

**A GUIDE TO RULES FOR FOREIGN SPECIAL MEMBERS**

**(Revised Edition)**

**February 2005**

**Foreign Lawyers and International Legal Practice Committee**

**Japan Federation of Bar Associations**

## Preface

The Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (hereinafter the “Foreign Lawyers Law”, or the “Law”) came into effect on April 1, 1987. This law opened the way for foreign lawyers to establish their offices in Japan and, as foreign special members of the Japan Federation of Bar Associations and qualified *gaikokuho-jimu-bengoshi*, to handle certain legal businesses concerning foreign law. Thereafter, four significant amendments were made to the Foreign Lawyers Law, and regulations thereunder were relaxed.

The first amendment in 1994, removed the reciprocity requirement for foreign lawyers from WTO member countries; permitted a credit of up to two years of legal experience in Japan toward the then five-year minimum experience requirement; recognized that the name of the home business entity to which the *gaikokuho-jimu-bengoshi* belonged could be used as part of the name of the foreign special member’s office in Japan; and established the “specific joint enterprise” system for cooperation between *gaikokuho-jimu-bengoshi* and Japanese *bengoshi*.

The next amendment in 1996 opened the way for both a *gaikokuho-jimu-bengoshi* and a foreign lawyer visiting Japan to freely represent clients in international arbitration procedures.

The amendment in 1998, reduced the five-year minimum experience requirement to three years, with up to one year of legal experience in Japan to be credited toward the three years experience requirement; broadened the scope of the functions to be performed by a *gaikokuho-jimu-bengoshi* by permitting under certain conditions for a *gaikokuho-jimu-bengoshi* to handle legal matters concerning the laws of a third country; and expanded the purpose of a specific joint enterprise to all international matters, including litigation in Japan. The 2003 amendment, which was made taking into consideration the view of the Advisory Council for

Internationalization created under the Judicial System Reform Promotion Headquarters as one of the steps of Japanese judicial system reform, has liberalized joint enterprises between *bengoshi* and *gaikokuho-jimu-bengoshi* and has removed prohibition of employment of *bengoshi* by *gaikokuho-jimu-bengoshi*.

The Japan Federation of Bar Associations and local bar associations, which guide, communicate and supervise the foreign special members, have amended their rules, articles, etc., with each amendment to the Foreign Lawyers Law.

As part of their role to guide and communicate with foreign special members, this brochure, a revision of the April 1990 edition, has been prepared to explain basic rules concerning foreign special members, under the revised Foreign Lawyers Law; and identifies matters that a foreign special member should consider when performing legal services. Our Committee hopes that this brochure will give foreign special members a better understanding of their functions under the Foreign Lawyers Law and position in the Japan Federation of Bar Associations. If you have questions about the matters described in this brochure, the Committee would welcome any inquiries.

We would like to express our sincere gratitude for the considerable assistance and work performed in creating this revision by the members of the Public Relations Sub-committee (Chairman Yukimasa Ozaki), and the Working Group for Explanatory Meeting on New Regulations Relating to Foreign Lawyers.

We hope that this Guide could help foreign special members understand the rules applicable to them.

February 2005

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Note: The English text herein is a preliminary translation. The Japan Federation of Bar Associations shall not bear any responsibility or liability in connection with the translation.

## Foreword: Recent Amendment to the Foreign Lawyers Law and Rules and Regulations

### 1. 2003 Amendment

In July 2003, the Practicing Attorney Law and the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (“the Foreign Lawyers Law” or the “Law”) were in part amended and such amendment took effect from April 1, 2004, except for provisions mentioned in paragraph 2 below. For that purpose, rules relating to foreign lawyers were amended at the Extraordinary General Meeting of the Japan Federation of Bar Associations (“the Federation”) held in November 2004 as follows:

- (1) By virtue of amendments to the Practicing Attorney Law and the Foreign Lawyers Law, the provision prohibiting *gaikokuho-jimu-bengoshi* from assuming public post (Practicing Attorney Law before amendment, Article 30, paragraph 1) was deleted. Accordingly, the Federation amended its rules so as to require *gaikokuho-jimu-bengoshi* to report when they assume public post and adopted new rules concerning assumption of public post by *gaikokuho-jimu-bengoshi* (Basic Rules Concerning Foreign Special Members (“Basic Rules”), Article 28; Rules Regarding the Notification, etc. of Assumption of Public Post by *Gaikokuho-jimu-bengoshi*).
- (2) By virtue of amendments to the Practicing Attorney Law and the Foreign Lawyers Law, the requirement to obtain approval of a local bar association for engagement in for-profit business was deleted and replaced by the requirement to report on such engagement (Practicing Attorney Law, Article 30; Foreign Lawyers Law, Article 50). Accordingly, the Federation amended its rules to such effect and adopted rules concerning report of engagement in for-profit business (Basic Rules Article 28-2; Rules for Notification, etc. of For-Profit Business by *Gaikokuho-jimu-bengoshi*).
- (3) By virtue of amendments to Practicing Attorney Law and Foreign Lawyers Law, provision requiring local bar associations to include in their rules standards of attorney’s fee was deleted (the Practicing Attorney Law before amendment, Article 33, paragraph 2, item 8). Accordingly, the Rules Concerning Fees of *gaikokuho-jimu-bengoshi* were repealed. It should be noted, however, that Federation at its Extraordinary General Meeting held in February 2004 adopted new Rules Concerning *gaikokuho-jimu-bengoshi’s* Fees, which require, among other things, preparation and keeping of fee standards.
- (4) By virtue of amendments to the Practicing Attorney Law and the Foreign Lawyers Law, provisions regarding maintenance of discipline, disciplinary action and publication of disciplinary actions were fixed (Practicing Attorney

Law, Chapter 8; Foreign Lawyers Law, Articles 53 through 58). Accordingly, necessary amendments to rules were effected (Basic Rules, Chapter 5; Rules Concerning *gaikokuho-jimu-bengoshi* Discipline Maintenance Committee and Discipline Maintenance Procedures; Rules Concerning *gaikokuho-jimu-bengoshi* Disciplinary Actions Committee and Disciplinary Actions Procedures; Rules for Public Notice and Announcement, etc. of Disciplinary Actions Against *gaikokuho-jimu-bengoshi*).

- (5) In addition to the foregoing, because a country of original qualification to be registered by *gaikokuho-jimu-bengoshi* was limited to one country, amendment to the effect that additional registration may be made with respect to two or more countries was made to the Basic Rules Concerning Foreign Special Members (Basic Rules, Article 13, paragraph 2, item 3).

## 2. 2004 Amendment

At the Extraordinary General Meeting held in November 2004, Federation adopted regulations relating to liberalization of *gaikokuho* joint enterprises and lifting of prohibition of employment of Japanese attorneys by *gaikokuho-jimu-bengoshi* which will, among the 2003 Amendments to the Foreign Lawyers Law, take effect from April 1, 2005, and amended its rules so as to apply *mutatis mutandis* to *Gaikokuho-jimu-bengoshi* Basic Rules on the Duties of Practicing Attorney, which was adopted at the same Meeting.

### (1) Employment of Japanese attorneys by *Gaikokuho-jimu-bengoshi*

The 2003 Amendment to the Foreign Lawyers Law permitted employment of Japanese attorneys by *gaikokuho-jimu-bengoshi*, but provides that *gaikokuho-jimu-bengoshi* shall not, with respect to handling of out-of-scope legal matters, give Japanese attorneys a business order based on their employment relationship (the Foreign Lawyers Law, Article 49). Accordingly, Rules on Employment of *Bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi* provide that when an employed *bengoshi*, etc. undertakes legal business outside the scope of competence of his employer he shall undertake it independently from the employer and on his account, and otherwise provide for notification of employment, investigation by the bar association, etc.

### (2) *Gaikokuho* Joint Enterprises

The 2003 Amendment to the Foreign Lawyers Law (the Foreign Lawyers Law, Article 2, item 15) repealed the restriction on the scope of business required under the specified joint enterprise system (the Foreign Lawyers Law before amendment, Article 49-2, paragraph 1). However, Article 4 of the Foreign Lawyers Law provides for prohibition of handling by *gaikokuho-jimu-bengoshi* of legal matters which are outside the scope of competence of *gaikokuho-jimu-bengoshi*. Therefore, Rules on *Gaikokuho* Joint Enterprises provide that

*gaikokuho-jimu-bengoshi* may undertake legal business concerning *gaikokuho* joint enterprise jointly with *bengoshi* engaging in such *gaikokuho* joint enterprise and in such event *bengoshi* and *gaikokuho-jimu-bengoshi* must explain the competence of each *bengoshi* and *gaikokuho-jimu-bengoshi*, and otherwise provide for notification of the *gaikokuho* joint enterprise, investigation by the bar association, etc. Upon taking effect of the above Rules, the Rules on Specified Joint Enterprises will be repealed.

(3) Application mutatis mutandis Basic Rules on the Duties of Practicing Attorneys

The Code of Ethics was those rules which practicing attorneys were obligated to observe only on a best effort basis. However, at the Extraordinary General Meeting held in November 2004, the Federation adopted the Basic Rules on the Duties of Practicing Attorneys, many provisions of which have effect of mandatory obligations. Accordingly, the Basic Rules were amended and a new provision to the effect that those provisions in the Basic Rules on the Duties of Practicing Attorneys which are appropriate to apply to *gaikokuho-jimu-bengoshi* shall be applied mutatis mutandis to *gaikokuho-jimu-bengoshi* has been inserted (Basic Rules, Article 30-2). Incidentally, Article 5 of the Basic Rules which provided for compliance of Code of Ethics was repealed.

I. Relationship between a *Gaikokuho-jimu-bengoshi* and the Federation and the Local Bar Association

A person who is qualified to be a *gaikokuho-jimu-bengoshi* [a person who has obtained the approval of the Minister of Justice pursuant to Article 7 of the “Law”] shall become a *gaikokuho-jimu-bengoshi* when he/she registers in the rolls of *gaikokuho-jimu-bengoshi* kept by the Japan Federation of Bar Associations (hereinafter, the “Federation”) (ARTICLE 24 of the Law). He/She shall, at the same time, become a foreign special member of the Federation and the bar association he/she joins (the “local bar association”) (Article 40 of the Law; Article 3 of the Basic Rules).

1. Articles of Association and Other Bylaws

A foreign special member is required to comply with the provisions regarding foreign special members in the articles, rules and regulations of the Federation and the local bar association (Article 42 of the Law; Article 19 of the Basic Rules). As to the ethics requirement as lawyers, a foreign special member shall comply with those relevant provisions in the Basic Regulations on the duties of Practicing Attorneys (effective on April 1, 2005) that shall apply to a foreign special member *mutatis mutandis*.

In addition to the Basic Rules, the Federation established several rules (enacted at its general meetings) and regulations (enacted by the board of governors) with respect to registration, discipline maintenance and disciplinary actions, self-representation, fees, employment, joint enterprises, advertisement and other matters of foreign special members.

Below are the rules and regulations concerning a foreign special member by the Federation:

- Articles of Association of Japan Federation of Bar Associations;
- Basic Regulations Concerning Foreign Special Members;
- Basic Rules on the Duties of Practicing Attorneys(those provisions that shall apply to a Foreign Special Member *mutatis mutandis*)
- Regulations concerning Registration Screening Procedure for *Gaikokuho-jimu-bengoshi*;
- Regulations Concerning Registration and Handling of the Register of *Gaikokuho-jimu-bengoshi*;
- Regulations Concerning the Badge of *Gaikokuho-jimu-bengoshi*;



- Regulations Concerning Denoting of Foreign Special Members;
- Regulations Concerning Advertising of Practice by Foreign Special Members;
- Regulations Concerning *Gaikokuho-jimu-bengoshi*'s Fees;
- Rules on employment of *Bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*;
- Rules for the Handling of Notification of Employment of Attorneys or *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*, Etc.;
- Rules on *Gaikokuho* Joint Enterprises;
- Rules for Handling of Notification of *Gaikokuho* Joint Enterprises, Etc.;
- Standards for the Indication of *Gaikokuho* Joint Enterprises;
- Regulations Concerning Notification of Employment of Foreign Lawyers;
- Regulations regarding the Notification of Assumption of Public Post by *Gaikokuho-jimu-bengoshi*, Etc.;
- Regulations for Notification of For-Profit Business by *Gaikokuho-jimu-bengoshi*, Etc.
- Regulations regarding Committee and Procedure as to Disciplinary Action of *Gaikokuho-jimu-bengoshi*;
- Regulations regarding Committee and Procedure as to Disciplinary Maintenance of *Gaikokuho-jimu-bengoshi*;
- Regulations for Public Notice and Announcement of Disciplinary Action against *Gaikokuho-jimu-bengoshi*, Etc.;
- Regulations Concerning Mutual Assistance in Maintenance of Discipline of Foreign Special Members.
- Form of Signs showing Law of Country of Primary Qualification and of Designated Laws

Local bar associations also have rules and/or regulations concerning foreign special members.

## 2. Disciplinary Actions

The Federation shall impose disciplinary action against a foreign special member based on a resolution of the Federation's *Gaikokuho-jimu-bengoshi* Disciplinary Actions Committee, if he/she violates the Law or any of the provisions pertaining to a *gaikokuho-jimu-bengoshi* in the articles of the local bar association or of the Federation, damages the integrity of or lessens public confidence in the local bar association or the Federation, or behaves with impropriety or appearance of impropriety in his professional or personal

conduct. (Article 51 of the Law).

### **3. Voting Rights at the General Meetings of Members**

A foreign special member may be present at a general meeting, express his/her opinions and participate in the voting, if the Federation or the local bar association convenes such general meeting of members for the purpose of adoption, revision or abolition of any provision of its articles of association (or any rules, decisions or the like established at a general meeting of members pursuant to a provision in the articles of association) concerning matters listed in Articles 22 or 23 of the Law, or for the purpose of deliberation of issues concerning special membership fees (Article 43 of the Law). A foreign special member may vote through a proxy who is another foreign special member or a *bengoshi* belonging to the same bar association (Article 36, paragraphs 1 and 4, and Article 38 of the Basic Rules). When the settlement of accounts or a budget is examined at the Federation's general meeting of members, a foreign special member may be present at such general meeting and express his/her opinions concerning matters which directly relate to foreign special members; with respect to examination of other items on agenda, he/she may observe the proceedings of the general meeting (Article 36, paragraphs 2 and 3 of the Basic Rules).

In order to vote through a proxy at a general meeting of members of the Federation, a foreign special member shall deliver to the Federation a written proxy showing the authority of the proxy with the approval of the president of the local bar association at least two days prior to the date of the general meeting (Article 38 of the Basic Rules).

### **4. Membership Fees and Other Payments**

A foreign special member is required to pay the membership fees and the special membership fees of the Federation through the local bar association (Articles 65 and 66 of the Basic Rules). If a foreign special member defaults in payment of any such fees for the period exceeding six months, the Federation may take disciplinary action against him/her with the consent of the local bar association (Article 68 of the Basic Rules). A foreign special member shall also pay the membership fees and the special membership fees of the local bar association to which he/she belongs.

### **5. Distribution of Publications, etc.**

A foreign special member is entitled to distribution of publications issued by the Federation and may participate in training seminars by the Federation (Articles 40 and 41 of the Basic Rules). In addition, a foreign special member may use the libraries, meeting rooms or other facilities located in the buildings of the Federation or the local bar association, in accordance with the applicable regulations.

#### **6. Conciliation of Disputes Relating to the Practice of Law**

The local bar association may hold a conciliation proceeding for a dispute relating to the practice of law by its foreign special member upon her/his request or any other person concerned (*mutatis mutandis* application of Article 41 of the Practicing Attorney Law under Article 21 of the Law).

#### **7. Request for Report**

A foreign special member may apply to the local bar association to make inquiries as to necessary information from governmental agency or a public or private organization, and to request them to provide such information. The local bar association may refer to, and request such necessary information from, a governmental agency or a public or private organization based on such application. The local bar association may reject such application if it deems such application as inappropriate. (*mutatis mutandis* application of Article 23-2 of the Practicing Attorney Law under Article 50 of the Law).

#### **8. Guidance, Liaison and Supervision**

In addition, the Federation and the local bar associations are responsible for affairs concerning guidance to, liaison with, and supervision over a foreign special member (*mutatis mutandis* application of Articles 31 and 45 of the Practicing Attorney Law under Article 21 of the Law; Article 4 of the Basic Rules), and, for those purpose, may require their foreign special members to report or submit materials on issues necessary for the stated purpose (Article 4 of the Basic of Rules).

The Federation established the Foreign Lawyers and International Legal Practice Committee, which performs research and studies of the issues on which the Federation provides its opinion to the Minister of Justice based upon the Foreign Lawyers Law, and the issues related to guidance to, liaison with,

supervision over, and maintenance of discipline of, *a* foreign special member.

## II Scope of *Gaikokuho-jimu-bengoshi*'s Legal Services Permitted to Provide

### 1. Articles 3, 5 and 5-2 of the Foreign Lawyers Law

Article 3, paragraph 1 of the Foreign Lawyers Law provides that a *gaikokuho-jimu-bengoshi*'s duties are "the Practice of Laws of the Country of Primary Qualification" (the "Law of the Country of Primary Qualification" is defined in Article 2, item (5) of the Foreign Lawyers Law). In addition to the above, Article 5 of the Foreign Lawyers Law provides that, he/she may engage in "the Practice of Designated Law," when a *gaikokuho-jimu-bengoshi* obtains designation from the Minister of Justice under Article 16, paragraph 1 of the Foreign Lawyers Law and has the additional note of the Designated Law entered in the rolls of *gaikokuho-jimu-bengoshi* kept by the Federation under Article 3, paragraph 1 of the Foreign Lawyers Law. Further, Article 5-2 provides that a *gaikokuho-jimu-bengoshi* may engage in legal services for a legal case, even if the whole or primary part of the case is governed by the laws of a particular foreign country other than the Laws of the Country of Primary Qualification or the Designated Law, as long as he/she provides such services under written advice of a foreign lawyer of such particular country (not including those employed in Japan to render legal services based upon their knowledge of the laws of that foreign country) or a *gaikokuho-jimu-bengoshi* whose Laws of the Country of Primary Qualification or Designated Law is the laws of the foreign country.

- (1) Under Article 3, paragraph 1 of the Foreign Lawyers Law, a foreign special member may not provide the following legal services:
  - (a) Representation in procedures before a court, a public prosecutor's office or other governmental or public agency in Japan, and preparation of documents to be submitted to such court or agency in regard to such procedures;
  - (b) Activities in the capacity of a defense counsel in a criminal case, activities in the capacity of an attendant in a juvenile protection case, and legal assistance to a fugitive criminal in an extradition case;
  - (c) Expression of expert opinion or other legal opinion concerning interpretation or application of laws other than the Laws of the Country of Primary Qualification;

- (d) Service of any document in regard to the procedure taken for a foreign court or administrative agency;
  - (e) Representation in regard to the entrustment of preparation of a notarial document as referred to in Article 22, item (5) of the Law of Civil Execution (Law No. 4 of 1979); and
  - (f) Representation in, or preparation of any documents (excluding written expert opinions for the purpose of this Article) for, a legal case, the primary purpose of which is acquisition or loss of, or change to, any right in or to real property located in Japan, or any industrial property right, mining right or any other right which arise upon registration thereof with an administrative agency in Japan or any right with respect to such right (hereinafter, collectively, the “Industrial Property Right(s)”).
- (2) Under Article 3, paragraph 2 of the Foreign Lawyers Law, a foreign special member shall render the following legal services either jointly with a *bengoshi* or under his/her written advice:
- (a) Representation in or preparation of documents for a legal case, other than item (6) of the preceding paragraph, purpose of which is acquisition or loss of, or change to, any right in or to real property located in Japan or any Industrial Property Right (note: item (f) of the preceding paragraph (1)).
  - (b) Representation in or preparation of documents for a legal case concerning family relations in which a Japanese national is involved as a party.
  - (c) Representation in or preparation of documents for a legal case involving a Japanese national as a party and concerning a will or gift effective upon death of any assets located in Japan and owned by a person residing in Japan, or concerning partition or management of estate or any other inheritance of any assets located in Japan and owned by a person residing in Japan at the time of his/her death.

## 2. Prohibited Legal Services

A foreign special member shall not render services that exceed the scope provided above (Article 4 of the Foreign Lawyers Law). When a foreign special member provides any of the legal services listed in the items of Article 63 of the Foreign Lawyers Law, he/she shall be sentenced to imprisonment with labor for not more than two years or a fine not exceeding one million yen (Article 63 of the Foreign Lawyers Law).

Article 63 of the Foreign Lawyers Law lists the prohibited services as follows:

- (1) Representation in lawsuits (*Soshou*) (excluding those concerning criminal issues), noncontentious cases (*Hi-soshou*), domestic relations cases (*kaji-shinpan*), cases involving execution of civil judgment, civil preservation cases (*Minji Hozen*) or any other civil cases before any court in Japan.
- (2) Representation in a criminal case, activities in the capacity of a defense counsel in a criminal case, activities in the capacity of an attendant in a juvenile protection case, or assistance to a fugitive criminal in an extradition case.
- (3) Representation in a case before administrative agency in Japan including a raising of objection (*Igimoushitate*), request for investigation (*Shinsa-seikyu*) or other legal actions to nullify an administrative disposition.
- (4) Expression of an expert opinion in writing concerning interpretation or applicability of the laws which are or were in effect in Japan (excluding the treaties or other international laws which became part of the Designated Law or the Laws of the Country of Primary Qualification, or, in case of engaging in the Practice of Laws of Particular Foreign Country under Article 5-2, paragraph 1, the treaties or other international laws which became part of the Laws of Particular Foreign Country).

A foreign special member who employs a *bengoshi* or *gaikokuho-jimu-bengoshi* shall not give a business order, based on employment relations, to the *bengoshi* or *gaikokuho-jimu-bengoshi* whom the foreign special member employs, on the handling of his/her legal business outside the scope of competence as prescribed in Articles 3 and 5 to 5-3 (hereinafter referred to as “legal business

outside the scope of competence”) (Article 49, paragraph 1 of the Foreign Lawyers Law). A foreign special member who runs a *gaikokuho* joint enterprise shall not improperly intervene in the handling of legal business, which is to be performed by the *bengoshi* or the legal profession corporation in the joint enterprise and which is outside the scope of the competence of the *gaikokuho-jimu-bengoshi* (Article 49-2 of the Foreign Lawyers Law). Please refer to sections regarding employment or *gaikokuho* joint enterprises for regulations of legal business outside the scope of competence in relation to employment and *gaikokuho* joint enterprises.

### 3. Involvement in Arbitration Procedure Held in Japan

Pursuant to Article 5-3 of the Foreign Lawyers Law, a *gaikokuho-jimu-bengoshi* may represent a party in an international arbitration procedure (including the settlement procedure incidental thereto). In Article 2, item (11) of the Foreign Lawyers Law, the term “international arbitration case” is defined as “an arbitration case concerning a civil dispute where the tribunal is located in Japan and where some or all of the parties reside or have located their headquarters or registered head offices abroad.” Accordingly, a *gaikokuho-jimu-bengoshi* may represent a party in an international arbitration case, exceeding the permitted scope under the Laws of the Country of Primary Qualification or the Designated Law, even when the substantive law governing the arbitration is Japanese law. Further, it is not necessary to obtain “written advice” required under Article 5-2 in order to legal services concerning the Laws of a Particular Foreign Country.

Notwithstanding the above, when a *gaikokuho-jimu-bengoshi* represents a party in international arbitration procedure, Article 3, paragraph 1, prohibits him/her to file with a court any applications relevant to such arbitration under the Code of Civil Procedure of Japan (including application for admission of arbitration award and application for compulsory execution of award), or to represent the party in procedure before a governmental agency (proviso of Article 3, paragraph 1 of the Foreign Lawyers Law).

A foreign lawyer who is not a *gaikokuho-jimu-bengoshi* may also represent a party in an international arbitration if he/she is retained in the foreign country where his/her main legal practice is located (Article 58-2 of the Foreign Lawyers Law).



### III. Important Items Concerning the Practice of Law

#### 1. Office

- (1) A foreign special member shall establish his/her office within the district covered by the local bar association he/she joins (Article 45, paragraph 4 of the Foreign Lawyers Law). No *gaikokuho-jimu-bengoshi* may have more than one office in Japan regardless of the names thereof (Article 45, paragraph 5 of the Foreign Lawyers Law). The office of a *gaikokuho-jimu-bengoshi* shall be represented as “*Gaikokuho-jimu-bengoshi-jimusho*” (Article 45, paragraph 1 of the Foreign Lawyers Law).

When a *gaikokuho-jimu-bengoshi* is employed by a *bengoshi*, the *gaikokuho-jimu-bengoshi* may use the name of that *bengoshi*'s office (Article 45, paragraph 3 of the Foreign Lawyers Law).

- (2) A foreign special member must post a sign stating the Law of the Country of Primary Qualification and, if any, the Designated Law(s) under Article 16, paragraph 1 of the Law in the form set forth by the Federation at the office entrance, the reception desk or another location in the office where the sign can be easily seen by the public (Article 2 of the Rules on Self-Representation by Foreign Special Members (the “Self-Representation Rules”)).

All the Designated Laws shall be stated in such sign.

When a foreign special member is employed by a *bengoshi*, the sign as described above shall be posted in such *bengoshi*'s office.

#### 2 Self-Representation

- (1) Representation of the Qualification of “*Gaikokuho-jimu-bengoshi*”
  - i) In rendering legal services, a foreign special member shall use the title of “*gaikokuho-jimu-bengoshi*” and add the name of the Country of Primary Qualification thereto (Article 44, paragraph 1 of the Foreign Lawyers Law).
  - ii) In rendering legal services, if a *gaikokuho-jimu-bengoshi* uses the title of his/her qualification in the Country of Primary

Qualification, the title shall be “appended to his/her title of *gaikokuho-jimu-bengoshi* and the name of the Country of Primary Qualification” (Article 47, paragraph 1 of the Foreign Lawyers Law). In such case, that title shall be expressed in the language used in the Country of Primary Qualification or phonetically expressed in the Japanese language. In any case, use of the word *bengoshi* shall not be permitted (Article 3 of the Self-Representation Rules).

- iii) When a foreign special member uses, in connection with his/her legal practice, business cards, letterhead or the like which shows his/her name, he/she must provide the Laws of the Country of Primary Qualification as well as the Designated Law(s) in such stationery (Article 2, paragraph 2 of the Self-Representation Rules). As for representation of the Designated Laws, “Laws of all the States in the United States of America except the State of Louisiana” is permissible.
- iv) In addition to the items (i), (ii) and (iii), above, a foreign special member must always indicate his/her Country of Primary Qualification while practicing, and, when the practice relates to his/her Designated Law(s), he/she must also indicate the Designated Law(s) (Article 2, paragraph 3 of the Self-Representation Rules).

(2) Name of Office

No office name of foreign special members shall include a name of any other individual or organization. Despite the above, a foreign special member may use the name of his/her “home business entity” as part of his/her office’s name when no other *gaikokuho-jimu-bengoshi* uses the name of such home business entity, or when he/she shares the office with all other *gaikokuho-jimu-bengoshi* using the name of the home business entity (proviso of Article 45-2, paragraph 2 of the Foreign Lawyers Law; Article 3-2, paragraph 1 of the Self-Representation Rules). The term “home business entity” is defined as a corporation, partnership or other business entity which has been established under the Laws of the Country of Primary Qualification for the purpose of providing legal services and to which the *gaikokuho-jimu-bengoshi* belongs (proviso of Article 45-2, paragraph 2 of the Foreign Lawyers

Law).

(3) Representation of the Name of the Home Business Entity

- i) A foreign special member may use the name of his/her home business entity only if it is used in the name of his/her office, or if it is used in addition to his/her own name or the name of his/her office (Article 45, paragraph 2 and Article 47, paragraph 2 of the Foreign Lawyers Law; Article 4, paragraph 1 of the Self-Representation Rules).
- ii) When a foreign special member uses the name of the home business entity in addition to his/her own name or the name of his/her office, unless it is used in the name of his/her office, the foreign special member shall notify the local bar association and the Federation with an written statement to the effect that no other foreign special member uses the name of such home business entity, or he/she shares the office with all other foreign special members using the name of the home business entity (Article 323, paragraph 1 of the Basic Rules). The name of the home business entity, shall not look or sound more conspicuous than the *gaikokuho-jimu-bengoshi's* own name or his/her office name, nor shall the *gaikokuho-jimu-bengoshi* make any self-representation of “*houritsu-jimusho*” or “*bengoshi-jimusho*” or “*bengoshi-houjin*” in the Japanese language (Article 4, paragraphs 2 and 3 of the Self-Representation Rules).
- iii) In order for a foreign special member to use the name of his/her home business entity in the name of his/her office under the proviso of Article 45, paragraph 2, of the Foreign Lawyers Law, the home business entity’s name shall be acceptable as a name of *gaikokuho-jimu-bengoshi-jimusho* under Japanese law. For example, a *gaikokuho-jimu-bengoshi*, as an individual, bears unlimited liability even if the home business entity owes limited liability only. Therefore, a *gaikokuho-jimu-bengoshi* whose home business entity’s name is, for example, “AB&C, Limited Liability Partnership,” may use the portion “AB&C” in the name of the *gaikokuho-jimu-bengoshi-jimusho*, although he/she may not include the portion “Limited liability Partnership (LLP)” in his/her office name because it misrepresents limitation of

liability. However, when a foreign special member whose name of office is AB&C Gaikokuho-Jimu-Bengshi-Jimusho may use the name of home business entity pursuant to Article 47, paragraph 2 of the Foreign Lawyers Law in addition to his/her office name: for example “AB&C Gaikokuho-Jimu-Bengshi-Jimusho,( AB&C, LLP).” Please ensure that such expression should not cause misrepresentation as to the liability of foreign special members.

iv) A *bengoshi* may perform functions set for the in Article 3 of the Practicing Attorney Law through a legal profession corporation (Article 30-2 of the Practicing Attorney Law). Name of legal profession corporations are regulated by the Rules Concerning Name of Legal Profession Corporation. According to Article 3 of the Rules, a legal profession corporation may not use the name which contains the name of, or a material part of the name of, the home business entity of a *gaikokuho-jimu-bengoshi*.

(4) Representation of the *Gaikokuho* Joint Enterprise

i) A foreign special member who has made a notification of the *gaikokuho* joint enterprise shall add the fact that he or she runs a *gaikokuho* joint enterprise to the name of his/her office and the title of the office of the *bengoshi* or legal profession corporation involved in the *gaikokuho* joint enterprise concerned, except when the words “*gaikokuho* joint enterprise” are used in Japanese in the title of the office in accordance with the preceding paragraph (Article 49-4 of the Foreign Lawyers Law). Please refer to Standards for Indication of *Gaikokuho* Joint Enterprises for indication of offices of foreign special members, *bengoshi* and legal profession corporation which are engaged in *gaikokuho* joint enterprises.

ii) If a foreign special member who runs a *gaikokuho* joint enterprise shares his/her office with that of the *bengoshi* or legal profession corporation in that *gaikokuho* joint enterprise (main office only, in the case of the legal profession corporation; hereinafter the same in this article) and if the scope of the legal business to be performed by the *gaikokuho* joint enterprise is not limited, and if the title of

the office of the *bengoshi* or legal profession corporation contains the words “*gaikokuho* joint enterprise” in Japanese, the *gaikokuho-jimu-bengoshi* may call his/her office in the same name as that of the *bengoshi* or legal profession corporation. (Article 49-5 of the Foreign Lawyers Law)

- iii) A foreign special member who is engaged in a *gaikokuho* joint enterprise with a *bengoshi* whose office is in a different location should take care so as not to create an appearance that it has more than one office because of displaying the fact that he/she runs a *gaikokuho* joint enterprise to the name of his/her office (please see Article 9 of the Rules on *Gaikokuho* Joint Enterprises).

### 3. Advertisement

In principle, a *gaikokuho-jimu-bengoshi*, like *bengoshi*, is not prohibited from advertising their legal services (Article 29 of Basic Regulations). However, advertising which misrepresents facts, may mislead, make extravagant claims, causes over-expectation, compares with other *bengoshi*, *gaikokuho-jimu-bengoshi* or their offices, violates laws, regulations, articles of associations or rules of the bar association or the Federation, or may degrade the dignity or credit of *gaikokuho-jimu-bengoshi* is prohibited (Article 3 of The Rules on Advertisement of Services by Foreign Special Members). Advertisement Rules also stipulate items that are prohibited from being advertised, regulations on the method of advertisement, obligations to keep the object of advertisement, etc (Article 4 to 11). Investigations of the local bar association to which a *gaikokuho-jimu-bengoshi* belongs, removal of the materials in violation of the rule, and others are also stipulated (Article 12). The Guidelines for Advertisement of Services by Practicing Attorneys and Foreign Special Members stipulate guidelines that are more concrete.

### 4. Legal Fees

Pursuant to Article 23, item (5) of the Law and Article 30 of the Basic Rules, the Federation established the Rules on Fees and Related Issues for a

*Gaikokuho-jimu-bengoshi*, which stipulate that legal fees shall be reasonable and appropriate, obligations to set up and keep a standard of legal fees, explanation of legal fees and disclosure of information, etc. .

Fee sharing with anyone other than a *gaikokuho-jimu-bengoshi* is prohibited, unless it is permitted under the laws, regulations or rules of the bar association to which the attorney belongs, or unless otherwise there is a justifiable cause (Article 30-2 of the Basic Rules, Article 12 of Basic Rules on the Duties of Practicing Attorneys).

**5. Prohibition of Association with Non-*Bengoshi* and Obligations to Keep Employees from *Hiben* Activities**

A person other than *bengoshi* or an entity other than a legal profession corporation shall not engage in the practice of law (Article 72 of the Practicing Attorney Law). Any violation of this will be subjected to criminal punishment (Articles 77 and 78 of the Practicing Attorney Law).

Article 72 of the Practicing Attorney Law

A person other than *bengoshi* or an entity other than a legal profession corporation shall not, for payment, engage in the practice of law by providing legal advice or representation, arbitrating, settling disputes, or rendering other legal services, in respect of lawsuits (*Soshou*), non-contentious matters (*Hi-soshou*), or cases before administrative agencies such as a request for investigation (*Sinsasaikyu*), raising of objection (*Igimousitate*) and request for administrative review, or any other legal matters. In addition, he/she may not act as an intermediary in such matters as are specified in this Article as constituting the practice of law, provided, however, that this shall not apply in such cases as otherwise specified in this Law.

Under Article 6, paragraph 2 of the Foreign Lawyers Law, a *gaikokuho-jimu-bengoshi* is exempted from the application of Article 72 of the Practicing Attorney Law and authorized to provide legal services as set forth in Articles 3, 5, 5-2 and 5-3 of the Law. However, he/she is prohibited, under Article 4 of

the Law, to provide any legal services other than those so authorized.

Accordingly, if a person other than a *bengoshi* or a *gaikokuho-jimu-bengoshi* (including a foreign lawyer) engages in providing legal services concerning Japanese or foreign law for the purpose of receiving fees, it constitutes a violation of Article 72 of the Practicing Attorney Law.

A foreign special member is prohibited from affiliating with a person or an entity who does such an activity (Article 50, paragraph 1 of the Foreign Lawyers Law, Articles 27 of the Practicing Attorney Law, Article 30-2 of the Basic Rules, Article 11 of Basic Rules on the Duties of Practicing Attorneys).

In addition, a foreign special member must supervise any individual, other than a *gaikokuho-jimu-bengoshi*, working for his/her *gaikokuho-jimu-bengoshi-jimusho* (including foreign lawyers called trainees or clerks) so that they will not commit any act in violation of Article 72 of the Practicing Attorney Law or engage in any illegal or improper activities (Article 30-2 of the Basic Rules, Article 19 of Basic Rules on the Duties of Practicing Attorneys).

A *bengoshi* having the authority to supervise a *gaikokuho-jimu-bengoshi* has obligations to ensure that a *gaikokuho-jimu-bengoshi* who belongs to his/her office complies with Basic Rules on the Duties of Practicing Attorneys (Article 55 of Basic Rules on the Duties of Practicing Attorneys).

## **6 Employment and Gaikokuho Joint Enterprises**

### **(1) Employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi***

A. A foreign special member who employs a *bengoshi* or *gaikokuho-jimu-bengoshi* (hereinafter “Employer”) shall not give a business order, based on employment relations, to the *bengoshi* or *gaikokuho-jimu-bengoshi* (hereinafter “Employee”) whom the foreign special member employs, on the handling of his/her legal business outside the scope of his/her competence (hereinafter referred to as “legal business outside the scope of competence”) (Article 49, paragraph 1 the Foreign Lawyers Law and Article 6 of the Rules on

employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*). An Employer shall not give disadvantageous treatment such as dismissal to an Employee by reason that the Employee does not comply with such order (Article 6, paragraph 2 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*). A Employer shall not improperly intervene in the handling of legal business which is to be performed by Employee and which is outside the scope of competence of himself /herself who is the Employer (Article 49, paragraph 3 of the Foreign Lawyers Law).

Please refer to “II Scope of *Gaikokuho-jimu-bengoshi*'s Legal Services Permitted to Provide” for the scope of competence of a *Gaikokuho-jimu-bengoshi*. Employment of *bengoshi* by a *gaikokuho-jimu-bengoshi* used to be prohibited because a *gaikokuho-jimu-bengoshi* may be involved in the practice which is outside the scope of his/her competence by way of employing a *bengoshi* (Article 49, Paragraph 1 of the Foreign Lawyers Law before amendments). However, the amendments to the Foreign Lawyers Law which took effect as of April 1, 2005 replaced preventive measures with the regulations of specific act of breaching the limitation by way of employment and lifted the complete ban of employment.

The Foreign Lawyers Law does not define the term “employment.” Please note that the foregoing regulations should apply to any *bengoshi* or *gaikokuho-jimu-bengoshi* whether he/she is called a partner, associate or any other title if in substance he/she is employed by a *gaikokuho-jimu-bengoshi* (Article 3 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).

- B. In case a foreign special member employs a *bengoshi* or *gaikokuho-jimu-bengoshi*, he/she shall notify in advance the Federation of name and registration number of Employee and the term of employment contract and the scope of legal business handled by Employer and the scope of legal business handled by Employee (Article 49-3, Paragraph 1 of the Law and Article 7, paragraph 1 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*). He/she shall give a notification of any change of notified matters and when the employment is terminated (Article 7, paragraphs 2 and 3 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).

C. Please note that Employees are subject to the following regulations.



- (a) Employees shall not handle, or participate in, legal business outside the scope of competence handled by an Employer. In cases where an Employee participates in legal business which is outside the scope of competence of the Employer, the Employee shall not be exempt from disciplinary action or other liability on the grounds that he/she conformed with the business order based on employment relations (Article 49, paragraph 2 of the Foreign Lawyers Law and Article 6, Paragraph 4 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).
- (b) When an Employee undertakes legal business outside the scope of competence of the Employer, the Employee shall undertake it independently from the Employer and on the account of the Employee (Article 4 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*). When an Employee undertakes a case and the legal business concerning the case is legal business outside the scope of competence of the Employer, such Employee shall give appropriate explanation to the client to prevent misunderstanding that the Employer is undertaking such case (Article 5 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).
- (c) When an Employee handles legal business outside the scope of competence of an Employer, the Employee shall act autonomously so that the independence of the work will not be impaired (Article 6 paragraph 3 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).
- D. An Employer and Employee shall retain a list of Employees, employment contracts and other documents describing the notifying matters for three years from termination of the employment contract (Article 6 paragraph 3 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).
- E. The Federation and the local bar association to which the Employer or Employee belongs may conduct necessary investigations if there is a suspicion of breach of the provisions of Article 4, 49 or 49-3 of the Foreign Lawyers Law, and the Employer and Employees shall cooperate with such investigations (Article 11 of the Rules on employment of *bengoshi* and *Gaikokuho-jimu-bengoshi* by *Gaikokuho-jimu-bengoshi*).

(2) *Gaikokuho* Joint Enterprises

- A. A foreign special member who runs a *gaikokuho* joint enterprise shall not improperly intervene in the handling of legal business, which is to be performed by the *bengoshi* or the legal profession corporation in the joint enterprise and which is outside the scope of the competence of the *Gaikokuho-jimu-bengoshi* (Article 49-2 of the Foreign Lawyers Law).

Please refer to “II Scope of *Gaikokuho-jimu-bengoshi*'s Legal Services Permitted to Provide” for the scope of competence of a *gaikokuho-jimu-bengoshi*. A joint enterprise used to be prohibited with certain exceptions because a *gaikokuho-jimu-bengoshi* may be involved in the practice which is outside the scope of his or her competence by way of a joint enterprise with a *bengoshi* (Article 49, Paragraph 2 of the Foreign Lawyers Law before amendments). However, the amendments to the Foreign Lawyers Law which took effect as of April 1, 2005 replaced preventive measures with the regulations of specific act of breaching the limitation by way of joint enterprises and lifted the ban of *gaikokuho* joint enterprises.

A “*gaikokuho* joint enterprise” means an enterprise jointly run by a *gaikokuho-jimu-bengoshi* and a *bengoshi* or a *gaikokuho-jimu-bengoshi* and a legal profession corporation under a *kumiai* contract or other continuous contract for the purpose of performing legal business (Article 2, Paragraph 1, item 15 of the Foreign Lawyers Law). A *gaikokuho-jimu-bengoshi* may operate a *gaikokuho* joint enterprise with or without sharing office premises and with or without limiting the scope of legal business performed through the joint enterprise.

A *gaikokuho-jimu-bengoshi* shall not conduct legal business outside the scope of competence even when the *gaikokuho-jimu-bengoshi* operates a *gaikokuho* joint enterprise. A *Gaikokuho-jimu-bengoshi* who operates a *gaikokuho* joint enterprise may undertake legal business concerning such *gaikokuho* joint enterprise jointly with *bengoshi* or legal professional corporations engaging in such *gaikokuho* joint enterprise (Article 3 of the Rules on *Gaikokuho* Joint Enterprises). This is provided for convenience of undertaking legal matters through a joint enterprise. Please note, however, that legal matters should be handled by a person who is qualified to do that.

- B. In case a foreign special member operates a *gaikokuho* joint enterprise with a *bengoshi*, he/she shall notify in advance the Federation of name and office of the *bengoshi* and the scope of legal business conducted through the joint

enterprise (Article 49-3, Paragraph 1 of the Foreign Lawyers Law and Article 10, paragraph 1 of the Rules on *Gaikokuho* Joint Enterprises). In case a foreign special member operates a *gaikokuho* joint enterprise with a legal profession corporation, he or she shall notify in advance the Federation of name, main office and branch offices of the legal profession corporation and the scope of legal business conducted through the joint enterprise (Article 49-3, Paragraph 1 of the Foreign Lawyers Law and Article 10, paragraph 2 of the Rules on *Gaikokuho* Joint Enterprises). He/she shall give a notification of any change of notified matters and termination of the *gaikokuho* joint enterprise (Article 10, paragraphs 3 and 4 of the Rules on *Gaikokuho* Joint Enterprises).

- C. A *bengoshi* or *gaikokuho-jimu-bengoshi* who operates a *gaikokuho* joint enterprise, shareholders of legal profession corporation which operates a *gaikokuho* joint enterprise, a *bengoshi* or *gaikokuho-jimu-bengoshi* who is employed by *bengoshi* or *gaikokuho-jimu-bengoshi* who operates a *gaikokuho* joint enterprise and a *bengoshi* or *gaikokuho-jimu-bengoshi* who is employed by a legal profession corporation which conducts a *gaikokuho* joint enterprise (collectively “Relevant Persons”) shall observe the following provisions.
- (a) When a Relevant Person conduct legal work jointly with another Relevant Person, they shall, upon undertaking the work, specify and explain the competence of each Relevant Person as well as the scope of legal business covered by each, to the client. If there are any reasons by which the Relevant Person cannot specify the scope of legal business to be handled by each Relevant Person when they undertake the work, the Relevant Person shall explain to the client the scope of legal business to be handled by each person without delay after such reasons cease to exist (Article 4 of the Rules on *Gaikokuho* Joint Enterprises).
- (b) A Relevant Person shall not disclose or use the confidential matters that they come to know in the course of performing work for the clients of another Relevant Person or of the business entity to which the *gaikokuho-jimu-bengoshi* in such *gaikokuho* joint enterprise belongs or of legal professional corporations in which such *gaikokuho* joint enterprise participates, without good reason (Article 5 of the Rules on *Gaikokuho* Joint Enterprises). If the Relevant Person shares offices with each other, Articles 60 and 56 of the Basic Rules Concerning Duties of Practicing Attorneys (as applied to foreign

special members by virtue of 30-2 of the Basic Rules) require such Relevant Person to maintain confidentiality of information of clients of other Relevant Persons. The Rules on *Gaikokuho* Joint Enterprises expand the scope of confidentiality obligations to a *gaikokuho*-joint-enterprise without sharing office premises and to the home business entity to which the *gaikokuho-jimu-bengoshi* belongs.

(c) Relevant Persons may not work on cases on which another Relevant Person or the legal profession corporation which operates the *gaikokuho* joint enterprise may not undertake by virtue of Attorney Professional Conduct Rules (including the provisions applied by virtue of 30-2 of the Basic Rules Concerning Foreign Special Members unless there are any reasons that fairness of the work can be maintained (Article 6 of the Rules on *Gaikokuho* Joint Enterprises). If the Relevant Person shares offices with each other, Articles 60 and 57 of the Basic Rules Concerning Duties of Practicing Attorneys (as applied to foreign special members by virtue of 30-2 of the Basic Rules) require such Relevant Person to prevent conflict of interests with each other. The Rules on *Gaikokuho* Joint Enterprises expand the scope of conflict of interests rules to a *gaikokuho*-joint-enterprise without sharing office premises.

D. A *bengoshi*, legal profession corporation and *gaikokuho-jimu-bengoshi* who operates a *gaikokuho* joint enterprise shall retain employment contracts and joint enterprise contracts for three years from termination of the employment or joint enterprise, respectively (Article 14 of the Rules on *Gaikokuho* Joint Enterprises).

E. The Federation and the bar association to which the *bengoshi*, legal profession corporation and *gaikokuho-jimu-bengoshi* belongs may conduct necessary investigations if there is a suspicion of breach of the provisions of Article 4, 49 or 49-3 of the Foreign Lawyers Law, and the *bengoshi*, legal profession corporation and *gaikokuho-jimu-bengoshi* shall cooperate with such investigations (Article 15 of the Rules on *Gaikokuho* Joint Enterprises).

### (3) Sharing of Offices

A *gaikokuho-jimu-bengoshi* may share an office with a Japanese *bengoshi* without by way of a *gaikokuho* joint enterprise. If a foreign special member

works with a *bengoshi* or legal professional corporation at the same office or shares office employees and/or facilities with a *bengoshi* or legal professional corporation, the foreign special member shall jointly with the *bengoshi* or legal professional corporation notify the Federation and the local bar association to which he/she belongs of the details of office sharing (Article 33, paragraph 1 of the Basic Rules).

## **7 Notification of Public Post and Business Activities.**

In the event that (1) a *gaikokuho-jimu-bengoshi* has assumed full-time paid public post, or (2) he/she is going to engage in profit-making business, he/she shall make notification of relevant matters to his/her bar association.

Until the revision of the Practicing Attorney Law and the Foreign Lawyers Law effective on April, 2004, a *gaikokuho-jimu-bengoshi*, as well as a *bengoshi*, had been prohibited from assuming public post (with a certain exception) and had only been allowed to engage in business activities when permitted by the local bar association (former Article 30 of the Practicing Attorney Law before amendment; Article 50 of the Foreign Lawyers Law before amendment). However, the said revision of the laws deleted the provision prohibiting their assumption of public post, and allowed their business activities with a simple notification obligation (Article 30 of the Practicing Attorney Law, Article 50 of the Foreign Lawyers Law). Under these current laws, the Federation requires a *gaikokuho-jimu-bengoshi* to submit notices of their assumption of public post and engagement of business activities to his/her bar association.

### **(1) Assumption of Public Post.**

In the event that a *gaikokuho-jimu-bengoshi* has assumed full-time paid public post, he/she shall submit to his/her bar association a Notice of Appointment to Public Post (Article 28, paragraph 1 of the Basic Rules; Article 2 of Regulations regarding Notification of Assumption of Public Post by *gaikokuho-jimu-bengoshi* (the "*Gaiben* Regulations on Public Post Notification").

A *gaikokuho-jimu-bengoshi* shall also notify his/her bar association promptly in writing of any changes in that notification, including leaving the public post (Article 28, paragraph 2 of the Basic Rules; Article 3 of the *Gaiben* Regulations on Public Post Notification).

(2) Business Activities.

In the event a *gaikokuho-jimu-bengoshi* wishes to engage in business activities described below, he/she shall submit in advance a Notice of Engagement in Profit-Making Business to his/her bar association (Article 50 of the Foreign Lawyers Law; Article 30, paragraph 1 and 3 of the Practicing Attorney Law; Article 28-2 of the Basic Rules; Article 2 of Regulations for Notification of Profit-making Business by *gaikokuho-jimu-bengoshi* (the “*Gaiben* Regulations on Business Activities Notification”)):

1. Engaging in profit-making business by himself/herself; or
2. Assuming the position of director, executive officer, or other officer operating the business or employee of a profit-making legal entity.

If the profit-making legal entity is a corporation, a certified copy of the corporation's company register shall be attached to the notification (Article 3 of the *Gaiben* Regulations on Business Activities Notification).

A *gaikokuho-jimu-bengoshi* shall also notify his/her bar association promptly in writing of (i) any changes in the notification, (ii) cessation of the business or (iii) resigning as Director or employee, if any (Article 50 Foreign Lawyers Law; Article 30, paragraph 3 of the Practicing Attorney Law; Article 28-2 of the Basic Rules; Article 4, paragraph 1 of the *Gaiben* Regulations on Business Activities Notification).

Local bar associations shall compile a register of *Gaikokuho-jimu-bengoshi* Engaging in Profit-making Business containing details of the notified matters, and shall make such register available for public inspection (Article 50 of the Foreign Lawyers Law; Article 30, paragraph 2 of the Practicing Attorney Law; Article 28-2 of the Basic Rules; Article 5 of the *Gaiben* Regulations on Business Activities Notification).

In the event that a *gaikokuho-jimu-bengoshi* engages in a profit-making business but has not submitted notification thereof or has not submitted notification of relevant changes, or in the event that the notification contains errors, a local bar association may recommend to make a correct notification. Furthermore, Should a local bar association have sufficient grounds to suspect that a *gaikokuho-jimu-bengoshi* is in violation of these Regulations with respect to matters notified, a local bar association may demand that person to submit a report as to such suspicion, and the *gaikokuho-jimu-bengoshi* shall promptly satisfy such requirement (Article 28-2 of the Basic Rules; Article 7 of the *Gaiben* Regulations on Business Activities Notification).

#### IV. Obligation to Stay in Japan

A foreign special member is required to stay in Japan for a period of not less than 180 days per year (Article 48, paragraph 1 of the Law). However, if a foreign special member is forced to stay abroad due to his/her own or his/her relative's injury, illness or any other unforeseen events, his/her stay abroad during such period shall be treated as if he/she stayed in Japan, and counted toward the required period of stay (Article 48, paragraph 2 of the Law). For the purpose of this obligation, the first day of the year shall be the date when the foreign special member is registered in the rolls of *gaikokuho-jimu-bengoshi* (Article 34 of the Basic Rules). If a *gaikokuho-jimu-bengoshi* violates his/her obligation to stay, the Federation may cancel his/her registration upon a resolution of the *Gaikokuho-jimu-bengoshi* Registration Screening Board (Article 30, paragraph 2 of the Law). The Minister of Justice shall cancel his/her approval given when the registration is cancelled (Article 14, paragraph 1, item (4) of the Law).

V. Obligations to Notify, etc. the Federation and/or the Local Bar Association

1. Under the applicable laws, a *gaikokuho-jimu-bengoshi* shall provide a request or a report of the following items with the Federation in the form set forth in the Regulations on Handling the Rolls of *Gaikokuho-jimu-bengoshi* or other rules or regulations together with the documents required under the Basic Rules or other rules or regulations.

(1) Request for Registration (Article 25 of the Law; Article 11 of the Basic Rules)

In order to be a *gaikokuho-jimu-bengoshi*, a person shall, after obtaining the approval from the Minister of Justice, file a written request for registration with the Federation through the local bar association which he/she intends to join, and obtain the registration.

(2) Request for Transfer of Registration (Article 28 of the Law; Article 12 of the Basic Rules)

When a foreign special member intends to change the local bar association, he/she shall file a written request for transfer of registration with the Federation through the local bar association which he/she intends to newly join.

(3) Request for Cancellation of Registration (Article 29 of the Law; Article 14 of the Basic Rules)

When a foreign special member intends to discontinue his/her practice, he/she shall file a written request for cancellation of registration with the Federation through the local bar association.

(4) Request for Additional Note of Designated Law (Article 33 of the Law; Article 15 of the Basic Rules)

When a foreign special member intends to have a note of the Designated Law added to his/her registration, he/she shall, after obtaining the designation by the Minister of Justice, file a written request for the additional note of Designated Law with the Federation through the local bar association.



- (5) Report on Employment of *Bengoshi* or *Gaikokuho*-Joint-Enterprises (Article 49-3 of the Law; Article 7 of Rules on the employment of *bengoshi* and *gaikokuho-jimu-bengoshi* by *gaikokuho-jimu-bengoshi* and Article 10 of the Rules on *Gaikokuho* Joint Enterprises)

Please refer to the description concerning the employment and *Gaikokuho* Joint Enterprises.

2. Other than the above, a foreign special member shall provide a report or the like of the following items with the Federation under the Basic Rules, the Regulations on Handling of the Rolls of *Gaikokuho-jimu-bengoshi* or other rules or regulations set forth by the Federation:

- (1) Change in Registered Items (Article 13, paragraph 1 of the Basic Rules)

A foreign special member shall immediately notify the Federation through the local bar association any change in the name, nationality, residence in Japan, or name or address of his/her office, admission number, date of admission, the Country of Primary Qualification, name of the qualification of a foreign lawyer, date when he/she became qualified as a foreign lawyer.

- (2) Change of Place for Contact Abroad (Article 2 of the Regulations on Handling of the Rolls of *Gaikokuho-jimu-bengoshi*)

A foreign special member shall notify the Federation any changes of his/her place for contact abroad entered in the rolls of *gaikokuho-jimu-bengoshi*.

- (3) Sharing of Office (Article 33 of the Basic Rules)

When a foreign special member intends to work with a *bengoshi* at the same office or share office employees and/or facilities with a *bengoshi*, the *gaikokuho-jimu-bengoshi* and the *bengoshi* shall, in the names of both himself/herself and the *bengoshi*, provide a notice thereof and the scope of such sharing to the Federation and the local bar association to which the foreign special member belongs.

Any change in the scope of or cancellation or such sharing is also required to be notified.

(4) Use of Name of Home Business Entity (Article 32, paragraph 1 of the Basic Rules)

When a foreign special member intends to use the name of his/her home business entity, he/she shall provide a notice thereof to the Federation and the local bar association. A change of the home business entities or cancellation of the use of the home business entity's name is also required to be notified.

(5) Report on Concurrent Engagement in Another Job or Profit-seeking Business (Article 28 and Article 28-2 of the Basic Rules)

Please refer to the description concerning regulations on concurrent engagement in another job and profit-seeking business.

(6) Loss of Badge (Article 8 of the Rules on *Gaikokuho-jimu-bengoshi* Badge)

If a foreign special member loses his/her *gaikokuho-jimu-bengoshi* badge, he/she shall promptly notify the Federation in writing through the local bar association and apply for reissuance of the badge.

(7) Employment of Qualified Foreign Lawyer (Article 2 of the rules on Report of Employment of Foreign Lawyer)

When a *bengoshi*, a legal professional corporation, a special member, a quasi member or a foreign special member employs an individual who is qualified to practice law in a foreign country but not permitted render legal services in Japan ("*a gaikoku-bengoshi-shikakusha*"), such person shall file with the Federation the name of the *gaikoku-bengoshi-shikakusha*, the country where he/she is qualified to practice law and other required items. Any changes in the above items or discontinuation of the employment shall be notified to the Federation.

*A gaikoku-bengoshi-shikakusha* employed by such person, or a trainee who render legal services under the supervision of a *bengoshi* or a *gaikokuho-jimu-bengoshi* and has the qualification corresponding to a *bengoshi* to practice law in a foreign country, shall not represent himself/herself as a *bengoshi* or a *gaikokuho-jimu-bengoshi* in Japan. Similarly, representation that he/she is a member of the legal profession or qualified to render legal services in that foreign country or the Japanese translation thereof is prohibited unless it is accompanied by a

statement that he/she is licensed to practice law in Japan.

## Disciplinary Actions

### 1. Causes for Disciplinary Action and Disciplinary Authority

#### (1) Causes for Disciplinary Action

Disciplinary action shall be imposed against a foreign special member, if he/she violates the Practicing Attorney Law, the Foreign Lawyers Law or any of the provisions pertaining to a foreign special member in the articles of the Federation or the local bar association; damages the integrity of or lessens public confidence in the local bar association or the Federation; or behave with impropriety or appearance of impropriety in his professional or personal conduct (Article 51, paragraph 1 of the Foreign Lawyers Law).

#### (2) Disciplinary Authority

A disciplinary action shall be imposed by the Federation, according to a resolution of the *Gaikokuho-jimu-bengoshi* Disciplinary Actions Committee (Article 51, paragraph 2 of the Foreign Lawyers Law).

### 2. Types of Disciplinary Actions

#### (1) There shall be 4 kinds of disciplinary actions as follows (Article 52 of the Foreign Lawyers Law):

##### i) Reprimand:

A reprimand is a disciplinary action that declares the fault of the foreign special member who committed professional misconduct, requests his/her repent, and warns him/her for the future.

##### ii) Suspension of Practice for Not More Than 2 years

Suspension is a disciplinary action to prohibit the *gaikokuho-jimu-bengoshi* against whom a disciplinary action is imposed from engaging in practice for a specified period of up to 2 years.

##### iii) Order to Withdraw

Order to Withdraw is a disciplinary action to force the *gaikokuho-jimu-bengoshi* against whom a disciplinary action is imposed to withdraw from the local bar association.

The disciplined *gaikokuho-jimu-bengoshi* loses the status of *gaikokuho-jimu-bengoshi* and his/her registration of the *gaikokuho-jimu-bengoshi* shall be cancelled (Article 30, paragraph 1, item (3) of the Foreign Lawyers Law).

iv) Dismissal

Dismissal is a disciplinary action to deprive of the status and qualification of *gaikokuho-jimu-bengoshi*. The registration of the *gaikokuho-jimu-bengoshi* of such disciplined person shall be cancelled (Foreign Lawyers Article 30, paragraph 1, item (1) of the Law; Article 7 of the Practicing Attorney Law). The disciplined person shall not regain his/her status as a *gaikokuho-jimu-bengoshi* for the period of 3 years from the disciplinary action (Article 8 of the Foreign Lawyers Law, Article 7 of the Practicing Attorney Law).

(2) Effective Time of Disciplinary Actions

A disciplinary action comes into effect when the person against whom the disciplinary action is imposed is notified.

(3) Public notice

Contents of a disciplinary action shall be announced publicly in an official gazette and bar journals (Articles 53 paragraph 7 of the Foreign Lawyers Law, Article 2 of the Rules on the public notice and announcement, etc. of disciplinary action of a *gaikokuho-jimu-bengoshi*).

**3 Procedure for Examination by the *Gaikokuho-jimu-bengoshi* Disciplinary Actions Committee**

(1) Request for Disciplinary Action

A person who believes that grounds for disciplinary action against a *gaikokuho-jimu-bengoshi* exist may file a request for disciplinary action with the Federation through the local bar association of which such a *gaikokuho-jimu-bengoshi* is a member (Article 53, paragraph 1 of the Foreign Lawyers Law)

(2) Investigation and Examination by Discipline Maintenance Committee of Local Bar Association

Upon receipt of a request for disciplinary action against a *gaikokuho-jimu-bengoshi* as described in (1) above, the local bar association may instruct its Discipline Maintenance Committee to conduct an investigation (Article 53, paragraph 2 of the Foreign Lawyers Law).

When the local bar association believes that grounds for disciplinary action against the foreign special member exist, it may instruct the Discipline Maintenance Committee to conduct an investigation, regardless of whether or not it receives a request as described in (1) above.

When the Discipline Maintenance Committee deems it appropriate to impose disciplinary action against the foreign special member, then, the local bar association shall file a request for disciplinary action with the Federation (Article 53, paragraph 2 of the Foreign Lawyers Law).

(3) Investigation by the Federation

When the Federation receives a request as described in (1) above or believes that grounds for disciplinary action against a foreign special member exist, the Federation shall instruct the *Gaikokuho-jimu-bengoshi* Discipline Maintenance Committee to conduct an investigation, unless the investigation in (2) above is currently in process (Article 53, paragraph 3 of the Foreign Lawyers Law).

(4) Examination by the *Gaikokuho-jimu-bengoshi* Disciplinary Actions Committee

When the Federation receives a request for disciplinary action against a *gaikokuho-jimu-bengoshi* from the local bar association as described in (2) above, or when the *Gaikokuho-jimu-bengoshi* Discipline

Maintenance Committee deems it appropriate to impose disciplinary action against the foreign special member after the investigation as described in (3) above, then, the Federation shall request the *Gaikokuho-jimu-bengoshi* Disciplinary Actions Committee to examine the case (Article 53, paragraph 4 of the Foreign Lawyers Law).

#### **4 Claim for Cancellation**

A *gaikokuho-jimu-bengoshi* against whom the Federation imposed disciplinary may appeal the Federation's determination for annulment to the Tokyo High Court (Article 60, paragraph 1 of the Foreign Lawyers Law).

#### **5 Time Limitation**

No procedure for disciplinary action shall be commenced after 3 years from when the alleged professional misconduct occurred (Article 54 of the Foreign Lawyers Law, Article 62 of the Practicing Attorney Law).

#### **6 Restrictions on Transfer of Registration, etc.**

A foreign special member whose disciplinary case is pending may not request for transfer or cancellation of registration until the case is finally determined (under Article 54 of the Foreign Lawyers Law Article 62 of the Practicing Attorney Law).