

**Q&A on Amendment of the Basic Rules for Duties of
Gaikokuho-jimu-bengoshi and the Basic Rules Concerning Foreign
Special Members**

Q1. I hear that the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and the Basic Rules Concerning Foreign Special Members have been amended. Please provide me with an outline of the amendment.

A. Article 11-2 has been newly added to the Basic Rules for Duties of Gaikokuho-jimu-bengoshi. Where equity interests or voting rights of a foreign business entity which has the purpose of providing legal services (hereinafter, “Foreign Entity”) are granted to non-lawyers (a person who is not an attorney at law or a foreign lawyer (the same shall apply hereinafter)) who are not engaged in the business of the Foreign Entity, a Gaikokuho-jimu-bengoshi is unconditionally prohibited from belonging to the said Foreign Entity. Where equity interests or voting rights of the Foreign Entity are granted to non-lawyers who are engaged in the business of the said Foreign Entity, a Gaikokuho-jimu-bengoshi is prohibited from belonging to the said Foreign Entity if the said Foreign Entity does not meet either or both of the following two requirements: (1) the existence of the Foreign Entity is permitted under the laws and regulations of the jurisdiction where the said Foreign Entity is located; and (2) equity interests or voting rights of non-lawyers are constrained to less than 50% or otherwise control by attorneys at law or foreign lawyers is structurally and effectively secured. Further, a general provision stating that a Gaikokuho-jimu-bengoshi is prohibited from belonging to the Foreign Entity if involvement of non-lawyers in the said Foreign Entity is deemed to have the risk of impairing the independence of the duties of Gaikokuho-jimu-bengoshi, was also added to the said Article. In connection with this amendment, if a

Gaikokuho-jimu-bengoshi belongs to a Foreign Entity which has the purpose of providing legal services, its name, the name of the country where it is located and the address where it is located are now required as matters to be registered in the Roll of Gaikokuho-jimu-bengoshi under the Basic Rules Concerning Foreign Special Members. Under the amendment, when requests for registration of Gaikokuho-jimu-bengoshi, requests for transfer of registration to a different bar association and reports of changes in registered matters are made, a letter pledging that the Foreign Entity does not fall under a Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters must be submitted together with other required documents. Further, it is provided that, if the Foreign Entity comes to fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi after submission of the said letter and documents, the Gaikokuho-jimu-bengoshi must immediately report such change to the JFBA via the bar association to which he/she belongs and withdraw or resign from the said Foreign Entity or take any other appropriate measures.

Q2. When will the amended provisions come into force?

A. The amended provisions will come into force as of April 1, 2018.

Q3. Who will be affected by the amendment?

A. Both foreign lawyers who plan to register with the JFBA and Gaikokuho-jimu-bengoshi already registered will be affected by the amended provisions.

Q4. Are any transitional measures provided?

A. A Gaikokuho-jimu-bengoshi who actually belongs to a Foreign Entity which has the purpose of providing legal services at the time of enforcement of the amended provisions must file, with the JFBA, its name, the name of the country where it is located and the address where it is located within two (2) weeks from the date of enforcement pursuant to the provisions regulating the changes in the registered matters. When reporting, a letter pledging that the said Foreign Entity does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters must be submitted as attached documents to the JFBA via the bar association to which he/she belongs. A Gaikokuho-jimu-bengoshi, who actually belongs to a Foreign Entity which he/she is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi at the time of enforcement of the amended provisions, will be given a grace period of up to one (1) year from the date on which the new rules come into effect regarding said Article unless the Gaikokuho-jimu-bengoshi changes the Foreign Entity to which he/she belongs. In such case, the Gaikokuho-jimu-bengoshi will not be required to submit a letter stating that the said Foreign Entity does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters during such grace period. The Gaikokuho-jimu-bengoshi is expected to take measures such as withdrawing from the said Foreign Entity within the grace period.

[Procedures (for persons qualified to become a foreign lawyer)]

Q5. I will register as a Gaikokuho-jimu-bengoshi in Japan. Is it possible to have the documents checked in advance as to whether the Foreign Entity to which I belong is permitted?

A. If you submit the JFBA a draft letter pledging that the Foreign Entity to which you belong does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters, JFBA will review them in advance and notify the applicant for registration of the results of such review. In the case of an office of a Gaikokuho-jimu-bengoshi or a Gaikokuho-jimu-bengoshi corporation from which more than one Gaikokuho-jimu-bengoshi are expected to apply for registration in the future, if the office submits draft documents certifying the pledged matters which will be attached to the pledge letter of each applicant for registration, the JFBA will review them in advance and notify the office of the results.

Q6. When should I submit the documents to the JFBA?

A. It is common practice to apply to the Ministry of Justice for preliminary examination of qualification approval if a person intends to become a Gaikokuho-jimu-bengoshi. We recommend that you receive advance review by submitting the JFBA a draft letter pledging that the Foreign Entity to which you belong does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters, simultaneously with the application to the Ministry of Justice for preliminary examination or prior thereto.

Q7. What advantage will I have for the subsequent registration if I have my documents checked in advance?

A. As the results of the advance review conducted by the JFBA will be shared as reference materials with the bar association to which you intend to join thereafter, the opinions of the JFBA will also be respected when such bar association expresses its opinions to the JFBA when the actual application for registration is made.

[Procedures (Gaikokuho-jimu-bengoshi)]

Q8. I am currently a Gaikokuho-jimu-bengoshi. What procedures will be required in connection with this amendment?

A. If a Gaikokuho-jimu-bengoshi does not belong to a Foreign Entity which has the purpose of providing legal services, you are not required to take any specific procedures. If a Gaikokuho-jimu-bengoshi belongs to a Foreign Entity which has the purpose of providing legal services, it is necessary to file, with the JFBA, its name, the name of the country where it is located and the address where it is located, pursuant to the provisions governing the changes in registered matters and when filing, a letter pledging that the Foreign Entity does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters must be submitted as attached documents to the JFBA via the bar association to which he/she belongs. If a Gaikokuho-jimu-bengoshi requests transfer of his/her registration to a different bar association, it is necessary to submit, to the JFBA via the bar association to which the Gaikokuho-jimu-bengoshi intends to join, a letter pledging that the Foreign Entity to which he/she belongs does not fall under any of the types of

Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters.

Q 9 . Is there a due date for the procedures?

A. The procedures must be performed within two (2) weeks from the enforcement date.

Q10. Can I, as a Gaikokuho-jimu-bengoshi, have the documents checked in advance as to whether the Foreign Entity to which I belong is permitted?

A. If you submit the JFBA a draft letter pledging that the Foreign Entity to which you belong does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters, the JFBA will review them in advance and notify the Gaikokuho-jimu-bengoshi of the results of the review. In the case of an office of a Gaikokuho-jimu-bengoshi or Gaikokuho-jimu-bengoshi Corporation to which many Gaikokuho-jimu-bengoshi belong, if the office submits draft documents certifying the pledged matters which will be attached to the pledge letter of each Gaikokuho-jimu-bengoshi, the JFBA will review them in advance and notify the office of the results of the review.

Q11. If a Gaikokuho-jimu-bengoshi has failed to submit the documents to be submitted under this amendment by the due date, what will happen?

A. The Gaikokuho-jimu-bengoshi may be subject to disciplinary actions due to having violated the provisions concerning Gaikokuho-jimu-bengoshi in the JFBA Rules.

Q12. What procedures will be required if I transfer to a different Foreign Entity?

A. In such case, the Gaikokuho-jimu-bengoshi is required to immediately submit a report of change in registered matters to the JFBA. When reporting, it is necessary to submit to the JFBA, via the bar association to which he/she belongs, a letter pledging that the Foreign Entity to which he/she belongs does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi and documents certifying the pledged matters.

[Procedures (When a person who is qualified to become a foreign lawyer requests registration with the JFBA and a Gaikokuho-jimu-bengoshi requests transfer to another bar association or submits changes in the registered matters)]

Q13. The amended provision lists a “pledge letter” and “certifying documents.” What should I write in these documents?

A. The JFBA will publish a form of the pledge letter and certifying documents in Japanese and English. As for the certifying documents, you may submit laws and regulations, the rules of the foreign bar association to which you belong, and/or the articles of incorporation, partnership agreement, etc. of the Foreign Entity to which you belong, as the basis of your pledge, in lieu of the above form.

* Please make sure that you attach Japanese translations to any foreign language documents.

Q14. The Foreign Entity to which I belong is a business entity of a jurisdiction where Foreign Entities falling under the amendment are prohibited. Even so, do I have to submit the pledge letter and certifying documents in a similar manner as the other foreign lawyers, etc.?

A. Yes, you still need to submit the letter and documents in such case.

Q15. Who should prepare the certifying documents?

A. The certifying document form prepared by the JFBA should be executed by the person who has the authority to certify the matters that require certification of the Foreign Entity to which you belong.

Q16. Is it also necessary to submit the pledge letter and certifying documents when a Gaikokuho-jimu-bengoshi or a Gaikokuho-jimu-bengoshi corporation does not use the name of the entity to which he/she belongs (as defined in Article 45, Paragraph 2 of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers and Article 50-10, Paragraph 2 of the said Act) in the name of its office or does not append such name to the name of the Gaikokuho-jimu-bengoshi or the name of the office?

A. As long as the Gaikokuho-jimu-bengoshi belongs to a Foreign Entity, he/she is required to submit the letter and the certifying documents even if the name of the Foreign Entity to which he/she belongs is not used in the name of the office or not appended to his/her name or the name of the office in Japan. In this regard, "business entity to which he/she belongs" is defined in Article 45, Paragraph 2, of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers as a corporation, partnership or other business entity of his/her jurisdiction of primary qualification which has, as its objective, the provision of legal services and to which he/she belongs. Under Article 50-10,

Paragraph 2 of the said Act, applying *mutatis mutandis*, the above provision, “business entity to which he/she belongs” is defined as a juridical person, partnership or other business entity of member’s jurisdiction of primary qualification which has, as its objective, the provision of legal services and to which the said member belongs. We assume that in most cases, the Foreign Entity to which the Gaikokuho-jimu-bengoshi belongs is an entity of the jurisdiction of such Gaikokuho-jimu-bengoshi’s primary qualification; however, please note that even if a Gaikokuho-jimu-bengoshi belongs to a Foreign Entity of a jurisdiction which is not his/her jurisdiction of primary qualification, he/she is also required to submit the letter of pledge and the documents certifying the letter of pledge regarding such Foreign Entity.

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Q17. What does “engaging in the business” mean?

A. Article 11-2, Item 2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi considers LDP (Legal Disciplinary Practice) and MDP (Multidisciplinary Practice) to be applicable Foreign Entities, which means that a non-lawyer engaging in professional services that support the legal services provided by the Foreign Entity or adjacent professionals engaging in non-legal professional services that relate to the legal services in the Foreign Entity are considered to be “engaging in the business” of the Foreign Entity.

Q18. Is “Foreign Entity to which he/she belongs” limited to the one to which a Gaikokuho-jimu-bengoshi belongs or does it include a business entity which directly or indirectly controls the Foreign Entity to which a Gaikokuho-jimu-bengoshi belongs or a business entity under common control with the Foreign Entity to which a Gaikokuho-jimu-bengoshi belongs?

A. If the Foreign entity to which a Gaikokuho-jimu-bengoshi belongs does not fall under any of the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi, the issue of whether or not a business entity directly or indirectly controlling the said Foreign Entity or a business entity under common control with the said Foreign Entity falls under a prohibited business entity will not be questioned.

Q19. Is “grants equity interests or voting rights” limited to cases where such rights are “actually granted” or does it include cases where they “may be granted?”

A. In either Item 1 or 2 of Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi, as long as the Foreign Entity to which a Gaikokuho-jimu-bengoshi belongs does not actually grant equity interest or voting rights to non-lawyers, the issue of whether the said Foreign Entity is permitted to grant equity interest or voting rights to non-lawyers under the applicable laws and regulations, etc. under their home jurisdiction will not be relevant; provided, however, that, if and when the said Foreign Entity later actually grants equity interests or voting rights to non-lawyers, and if it falls under Item 1 or 2, the Gaikokuho-jimu-bengoshi must immediately report such fact to the JFBA via the bar association to which he/she belongs and the Gaikokuho-jimu-bengoshi must withdraw or resign from the said Foreign Entity or take other appropriate measures.

Q20. Under what circumstances can it be deemed that “control by attorneys at law or foreign lawyers is structurally and effectively secured” other than in the case where equity interests or voting rights of non-lawyers who are engaged in

the services are constrained to less than 50%?

A. Circumstances such as the ratio of attorneys at law or foreign lawyers to the total number of members of the management committee, board of directors or any other similar decision-making body making business decisions of the Foreign Entity exceeding 50% is one example. Even in such case, however, it is necessary to comprehensively determine factors such as the ratio of equity interests or voting rights of non-lawyers who are engaged in the business and the conditions of involvement of non-lawyers in the decision-making on the financial and business policies in conjunction with individual specific cases.

Q21. What are the circumstances where “it is deemed that there is a risk of impairing the independence of the duties of Gaikokuho-jimu-bengoshi by the involvement of non-lawyers”?

A. Article 11-2, Item 3 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi is a catch-all provision covering the scope not covered by Items 1 and 2 of the said Article. Such provision will be applied when there are circumstances where the independence of the duties of Gaikokuho-jimu-bengoshi may be impaired because non-lawyers substantially control the management even though Items 1 and 2 of the said Article do not apply to the situation. It is advisable to consult with the JFBA in advance if the Foreign Entity may fall under the above situation.

Q22. Are there jurisdictions where the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi are not permitted at all by the laws and regulations, etc.?

A. In the following jurisdictions, it has been confirmed that MDPs are permitted,

but the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi are not permitted under the laws and regulations, etc. of such jurisdictions: British Columbia and Ontario - Canada, France, Germany, The Netherlands, and Switzerland.

In the following jurisdictions, it has been confirmed that LDPs are permitted, but the types of Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi are not permitted under the laws and regulations, etc. of such jurisdictions: Washington state, U.S.A.

With respect to the following jurisdictions, it has been confirmed that a Foreign Entity which a Gaikokuho-jimu-bengoshi is prohibited from belonging to under Article 11-2 of the Basic Rules for Duties of Gaikokuho-jimu-bengoshi is not permitted under the laws and regulations, etc. of such jurisdictions: All states of the U.S.A. other than the District of Columbia and Washington, Brazil, China (excluding state-owned law firms), Hong Kong, South Korea, Saudi Arabia and Taiwan.

All of the foregoing is the result of examination as of November 2017 of each jurisdiction as to which the Minister of Justice has approved as having "a qualification to become foreign lawyer" which is necessary to become a Gaikokuho-jimu-bengoshi.