

Comments of the Legal Services Committee (the “Committee”) of the European Business Council on the interim report of the Foreign Lawyers System Study Group

1. The Committee welcomes the proposal to remove the discrimination against foreign lawyers by enabling Gaiben to set up corporations with other Gaiben and also with Bengoshi.
2. While the Committee understands that the proposal may be consistent with the present law, the Committee thinks that it is too cumbersome to require, in a Type-A Corporation, that a lawyer qualified in one law (Equity Interest Holder P) has to give advice in writing to a lawyer qualified in a different lawyer (Equity Interest Holder Q) in order for Equity Interest Holder Q to communicate to his clients advice on the laws of country P.
3. The Committee does not understand the scope of the wording of Section III, 1 of the report. It should not extend beyond Article 49-2 of the existing Gaiben Law.
4. The Committee is strongly opposed to the idea that levels of Bengoshi ownership should be specified for a Type-B Corporation. There are no rules regulating the method of sharing the profit of a Gaikokuho Kyodo Jigyo, which is a partnership between Bengoshi and Gaiben: we see no reason why the position should be different for Bengoshi Corporation.
5. Type-A and Type-B Corporations should be able to give foreign law advice where they have an appropriately qualified and registered Gaiben even if the Gaiben is not an ‘Equity Interest Holder’.
6. Type-A Corporations and Type-B Corporations should be treated the same as Bengoshi Hojin in their ability to set up branches - it is in the best interests of clients to make foreign law advice broadly available throughout Japan now. Bengoshi Hojin have operated successful branch offices for some time now and it is not acceptable to assume a Gaiben Hojin will be problematic just because foreign lawyers are involved. So requirements for Gaiben Hojin to place a full time Equity Interest Holder in branch offices should be able to be waived, as with Bengoshi Hojin.
7. The Report is focussed on a very narrow point. While it is important to eliminate discriminatory treatment of foreigners, the main issue for our members is the ability to act in Japan through a branch of the relevant offshore limited liability entity, preserving the limited liability available to the foreign entity. In addition, a number of other important issues await consideration, including (1) the improvement and simplification of the registration process and ongoing administration of registrations, (2) branching without needing to be incorporated and (3) removal of the two year external (ex-Japan) experience from the three year experience requirement for Gaiben registration (or complete elimination of that requirement to begin with), among others. These important issues need to be addressed immediately and without waiting for this Gaiben Hojin issue to be “finalised” first.
8. We also suggest a review of reporting requirements for staff/partner changes (which do currently apply equally to the Kyodo Jigyo). Rather than reporting every time there is a change, this should be amended to semi-annual reporting (similar to Securities Law disclosure). As Gaiben firms get bigger in Japan, this ‘immediate’ reporting requirement is excessive and does not seem to serve any purpose.
9. The tax effect of these corporations should be considered for Gaiben. Adverse tax consequences may be avoided by permitting the current partnerships (both Gaiben and Bengoshi) to open branch offices.



10. For the future:-

- (i) we hope that any future study group in relation to Gaiben will be constituted in a more transparent manner than this study group, giving Gaiben more opportunity to participate and have their views heard and taken into account; and
- (ii) we would appreciate a longer time to comment on proposals circulated relating to Gaiben. For many Gaiben commenting in Japanese on proposals circulated in Japanese requires translations of the proposals from Japanese to English, and comments from English to Japanese.

24.9.09

About the EBC:

The European Business Council in Japan (EBC) is the trade policy arm of the 18 European national chambers of commerce and business associations in Japan. Established in 1972, the EBC works to improve the trade and investment environment for European companies in Japan. The EBC currently represents more than 3,000 local European companies and individuals who are members of their national chambers of commerce. Approximately 350 of these companies participate directly in the EBC's 28 sector-based committees. The EBC is registered with the Ministry of Economy Trade and Industry as the European (EU) Chamber of Commerce in Japan.

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