures and submitting an on-line request to the Japan National Notaries Association’s e-Notarisation Centre.⁴² However, completion of the process still requires the party or their agent to appear before a local notary to attest to the document. The local notary then attaches a digital certificate to it, saves it to some storage media, and provides that to the requesting party.⁴³

Where the contract requires the payment of money, e.g. a promissory note or a settlement and release, and the obligor agrees to compulsory execution, the notary will prepare an Acceptance of Execution (*shikkō judaku bunsho* or *shikkō nindaku yakkan*). The document is then, in the event of breach, treated similarly to a court judgment. It creates an established debt (*saimu meigi*) and allows the creditor to place a lien on the debtor’s bank account or otherwise seek compulsory payment of the debt without first obtaining a judgment in court.⁴⁴

Most contracts are notarized at the election of the parties. However, certain documents must be notarized in order to be legally enforceable. They include articles of incorporation; contracts for the lease of land for more than fifty years; the lease of a com-

40 T. SUGAWARA, *Nihon no Kōshō-nin seido* [Japan’s Notary System] (1 Sept. 2010), <http://www.e-hoki.com/column/jpn/112.html>.

41 NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Denshi Kōshō-nin seido no go-annai* [A Guide to the Electronic Notarization System], <http://www.koshonin.gr.jp/index2.html>.

42 For a discussion of electronic signatures see HŌMU-SHŌ [Ministry of Justice], *Denshi Shōmei-hō no gaiyō ni tsuite* [An Overview of the Electronic Signatures Act], <http://www.moj.go.jp/MINJI/minji32-1.html>.

43 *Id.*

44 See KANTEI ADR KENTŌ-KAI [Cabinet Office ADR Study Group], *Setsumei shiryō (shikkō-ryoku no fuyo)* [Explanatory Materials (Granting the Power to Execute)] No. 5-4, <http://www.kantei.go.jp/jp/sihouseido/kentoukai/adr/dai5/5siryō4.pdf>; NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Kōsei shōsho to wa* [What are Notarized Documents?], <http://www.koshonin.gr.jp/a3.html>.

mercial building for more than thirty years but less than fifty years without the right of renewal; and contracts voluntarily establishing a legal guardianship.⁴⁵

Consulting a notary is generally free, but the notarization is not. Fees are fixed by law and vary depending on the document to be notarized. The fees for notarizing a contract are generally assessed based on the value of the contract: with fees ranging from 5,000 Yen for a contract valued at 1 million Yen or less, to 43,000 Yen for contracts ranging from 50 million Yen to 100 million Yen, and separate fees schedules for contracts of greater value.⁴⁶ Fixed fees are established for other types of documents, e.g. 11,000 Yen for a contract establishing a legal guardian, and for incidental charges such as providing notarized copies.⁴⁷ Once notarized, the notary maintains the original copy of the document for a period of years depending on the type of document, e.g. seven years for documents of authentication or certification, ten years from the end of a contract period or execution of a legal right, and twenty years for articles of incorporation and trust documents.⁴⁸

IV. CONCLUSION

While the Civil Code requires no more than a valid declaration of will or intent by the contracting parties,⁴⁹ practice and a variety of rules often require more. Common practice requires the use of a variety of personal and corporate seals. Japanese law routinely requires payment of a stamp tax, and, periodically, notarization of the contract. As with much of life and the law in Japan, form matters and will continue to matter even after the adoption of Japan's revised Civil Code.

SUMMARY

Executing a contract in Japan commonly involves a step or steps that are foreign to those working in other jurisdictions. The first is affixing a personal or company seal to the contract in order to execute it. The second is payment of a stamp tax for certain contracts. A

45 See *Kaisha-hō* [Company Act], Law No. 86/2005, art. 30(1), <http://law.e-gov.go.jp/>; *Shakuchi shakuya-hō* [Land and Building Lease Act], Law No. 90/1991, arts. 22 and 23, <http://law.e-gov.go.jp/>; *Nin'i kōken keiyaku ni kansuru hōritsu* [Voluntary Legal Guardianship Act], Law No. 150/1999, art. 9, <http://law.e-gov.go.jp/htmldata/H11/H11HO150.html>; NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Kōshō Jimu Q & A* [Notarization Matters Q & A], <http://www.koshonin.gr.jp/index2.html>.

46 NIHON KŌSHŌ-NIN RENGŌ-KAI [Japan National Notaries Association], *Tesū-ryō* [Fee Schedule], <http://www.koshonin.gr.jp/index2.html>.

47 *Id.*

48 *Kōshō-nin-hō shikō kisoku* [Notary Act Enforcement Regulations] Ministry of Justice Regulation No. 7/2007, art. 27, <http://law.e-gov.go.jp/htmldata/S24/S24F00401000009.html>.

49 T. UCHIDA, *Minpō I* [Civil Code I] (Tōkyō Daigaku Shuppan-kai, Tōkyō 1996) 32–33.

third, less-common step involves the use of a Japanese notary. Those who work in Japan inevitably see the first two and, when notarization is required, are often shocked by the cost of the third. Yet there is little explanation of the practices and requirements for each in Western scholarship. This short article is intended to fill that void.

ZUSAMMENFASSUNG

Der Abschluss eines Vertrags in Japan ist durch einige Besonderheiten gekennzeichnet, die Personen, die aus anderen Rechtssystemen kommen, fremd erscheinen. Die erste Besonderheit besteht darin, den Vertrag mit einem Siegel zu versehen, um den Vertragsabschluss herbeizuführen; dies geschieht sowohl bei Einzelpersonen als auch bei Gesellschaften. Die zweite ist die Zahlung einer Stempelsteuer auf bestimmte Verträge. Eine dritte Besonderheit zeigt sich, wenn ein Notar einzubinden ist. Wer in Japan arbeitet, ist mit den ersten beiden Elementen vertraut, erlebt aber, wenn die Mitwirkung eines Notars erforderlich ist, oftmals einen Schock hinsichtlich der Kosten, die dies verursacht. In der westlichen Literatur finden sich nur wenige Erläuterungen zu diesen Eigenheiten des Vertragsschlusses. Der Beitrag soll diese Lücke schließen.

(Die Redaktion)

