

Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers (Foreign Lawyers Act) has been amended.

Three Key Revisions

A Bill to Amend Part of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers was enacted on **May 22, 2020**.

The **three** major revisions are as follows:

- (1) Expansion of the Scope of Representation in International Arbitration
Establishment of Provisions on Representation in International Mediation...👉 **Page 2-4**
- (2) Relaxing the Requirements of Legal Work Experience
...👉 **Page 4-5**
- (3) Introduction of a Joint Corporation System...👉 **Page 6-8**

Effective date

(1) and (2) came into force on **August 29, 2020**.

(3) will come into force **within 2 years and 6 months from the promulgation date of the amended Foreign Lawyers Act (May 29, 2020) specified by Cabinet Order.**

- Web page about the amendment of the Foreign Lawyers Act (Japanese text only)

http://www.moj.go.jp/housei/gaiben/housei07_00002.html

- Web page about the application procedures for approval and designation (Japanese text only)

<http://www.moj.go.jp/ONLINE/FOREIGNER/3-1.html>

- Contact Information

Registered Foreign Lawyer Section, Examination and Supervision Division,
Judicial System Department, Minister's Secretariat, Ministry of Justice

1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo

03-3580-4111 (ext. 2373) *available only in Japanese



Ministry of Justice

(1) Expansion of the Scope of Representation in International Arbitration Establishment of Provisions on Representation in International Mediation

1. Purpose of the Revision of the Provisions on the Representation of Clients

(1) It has been pointed out that the use of international arbitration, the global standard means of dispute settlement over international commercial transactions, is limited in Japan. One of the factors mentioned was the narrow scope of “international arbitration cases” for which registered foreign lawyers and foreign lawyers (Note 1) may provide representation.

➔ The legal amendment **expanded the scope of “international arbitration cases”** that can be represented by registered foreign lawyers and foreign lawyers.

(2) International mediation has been recently garnering attention for its low costs in terms of both expenses and time, and multi-stage dispute settlement procedures, including the use of mediation prior to the arbitration procedure, are used in the world. However, there was no provisions on representation regarding international mediation cases in the Foreign Lawyers Act before the amendment.

➔ The legal amendment **established the provisions of “international mediation cases”** that can be represented by registered foreign lawyers and foreign lawyers.

(Note 1) This refers to foreign lawyers requested to undertake or undertook proceedings in the foreign jurisdiction (Article 58-2 of the new Foreign Lawyers Act).

2. Expansion of the Scope of Representation in International Arbitration

○ Prior to the amendment, the scope of “international arbitration cases” was limited to the following cases:

- Civil arbitration case which is conducted in Japan; and
- Cases where all or some of the parties are persons who have a head office, etc. in a foreign jurisdiction.

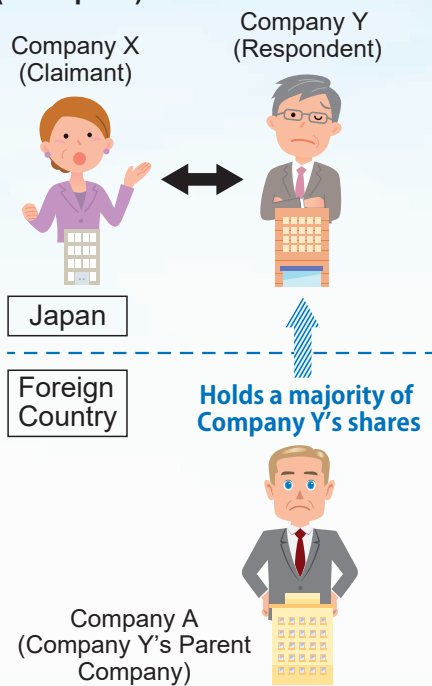
○ After the amendment, the scope of “international arbitration cases” was expanded to the following cases:

- Civil arbitration case (**deleted** the requirement of “**which is conducted in Japan**”); and
- Cases where any of the following (A) through (C) apply:

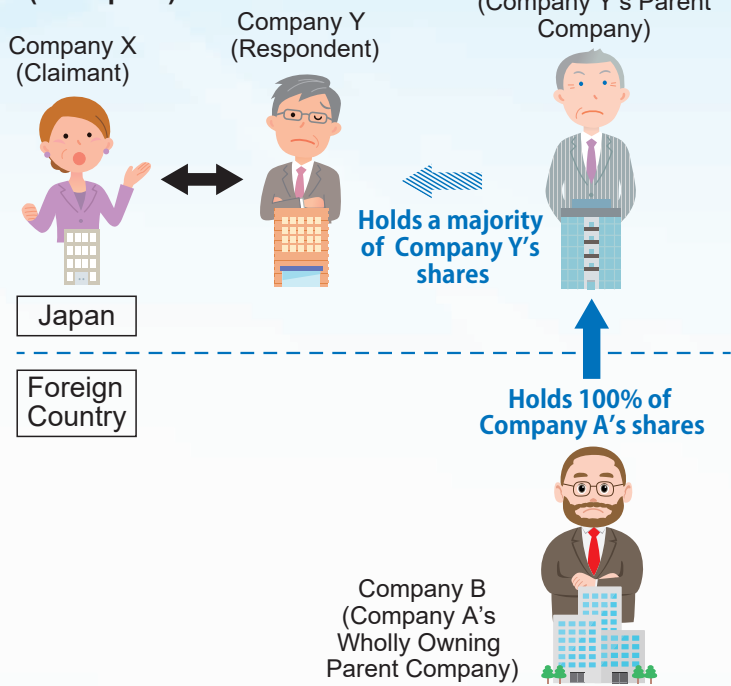
(A) A party to the case has a specific connection to a foreign jurisdiction (Article 2, item (xi) (a) of the new Foreign Lawyers Act).

⇒ Specifically, cases where all the parties to the case have head offices, etc. in Japan but **a person holding a majority of the issued shares of a party to the case has a head office, etc. in a foreign jurisdiction (Example 1)**, or the wholly owning parent company of the parent company of a party to the case has a head office, etc. in a foreign jurisdiction **(Example 2)** (Note 2).

(Example 1)

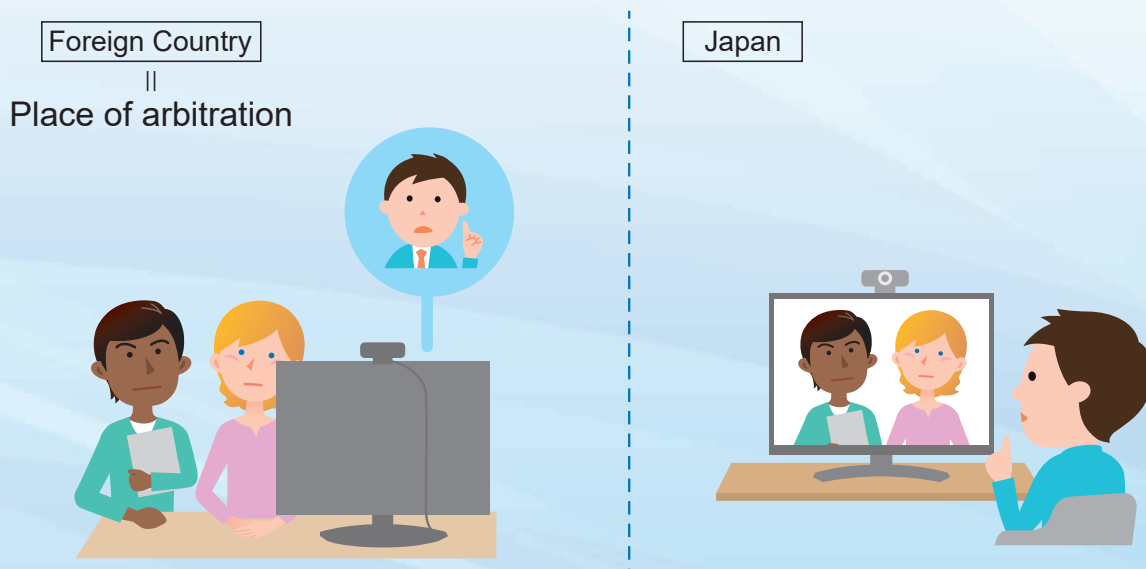


(Example 2)



(B) The governing law agreed by the parties is a law other than Japanese law (Article 2, item (xi) (b) of the new Foreign Lawyers Act).

(C) The place of arbitration is in a foreign country (Article 2, item (xi) (c) of the new Foreign Lawyers Act).



3. Establishment of Provisions on Representation in International Mediation

○ The scope of “international mediation cases”

- **Civil mediation cases (including conciliations) where all the parties to the case are involved in a dispute concerning a contract or transaction **between businesses**** (Note 3);

⇒ Excluding consumer disputes, labor disputes, family affair disputes, etc.
and

- **Cases where either of the following (A) or (B) apply:**

⇒ In principle, these are pursuant to the conditions for international arbitration cases.

(A) A party to the case has a specific connection to a foreign jurisdiction
(Article 2, item (xi-2) (a) of the new Foreign Lawyers Act). (Note 2)

(B) The governing law agreed by the parties is a law other than Japanese law
(Article 2, item (xi-2) (b) of the new Foreign Lawyers Act).

(Note 2) The new Foreign Lawyers Act additionally recognizes internationality for circumstances where those who hold a majority of issued shares have a head office, etc. in a foreign jurisdiction (Article 2, item (xi) (a) and item (xi-2) (a) of the new Foreign Lawyers Act).

The requirements for (A) are delegated to the Regulation for Enforcement of the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers, which sets forth the following in addition to Example 2 on page 3:

- The combined shares of a party (Company Y) held by an entity (Company B) having a head office in a foreign jurisdiction and its subsidiary (Company A) that it wholly owns constitute a majority of the party's shares;
- When a corporation that is to determine its practices with more than half of the members is a party to the case, the entity that has a head office in a foreign jurisdiction accounts for more than half of the members.

(Note 3) Cases are limited to those performed by private businesses.

(2) Relaxing the Requirements of Legal Work Experience

1. Requirements of Legal Work Experience

To be approved as a registered foreign lawyer, it is required to have **at least three years of legal work experience** (period of legal work experience) (Note 4) **as a foreign lawyer in the foreign jurisdiction where the person has qualification to practice** after the acquisition of qualification (Article 10, paragraph (1) of the new Foreign Lawyers Act). Before the amendment, **a maximum of one year** to be employed by an attorney at law, etc. (Note 5) in Japan while providing services based on knowledge of the laws of a person's jurisdiction of qualification (period of providing services) could be included in the required period of legal work experience.

2. Purpose of the Relaxation of the Requirements

Before the amendment, a person was required to have at least two years of work experience as a foreign lawyer in a foreign jurisdiction, which created a burden on foreign lawyers who started a career in Japan since they were required to be away from Japan for a long period of time to obtain approval as a Registered Foreign Lawyer, discouraging them from building a career in Japan.

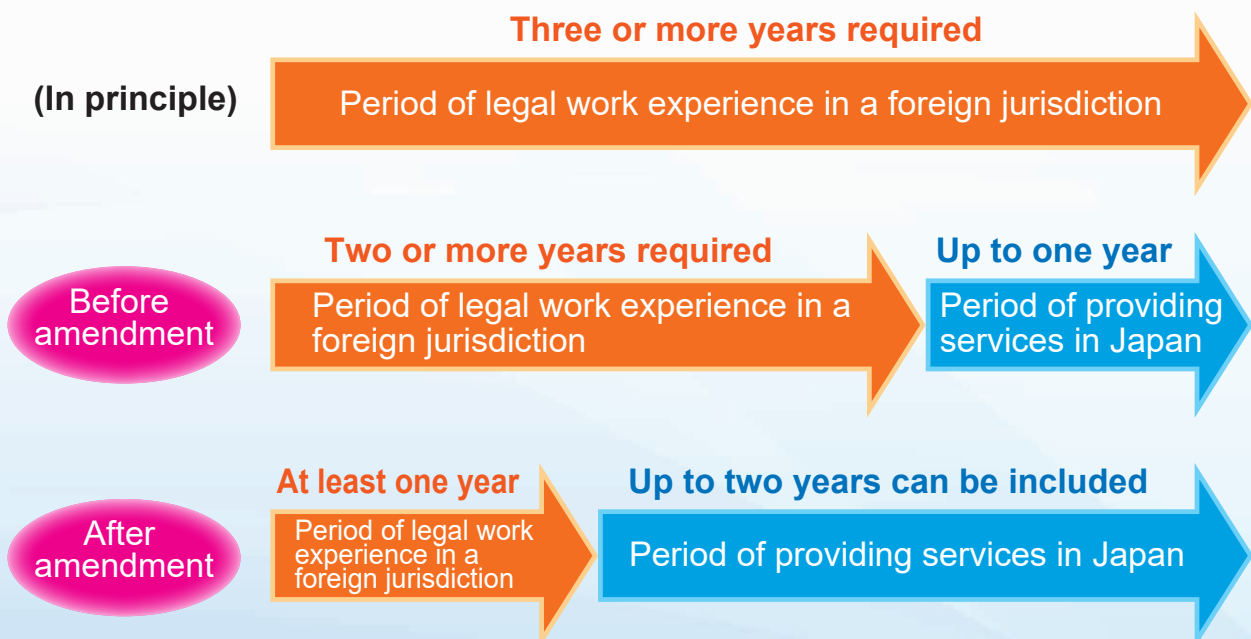
3. Regulation after the Amendment

Therefore, the amendment enabled a maximum of two years of providing services in Japan to be included in the period of legal work experience (Article 10, paragraph (2) of the new Foreign Lawyers Act).

As a result, it became possible to meet the requirement of legal work experience by having at least one year of work experience as a foreign lawyer in a foreign jurisdiction.

Illustrative description of requirements of legal work experience

(Note 6)



(Note 4) This includes the experience of having engaged in the practice of providing legal services in a foreign jurisdiction other than the jurisdiction where the person acquired the qualification, concerning the laws of the jurisdiction based on the qualification to become a foreign lawyer.

(Note 5) This refers to an Attorney at Law, a Legal Professional Corporation, a Registered Foreign Lawyer and a Registered Foreign Lawyer Corporation. After the amendment, a Joint Corporation will be added.

(Note 6) There is no rule regarding which should come first, the period of legal work experience in a foreign jurisdiction or the period of providing services in Japan, nor do these periods need to be continuous. The above illustrative description is only an example.

(3) Introduction of a Joint Corporation System

1. Definition of a Joint Corporation

A joint corporation is officially called an “Attorney at Law/Registered Foreign Lawyer Joint Corporation”, and it is a corporation composed of one or more attorneys at law and one or more registered foreign lawyers with different qualifications and authorities.

Joint corporations can handle full legal services in the same way as legal professional corporations.

2. Purpose of the Introduction of the Joint Corporation System

Today, along with the globalization of society and the economy, legal services are becoming internationalized and specialized. The joint corporation system was established to enable the joint corporations to properly address such circumstances and provide high-quality legal services, by collaboration of attorneys at law and registered foreign lawyers and specializing their legal services through incorporating an organization, and facilitate the provision of one-stop services for Japanese laws and foreign laws. Since joint corporations can establish secondary law offices, they are expected to expand offices that provide one-stop services to various local regions, making them accessible to regional companies and hence promoting overseas business expansion of those companies.

3. Outline of the Joint Corporation System

The outline of the joint corporation system is as follows:

(1) Qualification of Members

A member of a joint corporation must be an attorney at law or a registered foreign lawyer (Article 70, paragraph (1) of the new Foreign Lawyers Act). While a joint corporation needs to have both attorneys at law and registered foreign lawyers as members (Article 81 of the new Foreign Lawyers Act), there is no provision on their ratio, etc.

(2) Scope of Practices of Joint Corporations

- A joint corporation can provide full legal services (Article 71 of the new Foreign Lawyers Act).
- Members who are attorneys at law may provide full legal services (Article 74, paragraph (1) of the new Foreign Lawyers Act).
- Members who are registered foreign lawyers may only provide legal services concerning foreign laws including the law of their jurisdiction of primary qualification, etc. (Article 74, paragraph (2) of the new Foreign Lawyers Act).

(3) Representative Member

- In principle, each member of a joint corporation represents the corporation, but it is also possible to specify one or more members representing the corporation by means of articles of incorporation or by a consensus of all members (Article 75, paragraphs (1) and (2) of the new Foreign Lawyers Act).
- However, for services that only members who are attorneys at law may provide, only members who are attorneys at law may represent the joint corporation (Article 75, paragraph (3) of the new Foreign Lawyers Act).

(4) Establishment of Secondary Law Offices

A joint corporation may establish secondary law offices. While in principle a secondary law office must have a member who is an attorney at law to be permanently assigned (Article 80, paragraph (1) of the new Foreign Lawyers Act and Article 30-17 of the Attorney Act), there is no obligation to permanently assign a member who is a registered foreign lawyer.

(5) Provisions that Prohibit the Improper Involvement, etc.

As described in (2), registered foreign lawyers may not provide legal services concerning Japanese laws. In order to avoid improper involvement of registered foreign lawyers in handling of Japanese law services performed by a member who is an attorney at law in the same joint corporation and clients' confusion, the following provisions are set forth in new Foreign Lawyers Act:

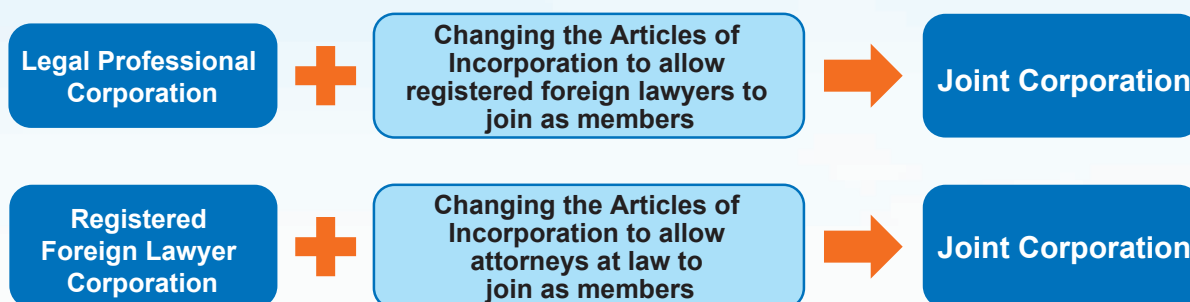
- A joint corporation must, when a member who is a registered foreign lawyer conducts business, have that member use the title “Gaikokuho-Jimu-Bengoshi” and attach the name of the Jurisdiction of Primary Qualification to this title (Article 76 of the new Foreign Lawyers Act).
- Registered foreign lawyers are prohibited from giving orders to attorneys at law concerning legal services outside their authority and becoming improperly involved (Note 7) in the handling of those legal services (Article 78 of the new Foreign Lawyers Act).

(Note 7) In general, improper involvement means a registered foreign lawyer's involvement in legal services performed by members who are attorneys at law that improperly influences their decision-making, based on the registered foreign lawyer's position or authority, etc. in the corporation.

(6) Change to a Different Type of Corporation

The amended Foreign Lawyers Act sets forth a provision concerning changing a legal corporation to a different type of legal corporation regarding the three types of legal corporations, the Legal Professional Corporation, the Registered Foreign Lawyer Corporation, and the Joint Corporation, and permits flexible organizational change so as to allow Legal Professional Corporations and Registered Foreign Lawyer Corporations to become Joint Corporations without going through procedures such as for dissolution (Article 81 of the new Foreign Lawyers Act) (Note 8).

<Example>



(Note 8) Additionally, there is a provision that permits the above three types of corporations to merge with another corporation of a different type and become a joint corporation after the merger or upon incorporating a new corporation, when there is a consensus among all members (Article 82 of the new Foreign Lawyers Act).

(7) Disciplinary Action

In the same way as legal professional corporations, the bar association to which the joint corporation belongs has the primary disciplinary authority to execute disciplinary action against joint corporations. Disciplinary action against a joint corporation consists of admonition, suspension of practice of a joint corporation or its office for not more than two years, order to withdraw from the bar association, or disbarment (Articles 92 and 93 of the new Foreign Lawyers Act).

<<Important Notice on Articles>>

The name of the law will be changed with Articles re-numbered on the effective date of the joint corporation system (within 2 years and 6 months from the promulgation date, May 29, 2020).

Therefore, it must be noted that the Article numbers cited on pages 2 through 5, concerning the representation in international arbitration and international mediation, and the requirements of legal work experience, will change as of the above-mentioned date.