

# Act on the Amendment Part of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers

May.2020

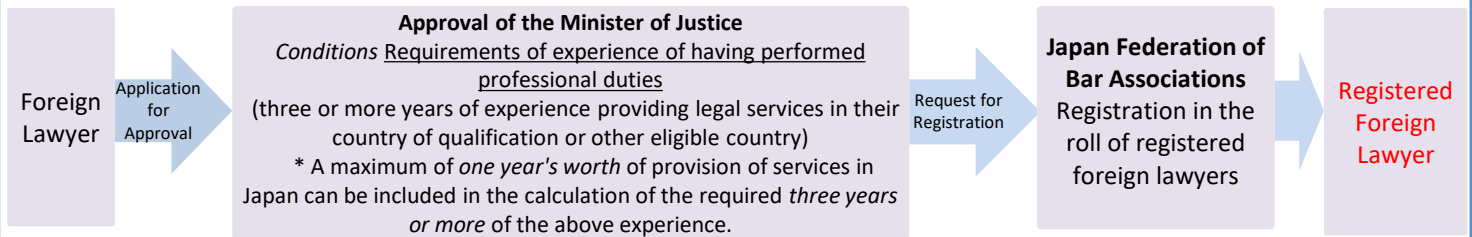
Judicial System Department of the Ministry of Justice

## Outline of Foreign Lawyers System

### REGISTERED FOREIGN LAWYER

This system allows foreign lawyers to handle legal services concerning foreign laws in Japan, as **registered foreign lawyers**, if they meet the certain requirements.

(Implemented 1987)



\* Registered foreign lawyers are prohibited from handling legal matters that involve Japanese law, and from representing in court cases, etc.

### MAIN DUTIES

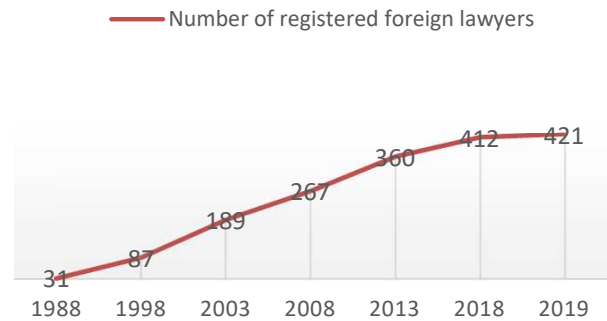
#### (1) Providing legal services concerning foreign laws

(i.e.) Representing clients in international transactions that shall be governed by foreign law with foreign companies, drafting contracts for international transactions, giving advice on things like local laws to companies expanding into overseas markets

#### (2) Representation in international arbitration cases

### PRESENT SITUATION 421 registrees (as of April 1<sup>st</sup>, 2019)

Country of primary qualification	U.S.A 221	United Kingdom 72	China 44
Nationality	U.S.A 143	Japan 83	UK 46
Bar Association	Tokyo (all three) 392	Osaka 8	Aichi 5



\* Joint Enterprises between attorneys at law and registered foreign lawyers and others (**Foreign Law Joint Enterprises**) 42  
Attorneys at law and registered foreign lawyers engaging in Foreign Law Joint Enterprises : **total 940 people**  
(798 attorneys at law, 142 registered foreign lawyers)

## Purpose and Necessity of the Amendment

- **Demand for foreign law services is expanding** in line with an increase in international business transactions.
- There is a need to develop an infrastructure that will **promote active recourse to international arbitration**.  
Singapore(SIAC) Approximately 400 cases Hong Kong (HKIAC) Approximately 260 cases Japan (JCAA) Approximately 10 cases

### ► The Basic Policy 2019 (June 21, 2019 Cabinet Decision)

"The government will promote the development of infrastructure towards further activation of international arbitration such as enhancement of the registered foreign lawyer system."

### ► Follow-up of the Growth Strategy (June 21, 2019 Cabinet Decision)

" The government will establish a dispute-settlement infrastructure that includes the prompt amendment of the Foreign Lawyers Act aimed at promoting active recourse to international arbitration, thereby driving overseas expansion by Japanese companies."

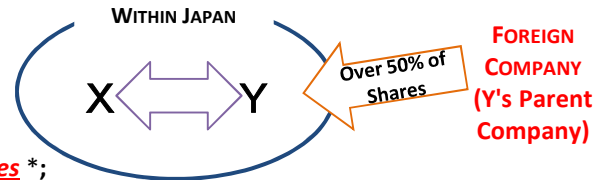
## Substance of the Amendment

### (1) Expands the scope of representation in international arbitration; establishes provisions on representation in international mediation by registered foreign lawyers and foreign lawyers

(Article 2, paragraph (11), Article 5-3, paragraph 2, Article 58-2, related to amended Act Article 1)

⇒ Even if all parties involved have a head office within Japan, if there is a specific connection to a foreign country as regards something such as a party to the case or the governing law, it will be treated as an **international arbitration case** and a registered foreign lawyer and a foreign lawyer will be able to provide representation.

Example of a case that would come to be treated as an international arbitration case



⇒ The amendment establishes provisions on **international mediation cases**\*; registered foreign lawyers and foreign lawyers will be able to provide representation.

\* Cases involving contracts and trade disputes between businesses and trade disputes

### (2) Easing the Relevant Requirements of experience of having performed professional duties

(Article 10, paragraph (2), related to amended Act Article 1)

⇒ The amendment increases the **maximum period of provision of services in Japan that can be included in the calculation** of the required 3 years or more of experience of having performed professional duties from the current **one year, to two years**.

CURRENTLY 3 years of having performed professional duties, including **1 year of provision of services in Japan**



AS PROPOSED 3 years of having performed professional duties, including **2 years of provision of services in Japan**



### (3) Establishing a joint corporation system

(Article 68 and thereafter, related to the amended Act, Article 2)

⇒ The amendment would **enable joint corporations to be established** consisting attorneys at law and registered foreign lawyers.

(Name) Attorney at law/registered foreign lawyer joint corporation  
 (Members) Attorneys at law, registered foreign lawyers  
 (Duties) Full legal services

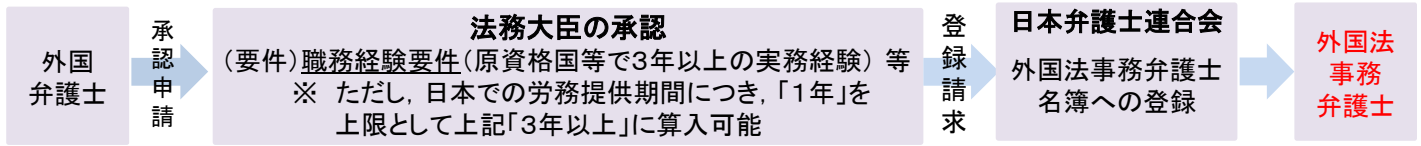


• (Note) registered foreign lawyers can only engage in practice concerning foreign laws, etc.

Effective date of (1) and (2): 3 months after the date of promulgation, Effective date of (3): Within 2 years and 6 months from the date of promulgation

## 外弁制度の概要

〔外国法事務弁護士〕 **外国弁護士**が、一定の要件を満たした場合に、**外国法事務弁護士**として、国内で**外国法に関する法律事務等**を取り扱うことができる制度(S62 制度開始)



〔主な業務〕 ① **外国法に関する法律事務** ※裁判など日本法に関する法律事務の取扱いは不可  
(例) 外国企業との国際取引の代理、国際取引の契約書作成、海外進出企業への現地法制等に関するアドバイス 等

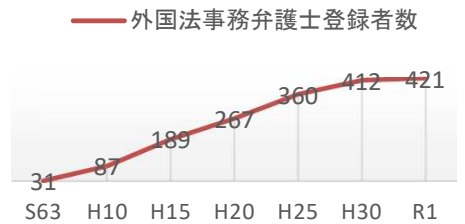
② **国際仲裁事件に関する事務**

〔現況〕 登録者数 421人(H31.4.1時点)

うち	原資格国別	米国221人	英国72人	中国44人
	国籍別	米国143人	日本83人	英国46人
	弁護士会別	東京三会392人	大阪 8人	愛知 5人

※弁護士と外国法事務弁護士等の共同事業(外国法共同事業)数 42

外国法共同事業に従事する弁護士・外国法事務弁護士 計940人(弁798人, 外142人)



## 改正の趣旨・必要性

○ 企業の国際取引の増加等に伴う**外国法サービスのニーズの拡大**

○ **国際仲裁の活性化**に向けた基盤整備の必要性

シンガポール(SIAC)約400件 香港(HKIAC)約260件 日本(JCAA)約10件

▶ **骨太の方針2019(R1.6.21閣議決定)**

「外国法事務弁護士制度の充実強化などの国際仲裁の更なる活性化に向けた基盤整備を推進する。」

▶ **成長戦略フォローアップ(R1.6.21閣議決定)**

「国際仲裁の活性化に向けた速やかな外弁法改正を含む紛争解決基盤の整備を行い、日本企業の海外展開を後押しする。」

## 改正の内容

① **国際仲裁代理の範囲拡大・国際調停代理の規定整備**(2①, 5の3②, 58の2(改正法1条関係))

⇒ 当事者全部が国内に本店等がある場合でも、当事者や準拠法等について外国との一定の関連性がある場合には「**国際仲裁事件**」と扱うこととし、その代理を可能とする。

⇒ 「**国際調停事件**」(※)の規定を新設し、その代理を可能とする。

※ 事業者間の契約・取引紛争を対象

【新たに「国際仲裁事件」と扱う例】  
日本国内



② **職務経験要件の緩和**(10 II (改正法1条関係))

⇒ 職務経験期間「3年以上」につき、日本での**労務提供期間の算入上限**を、現行の「1年」から「**2年**」に拡大する。

【現行】 職務経験期間3年, うち**労務提供期間1年算入可能**

2年・外国実務経験 + 1年・労務提供 ⇒ 3年充足

【新】 職務経験期間3年, うち**労務提供期間2年算入可能**

1年・外国実務経験 + 2年・労務提供 ⇒ 3年充足

③ **共同法人制度の導入**(68以下(改正法2条関係))

⇒ 弁護士及び外国法事務弁護士を社員とする**共同法人の設立を可能とする。**

【名称】弁護士・外国法事務弁護士共同法人

【社員】弁護士, 外国法事務弁護士

【業務】法律事務一般 ※外弁社員は, 外国法法律事務等の業務執行のみ可



①・②の施行日: 公布後3か月, ③の施行日: 公布後2年6月の範囲内の政令で定める日

## Act on the Amendment Part of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers

In order to appropriately respond to the internationalization, specialization, and complex diversification of legal services and ensure the stability of international legal regulations, this amendment takes measures as follows;

- adjusting the provisions on representation of clients in international arbitration and international mediation case proceedings by registered foreign lawyers and foreign lawyers (limited to the foreign lawyers who are not registered foreign lawyers but who meet the requirements prescribed in the Act; the same applies hereinafter)
- easing the relevant requirements of experience of having performed professional duties to become registered foreign lawyers,
- establishing a system of joint corporations consisting of both attorneys at law and registered foreign lawyers, that provide full legal services.

### I Outline

#### 1 Adjustment of Provisions on Representation in International Arbitration and International Mediation Case Proceedings by Registered Foreign Lawyers and Foreign Lawyers

(1) The Bill expands the definition of the term "international arbitration cases", in which registered foreign lawyers and foreign lawyers are permitted to provide procedural representation, to cover the following circumstances:

(a) those in which all or some of the parties to the case have head offices or other such offices in a foreign jurisdiction, including, for example, the case where a person such as one that holds a majority of the issued shares (with voting rights) of a party to the case has a head office or other such office in a foreign country.

(b) those in which the governing law that the parties have established by agreement is anything other than Japanese law.

(c) those in which the place of arbitration is a foreign country (if, for example, the proceeding for an examination of witnesses takes place in Japan)

(2) The amendment would make it possible for registered foreign lawyers and foreign lawyers to represent clients in proceedings for *international mediation cases* (meaning cases involving disputes to which all of the parties are enterprises such as corporations or individuals that have become parties to contracts as a part of a business undertaking or for business purposes) that fall under (1) (a) or (1) (b), above (but in proceedings implemented in the courts, etc. only in proceedings implemented by private businesses).

#### 2 Easing of the Relevant Requirements of Experience of Having Performed Professional Duties

The amendment prescribes that a maximum of two total years (the current Act prescribes a total of one year) of employment in Japan by an attorney at law or

other such person while providing services based on knowledge of the laws of a person's jurisdiction of qualification following that person's qualification to practice in a foreign jurisdiction will be deemed to constitute professional experience as a foreign lawyer, and counted toward the requirement of professional experience to become a registered foreign lawyer (at least three years of relevant experience is required following a foreign lawyer's qualification to practice in a foreign jurisdiction).

### 3 Establishing a System for Attorney at Law/Registered Foreign Lawyer Joint Corporations

The amendment creates a system for joint corporations (attorney at law/registered foreign lawyer joint corporations) whose scope of practice is to provide full legal services, consisting both of attorneys at law and registered foreign lawyers, proposing to arrange provisions as follows:

- (1) The amendment provides that the scope of practices provided by joint corporations is full legal services.
- (2) The amendment provides that those members who are attorneys at law are permitted to provide full legal services, and those members who are registered foreign lawyers would be permitted to provide legal services concerning foreign law and other such services.
- (3) The amendment establishes provisions to prohibit the improper involvement by registered foreign lawyers who are members in legal services that are outside their authority.
- (4) The amendment provides that joint corporations are permitted to establish secondary law offices (with the duty for a member attorney at law to be permanently assigned, in principle).
- (5) The amendment provides for the adjustment of the requisite provisions by, for example, establishing provisions prescribing that joint corporations be subject to the same disciplinary action and other measures as legal professional corporations.

### 4 Other Content

In addition to changing a part of the name of the Act, the amendment provides for the adjustment of the requisite provisions of the Attorney Act and other related laws.

## II Effective Date

- 1 I of 1 and 2: three months after the date of promulgation
- 2 I of 3: within two years and six months from the date of promulgation

## 外国弁護士による法律事務の取扱いに関する特別措置法の一部を改正する法律の概要

法律事務の国際化、専門化及び複雑多様化によりの確に対応し、渉外的法律関係の一層の安定を図る等のため、外国法事務弁護士等による国際仲裁事件及び国際調停事件の手続についての代理の規定を整備するとともに、外国法事務弁護士となるための職務経験要件を緩和し、あわせて弁護士及び外国法事務弁護士が社員となり法律事務を行うことを目的とする法人の設立を可能とする等の措置を講ずる。

### 第1 骨子

#### 1 国際仲裁事件及び国際調停事件についての手続の代理の規定の整備

(1) 外国法事務弁護士等（外国法事務弁護士でない外国弁護士で、所定の要件を満たした者を含む。）が手続等を代理することができる「国際仲裁事件」の定義を拡大し、次のとおりとする。

ア 当事者の全部又は一部が外国に本店等を有する場合（発行済株式（議決権のあるもの）の総数の過半数を有する者等が外国に本店等を有する場合等も含む。）

イ 当事者が合意により定めた準拠法が日本法以外の法である場合

ウ 外国を仲裁地とする場合（日本国内で尋問手続を実施する場合等）

(2) 「国際調停事件」（当事者の全部が法人等の事業者である紛争に係る事件に限る。）であって、上記(1)ア及びイに当たるものの手続（民間事業者によって実施されるものに限る。）について、外国法事務弁護士等が代理することを可能とする。

#### 2 職務経験要件の緩和

外国法事務弁護士となるための職務経験要件（外国弁護士の資格取得後3年以上の実務経験を要する）について、資格取得後に日本国内において弁護士等に雇用され、資格取得国の法に関する知識に基づいて行った労務の提供は、通算して2年（現行法は1年）を限度として外国弁護士としての職務の経験とみなすものとする。

#### 3 弁護士・外国法事務弁護士共同法人制度の創設

弁護士及び外国法事務弁護士が社員となり法律事務を行うことを目的とする法人（弁護士・外国法事務弁護士共同法人）制度を創設し、次のとおり規定を整備する。

(1) 共同法人の業務の範囲は、法律事務一般とする。

(2) 弁護士である社員は法律事務一般につき、外国法事務弁護士である社員は外国法に関する法律事務等に限り、業務執行することができるものとする。

(3) 外国法事務弁護士である社員による権限外法律事務への不当関与禁止規定を設ける。

(4) 従たる事務所を設置することができる（弁護士である社員について原則常駐義務）。

(5) 上記のほか、共同法人制度の導入に伴い、弁護士法と同様の懲戒等の規定を設けるなど所要の規定を整備する。

#### 4 その他

法律名称を一部改めるほか、弁護士法その他の関係法律の所要の規定の整備を行う。

### 第2 施行日

1 第1の1及び2 公布の日から起算して3月を経過した日

2 第1の3 公布の日から起算して2年6月を超えない範囲内において政令で定める日