



For more information, please contact:

Sidley Austin Nishikawa
Foreign Law Joint Enterprise
Marunouchi Building 23F
4-1, Marunouchi 2-chome
Chiyoda-Ku, Tokyo 100-6323
Japan

T: 81.3.3218.5900
F: 81.3.3218.5922

Tomoo Nishikawa - Partner
(Dai-ni Tokyo Bar Association)
Tel: 81.3.3218.5011
E-mail: tnishikawa@sidley.com

Wansik Lee - Counsel
(Dai-ichi Tokyo Bar Association)
Tel: 81.3.3218.5013
E-mail: wslee@sidley.com

To receive future copies of Japan Update via email, please send your name, company or firm name and email address to Kimi Ebinuma at kebinuma@sidley.com

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The Lay Judge System in Japan

The Commencement of the Lay Judge System

The Lay Judge (or *Saiban-in* in Japanese) System (the “System”), where ordinary citizens sit on the bench with professional judges in certain criminal cases, began in Japan on March 21, 2009. The first trial under the System took place August 3-6, 2009 in the Tokyo District Court, and several cases have followed.

In principle, under the System, six lay judges chosen from ordinary citizens, together with three professional judges, determine the defendant’s guilt and, if applicable, his or her sentence. Decisions are made by a majority vote and support of at least one professional judge is required for a guilty ruling. The System only applies to the district court trial of certain felony crimes, such as murder, robbery resulting in death, and arson of an inhabited structure, which could be subject to a sentence of life in prison or death.

The adoption of the System is a part of Japan’s wide-ranging judicial reform, which aims to familiarize the general public with criminal court proceedings and to enhance its belief in the judicial system in Japan.

Selection of Lay Judges and Trial

A candidate group of about 300,000 is chosen annually by lot from those registered to vote in the Lower House election. The court surveys those selected as to whether they are disqualified or in an exempted occupation (such as lawyer, police officer, etc.), or have other reasonable grounds for refusal (such as being 70 or older). Disqualified or exempted individuals will not be called to court for a year.

After the filing of a specific case and approximately six weeks before the trial, the court selects, by lot, about 50 candidates for the case and calls them to court. Summonses are served with a questionnaire asking the candidates again whether they should be disqualified or exempted, and the summonses are cancelled as appropriate.

On the date of the final selection of lay judges, the presiding judge interviews each candidate to see if the candidate should be disqualified or exempted, if the candidate has any reasonable ground for refusal, and if there is reason to believe the candidate might render an unfair judgment. Further, the prosecutors and defense attorneys are each entitled to exclude up to four lay judge candidates for any reason.

After the foregoing procedures, six lay judges, in principle, are chosen by lot. Generally, the selection procedures take place in the morning and the trial starts in the afternoon of the same day.

To lighten the burden of the lay judges, the trial is scheduled to take place in consecutive days, concluding in three or four days. To expedite the trial, professional judges, prosecutors and defense attorneys conduct pre-trial discussions between the indictment and the trial to plan for court hearings and to narrow down the issues.

During the course of the trial, lay judges hear the arguments of the prosecutors and defense attorneys as well as testimonies of witnesses, evaluate evidence and conduct discussions with the professional judges to decide the guilt or innocence of the defendant and the sentence, if applicable. The lay judges are required not to disclose the substance of the deliberations, and such disclosure can be subject to criminal penalty.

What Is Unique about the Lay Judge System

When the System is compared to the U.S. jury system, there are several major differences:

- The System applies only to certain felony crimes and does not apply to civil cases.

- The System's purpose is not the promotion of the defendant's rights but the promotion of the public's participation in the judicial system. Therefore, the defendant cannot waive or reject the use of lay judges.
- Even if the defendant pleads guilty, the System will still be used.
- The deliberations are conducted among lay judges and professional judges, unlike the U.S. jury system where deliberations are only conducted by the juries, without the judges.
- The decisions are made by a majority rather than a unanimous vote.
- The lay judges also participate in deliberations with professional judges to make decisions on the sentence.

Although the System began in August 2009, it is still controversial in Japan. Under the statute, it will be reviewed in three years.