

**Written evidence submitted by the Law Society of England and Wales to International Trade Select Committee inquiry on UK trade negotiations: Agreement with Japan**

**Key points:**

- a. Ahead of the trade negotiations with Japan, the Law Society of England & Wales called for the following rights, consistent with those currently afforded to Japanese lawyers in England and Wales.
  - i. reciprocal recognition of legal qualifications, specifically for the purpose of registration as a foreign lawyer;
  - ii. a streamlined registration process for foreign lawyers; and
  - iii. mutual acceptance of a wider variety of business structures through which lawyers can operate, particularly the UK limited liability partnership (LLP).
- b. It is recognised that both the timeframes surrounding the discussions and the practicality of addressing these within the text of the agreement prevented these issues being addressed in great detail in the CEPA.
- c. However, the CEPA's domestic regulation sub-section may provide an avenue to lessen remaining barriers if complemented with further cooperative discussions to raise awareness of the practicalities of doing international business and encourage the application of these principles in practice. Further opportunities may also be available for the legal profession through provisions in the E-Commerce section.
- d. Looking forward, open dialogue between the Law Society of England and Wales, the UK Government and Japanese counterparts is crucial to ensuring that both professions benefit from the opportunities under this agreement. **This should include exploring whether recognition of solicitor traineeships can be considered valid experience for the purposes of registration as a foreign lawyer; firm-wide registration, and; a mutual acceptance of a wider variety of business structures.**

1. The Law Society of England and Wales (LSEW) is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.
2. Services, and in particular legal services, play an important role in facilitating the globalised market, both directly and indirectly. Nearly all international commercial transactions require the services of lawyers from two or more jurisdictions and this can be done most effectively where foreign and domestic firms can work together.
3. The LSEW believes that it is vital for our trade negotiators to put legal and other professional services at the forefront of forthcoming trade discussions due to the economic importance of the sector, both in its own right and in its role as a facilitator of all international business transactions. In future, the UK should ensure that it is negotiating on its areas of strength and so secure ambitious deals for its leading sectors, even if this lessens chances of securing a future agreement quickly.

4. For service sectors, trade agreements can be limited in what they achieve in practice as dealing with domestic regulations is not as simple as seeking to lower tariffs on goods. While this may have prevented detailed consideration of legal services in the CEPA, the LSEW sees this as an opportunity to continue the discussion with its counterparts in Japan and the UK Government to further address the remaining barriers to practice in Japan.
5. Not all future trade negotiations will be subject to the same time pressures, and therefore in future trade negotiations the UK Government should seek the ability for UK legal professionals to do the following:
  - a. Advise clients on home-country laws and public and private international law to the extent that they are entitled to practise in their home jurisdiction;
  - b. Provide advice through commercial presence for firms, temporary practice (fly-in fly-out), establishment rights for individuals, as well as digital provision;
  - c. Have a clear, transparent and proportionate path to requalification into the host state profession;
  - d. Represent their clients in arbitration, conciliation and mediation in international proceedings; and
  - e. Partner with, employ and be employed by local lawyers.
6. Further, the LSEW supports the UK Government's intention to seek accession to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), considered by many as a next step to the CEPA.
7. However, it also notes that the CEPA falls short of CPTPP provisions in a number of areas (such as individual chapters on investment and e-commerce) and encourages harmonisation in the UK's approach to these areas.

#### **Current level of market access**

8. While Japan is relatively open for foreign legal services, remaining procedural issues make it difficult for firms and lawyers wishing to enter the market. These increase costs for clients in Japan; limit international opportunities for local lawyers; and prevent international talent from contributing to the domestic market.
9. The difficulties, in order of priority, are:
  - a. experience requirements and procedural burdens for registration as a foreign lawyer;
  - b. limited availability of permitted law firm structures;
  - c. the requirement to be resident in Japan for 180 days of the year.
10. These points are discussed in detail in our previous submission.<sup>1</sup>

#### **Developments under the CEPA**

11. The CEPA replicates provisions from the existing EU-Japan Economic Partnership Agreement (EPA) that are relevant to legal practice. It also maintains mechanisms to review and monitor the agreement and provide recommendations.

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<sup>1</sup> See written evidence submitted by the Law Society of England and Wales to the International Trade Select Committee inquiry on EU International Agreements Sub-Committee inquiry on UK trade negotiations <https://committees.parliament.uk/writtenevidence/8646/pdf/>

### *Domestic regulation*

12. A number of the barriers identified above (para [9]) are administrative or ‘behind the border’ barriers that are difficult to address in FTAs. The extent that an FTA will impact on private market activities in this respect is ultimately dependent on its interaction with government regulation. Domestic regulation chapters have the potential to benefit the legal services profession where they are implemented into local law.
13. New commitments in the CEPA to publicise details regarding the applications for licensing such as fees and timeframes as well as limiting the number of competent authorities that need to be approached may positively impact on the current licensing requirements for registered foreign lawyers in Japan (*gaiben*). Similarly, accepting electronic means for applications wherever possible may facilitate smoother processes for foreign lawyers.
14. The LSEW also supports provisions that encourage competent authorities in Japan to give due consideration to the relevant professional experience of an applicant, where the competent authority considers such experience to be indicative of the level of competence or experience of the applicant. These provisions are consistent with changes to the Foreign Lawyers Act that decrease required overseas experience.

### *Electronic Commerce*

15. The LSEW supports technological development and innovation that improves the way legal services are being delivered.<sup>2</sup> The global market for lawtech is growing rapidly and is valued at \$15.9bn. The adoption of new technologies could increase productivity growth in the legal sector from 1.3% per year to 2.7% per year.
16. The CEPA goes beyond the EPA in a number of digital provisions. These include:
  - a. Greater detail in definitions;
  - b. Clarity around disclosure of source codes and cryptology;
  - c. Confirming the validity of e-contracts and e-signatures;
  - d. Principles on access to and use of the internet;
  - e. Greater consumer protection/data protection provisions;
  - f. Clarity on use of government data; and
  - g. Greater prescription on cross border transfer, including a ban on unjustified data localisation.
17. Provisions which provide greater clarity and certainty for businesses operating internationally in the digital sector are a welcome development. In particular, measures on intellectual property as well as usage rights and restrictions on source codes would benefit the Lawtech sector.
18. At the same time, lawyers and law firms operating internationally are required to deal with a regulatory patchwork contained in domestic laws, bilateral and regional free trade / investment agreements, and multilateral rules. These lead to higher compliance costs but not necessarily greater certainty for businesses. Development of widely accepted rules in

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<sup>2</sup> More detail available on our report “Lawtech: a comparative analysis of legal technology in the UK and in other jurisdictions (2019): <https://www.lawsociety.org.uk/topics/research/lawtech-comparative-analysis-of-legal-technology>

these areas, such as those contained in the CPTPP, may provide a greater benefit and harmonisation.

19. Where provisions on cross-border data flows, data localisation, and personal data protection are proposed, the LSEW further submits that consideration must always be given to the legal principles of legal professional privilege and client confidentiality.

#### **Suggested further innovation**

20. The LSEW believes that all trade agreements should be complemented with market access discussions. Trade negotiations may provide a catalyst for change outside of the text of a free trade agreement, particularly if both governments give impetus to relevant authorities to progress them.
21. The CEPA and its surrounding discussions provide an opportunity for further open dialogue between LSEW, the UK Government and Japanese counterparts to benefit both legal professions and raise awareness of the practicalities of doing international business.

#### *Reciprocal recognition of legal qualifications*

22. In England and Wales there is no requirement for foreign lawyers to register or be approved if they are only practising the law of their home jurisdiction, except where they are entering into partnership with solicitor or solicitors of England and Wales. Japanese lawyers can dual qualify as English solicitors through the Qualified Lawyers Transfer Scheme.
23. To qualify in England and Wales, solicitors will have gone through at least two years of legal education, followed by two years of practical training. This is comparable to the Japanese system where *bengoshi* with a non-law degree will have gone through a two-year or three-year legal course followed by one year of vocational training at a national training institute.

#### *Firm level registration*

24. The current regime in Japan requires foreign lawyers to register on an individual basis, imposing a significant administrative burden and cost for both individuals and their firms. Streamlining this process is an important objective for foreign lawyers in Japan.
25. Several regulatory burdens could be reduced if registration as a foreign lawyer could be administered at a firm level, rather than individual level. This could, for example, permit registration on a bi-annual basis and introduce a more streamlined process for approving individuals.

#### *Mutual acceptance of business structures*

26. The LLP structure has become a common and preferred business structure in many countries. These structures combine the benefits of limited liability with the flexibility of partnerships and are widely regarded as supporting growth and investment. Permitting these structures would greatly increase the attractiveness of doing legal business in Japan and would equally benefit *bengoshi*.

For further information please contact:

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