



AS ONE OF THE REQUIREMENTS FOR THE STATUS OF A LAWYER

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<https://doi.org/10.5281/zenodo.11526732>

ARTICLE INFO

Qabul qilindi: 01-June 2024 yil

Ma'qullandi: 04- June 2024 yil

Nashr qilindi: 08- June 2024 yil

KEYWORDS

lawyer qualification, citizenship requirements, global legal services

ABSTRACT

This article comprehensively analyzes the citizenship requirements for lawyers in China, Uzbekistan, and other countries, and explores the question of whether lawyers need to be citizens of their own country by comparing the practical experience of various countries.

In today's society, most countries have developed into civil societies. Citizenship is not only a legal concept, but also a political, social and cultural concept, which involves the relationship between individuals and the state, the distribution of rights and obligations, and the opportunity to participate in political and social activities.

In the view of some countries, citizenship not only means an individual's legal status, but also means an individual's responsibility and participation in society and the country.

In most countries, lawyers are usually required to have citizenship of that country. This is because lawyers will be involved in various aspects of the country's laws and judicial system during their practice. Holding citizenship can ensure that lawyers have a deep understanding of the country's laws and legal system and are better able to provide legal services to the citizens of their country. In addition, citizenship may also involve security and confidentiality considerations, as lawyers may be exposed to some sensitive information and cases.

However, in some countries, non-citizens are allowed to become lawyers, but they are usually required to meet certain conditions and qualifications. For example, they may need to hold permanent residency or a work visa and pass the national bar exam.

This article will explore whether lawyers need to have domestic citizenship based on the experiences of China, Uzbekistan and other countries.

Uzbekistan's Law on Defense stipulates that if you want to become an Uzbek defense lawyer, you need citizenship.

In China, although there is no clear provision in the Lawyers Law that defense counsel must be lawyers, the Implementation Measures for the National Unified Legal Profession Qualification Examination stipulates that one must be a citizen of the People's Republic of China, uphold the Constitution of the People's Republic of China, and have the right to vote and be elected in order to be eligible to take the National Unified Legal Profession Qualification Examination. The prerequisite for obtaining the qualification to practice Chinese

lawyers is to pass the National Unified Legal Profession Qualification Examination. Therefore, like Uzbekistan, citizenship is required to obtain the status of a practicing lawyer in China.

However, looking at other countries with citizenship, such as the United States, the United Kingdom, Italy, the Russian Federation, South Korea, Ukraine, France, etc., there are no clear requirements for citizenship. For non-citizens, that is, foreigners who do not have the nationality of these countries, they also have the opportunity to become practicing lawyers in these countries if they meet certain conditions.

For example, before the signing of the free trade agreement, the legal services market in South Korea was completely closed, and foreign law firms were not allowed to set up representative offices in South Korea. South Korea's demand for foreign legal consulting services was met by Korean law firms by hiring foreign lawyers. There were also a number of foreign lawyers who had received foreign legal education and even obtained foreign lawyer practice licenses and were hired by Korean companies as internal legal advisers.[1]

In 2009, according to the free trade agreement (FTA) signed between South Korea and the United States, the European Union and other countries, South Korea promised to open up the legal services market in three stages. The first stage started in 2009, allowing foreign lawyers to register as foreign legal consultants (FLC) and foreign law firms to set up offices in South Korea; the second stage started in 2011, allowing foreign law firms to cooperate with South Korean law firms and share legal fee income; the third stage started in 2016, allowing foreign law firms and South Korean law firms to jointly establish cooperative law firms. At present, the opening of the legal services market in South Korea has entered the third stage. Since 2009, 28 foreign law firms have set up offices in South Korea, including 22 American law firms and 5 British law firms. Beijing Lifang Law Firm, China's only Asian law firm, also recently set up an office in Seoul.[1]

At the same time, the UK is also one of the most open legal service markets in the world. Half of the top 100 law firms in terms of revenue in the UK are multinational law firms based in London. The British legal community believes that for foreign law firms, the legal system of England and Wales is one of the most business-friendly legal systems in the world.[2]

In the Russian Federation, Azerbaijan, Armenia and Ukraine, applicants for lawyer status do not need to be citizen of the country. Applicants are considered "individuals", which means that they can be citizens of the country, foreign citizens or stateless persons. Therefore, as long as the applicant meets the conditions for obtaining lawyer status in the established procedures, regardless of their nationality, they are eligible to obtain lawyer status and practice in these countries.

In Japan, foreign lawyers who meet the following requirements are eligible to apply to become foreign special members (foreign law lawyers).

Applicants must be qualified to become lawyers in a foreign country. The term "lawyer" here refers to a person who handles legal affairs in a foreign country and whose functions in that country are equivalent to those of a lawyer in Japan.[3]

Applicants must have three years or more of experience in practicing law in the country where they obtained their qualifications after obtaining their qualifications. However, if an applicant is employed by a lawyer, a law firm, or a foreign law attorney in Japan and provides services to the lawyer, a law firm, or a foreign law attorney based on knowledge of the laws of the country where they obtained their qualifications, they may count up to one year as their

professional experience as a foreign lawyer in the country where they obtained their qualifications.[3]

The applicant must not be a person who has been expelled from the country of qualification acquisition or Japan due to disciplinary sanctions within the past three years.

The applicant must have the intention to practice law in Japan as a foreign special member in good faith, have a plan to properly and reliably practice law, reside in Japan, and have sufficient financial foundation to practice law in Japan (either as an individual or through a firm), and must also have the ability to compensate clients for losses caused.

In the United States, due to the state-federation system, different states have different regulations for the practice of foreign lawyers. For example, some states require lawyers to have citizenship, that is, U.S. nationality, to practice, while some states, such as California and New York, do not require citizenship.[4]

In Georgia and Turkey, obtaining lawyer status requires citizenship of that country. In contrast, in Lithuania and Finland, as well as in EU member states, lawyer status requires the applicant to be a citizen of that country or EU member state. Similar requirements exist in Italian law.

In France, obtaining the status of a lawyer requires meeting certain citizenship requirements, according to a law adopted in 1971. Applicants can be French citizens, citizens of a member state of the European Union or a party to the Agreement on the European Economic Area, or refugees or stateless persons from the European Community or the European Economic Area recognized by the competent French authorities.[5]

In Germany and Italy, both nationals and foreigners who meet certain conditions are eligible to become lawyers. For example, in Italy, a foreign citizen or stateless person must complete a bachelor's degree in law at a university in the country and pass the corresponding qualifying examination.

Through the analysis and comparison of the above countries, we can see that the standards for allowing foreign lawyers to provide legal services within the territory of their country can be divided into the following models:

- 1) Prohibition mode;
- 2) restrictive mode;
- 3) Fully open mode.

Most countries are in the restrictive model, while China and Uzbekistan are in the prohibitive model. The restrictive model is more common in the appeal case. The fully open model, that is, foreign lawyers have the right to practice law without any restrictions in the country of their residence, is relatively rare and mostly appears in the fully developed model between EU member states.

As for the above example, we can see that with the advancement of globalization, the economic, commercial and legal ties between countries are becoming increasingly close. The increase in multinational companies and international organizations, as well as the booming international trade and investment, have made cross-border legal affairs and cross-border contracts increasingly frequent. This has led to an increase in demand for foreign-related legal services, creating market demand for foreign lawyers to provide legal services in China.

In the face of globalization, the role of lawyers is increasingly important in cross-border legal affairs and international cooperation. However, practicing lawyers cannot be limited to

nationals of their own country, but should embrace a diverse client base, including foreign citizens and stateless persons. This requirement goes beyond the traditional market-oriented paradigm, but also meets the trend of economic development.

The author believes that, in this context, the prohibitive model adopted by China and Uzbekistan can no longer meet the current global demand for legal services.

Lawyers are economically rational people. The professional achievements they pursue are mainly economic success, and only in special circumstances are they "political or reputational rewards." In addition to some public welfare legal service activities, the pursuit of economic benefits is the ultimate goal of lawyers' practice.

In terms of legislation, when restricting foreigners from practicing law in China, it is possible to consider formulating relevant regulations to clearly stipulate the restrictions on foreign lawyers when handling sensitive cases involving state secrets, territorial security, etc. Such restrictions are intended to ensure national security and safeguard national interests while respecting the professional rights and legal responsibilities of foreign lawyers. Therefore, when formulating such regulations, the following professional positions should be taken:

Distinguishing the sensitivity of cases: Regulations should clearly define which cases fall into the category of sensitive cases involving state secrets, territorial security, etc., to ensure that foreign lawyers are clearly aware of the restrictions on their practice in the country.

Safeguarding professional rights: Regulations should ensure that foreign lawyers can practice freely and have the right to a fair trial when handling non-sensitive cases. This includes ensuring that they can participate in ordinary civil and commercial litigation and protecting their professional rights and the interests of their clients.

Strengthen supervision and review: Supervision and review mechanisms should be strengthened for foreign lawyers handling sensitive cases to ensure that their actions comply with the law and do not endanger national security and interests.

Promoting international exchanges and cooperation: While restricting the scope of practice of foreign lawyers in sensitive cases, we should also encourage international exchanges and cooperation and promote cross-border exchanges and cooperation in the legal profession to enhance the level of global rule of law.

To sum up, when imposing legislative restrictions on foreign lawyers practicing in China, measures such as clear case classification, protection of professional rights, strengthening of regulatory review and promotion of international exchanges should be adopted to safeguard national security and interests while respecting the professional rights and legal responsibilities of foreign lawyers.

In the context of the continuous integration of the global economy, considering the particularity of legal services and the different characteristics of the development of the legal service markets of various parties, if China and Uzbekistan want to develop the current legal market and allow foreign lawyers to practice in their territories, they need to take into account factors such as the existing legal system and the level of development of the legal service industry. China and Uzbekistan should moderately open up their legal service markets in stages, steps and scopes in a prudent and cautious manner under the GATS framework.

In long-term planning, different areas, such as Beijing, Tashkent and other international metropolises, can be used as demonstration areas for "trial first", and continuous exploration

can be made in practice on how the legal services markets of China and Uzbekistan can be opened up to the outside world, and what kind of impact the expansion of the opening up of the legal services market may have on the legal professions of China and Uzbekistan .

In addition, we can learn from foreign experience, such as the "dual track" opening model of the European Union and South Korea. China and Uzbekistan can appropriately lower the entry threshold of the legal services market within a certain region and conduct necessary experiments .

For example, special areas can be set up: Special areas for legal services can be set up in specific regions, such as free trade zones, special economic zones or innovation pilot zones, etc., to allow foreign lawyers to practice in these areas. These areas can provide a more flexible practice environment and regulatory mechanism, and promote cooperation and exchanges between domestic and foreign lawyers.

Conduct pilot projects: Conduct pilot projects in a few regions to allow foreign lawyers to practice with local lawyers or provide cross-border legal services. Through pilot projects, we can evaluate the impact of different practice models on the legal services market and gradually improve relevant policies and systems.

Establishment of representative offices for foreign lawyers: Foreign lawyers are allowed to establish representative offices or representative offices in specific regions to provide services such as legal consultation, mediation, and assistance in contract negotiation. This will help attract foreign lawyers and multinational law firms to enter the market and promote the international development of legal services.

Strengthen legal education and training: Increase investment in legal education and training resources to improve the professional level and international competitiveness of legal practitioners. Through training and exchange activities, promote mutual learning and cooperation between domestic and foreign lawyers and promote the development and growth of the legal services industry.

Establish a regulatory mechanism: Establish a sound regulatory mechanism for foreign lawyers, including registration, approval, supervision and punishment systems, to ensure market order and fair competition. The regulatory mechanism should be aligned with international standards to improve the transparency and predictability of market access.

Through the implementation of the above measures, China and Uzbekistan can gradually open up the legal services market, attract more foreign lawyers and international law firms to enter the market, promote the international development of legal services, and enhance the international competitiveness of their own legal services industry. At the same time, policies and measures should be continuously adjusted and improved according to actual conditions to ensure the steady development of the legal services market and the good order of the rule of law environment.

With the increase of international trade and cross-border investment, as well as the intensification of personnel mobility, the internationalization of the legal profession has become an inevitable trend. As important international economic and political participants, China and Uzbekistan should be aware of the opportunities and benefits of opening up the legal services market to foreign lawyers. Therefore, the requirements for lawyers to practice should no longer be limited to nationals, but foreign lawyers should be allowed to practice in their own country to a certain extent. This will not only help promote the exchange and

cooperation of international legal services, but also help improve the international competitiveness and professional level of the national lawyer team.

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