



EUROPEAN BUSINESS COUNCIL IN JAPAN
THE EUROPEAN (EU) CHAMBER OF COMMERCE IN JAPAN

LEGAL SERVICES

ISSUES AND RECOMMENDATIONS



RECOGNITION & APPROVAL AS A FOREIGN LAWYER IN JAPAN



Recognition & Approval as a Foreign Lawyer in Japan

YEARLY STATUS REPORT: Reasonable Progress

Reasonable progress, pending enactment of the July 2016 Study Group recommendations.

- ❑ In order to become registered as a *gaiben* in Japan, a foreign lawyer must have three years of professional experience in his/her respective home law, of which two must have been obtained outside Japan.
- ❑ This rule is in stark contrast to the rules governing *bengoshi* who are not required to have any post-qualification experience before being recognised.
- ❑ The EBC believes that this practice is not only discriminatory, but also makes little sense, as foreign lawyers are already recognised by their jurisdiction of qualification.



Recognition & Approval as a Foreign Lawyer in Japan

YEARLY STATUS REPORT: Reasonable Progress

- If there is to be such a rule, what is important is the experience in home jurisdiction law, not where it is practised.
- The procedure for admitting foreign lawyers as *gaiben* also still imposes undue costs on foreign firms and individuals.
- A streamlined application form has, in general, shortened the process, but the requirement for approvals from both the Ministry of Justice and committees at the *Nichibenren* and local bar associations inevitably gives rise to delays.
- After over 25 years of operation, the *gaiben* system is in need of a thorough overhaul.
- An overhaul of the system could resolve a number of the current frustrations.



Recognition & Approval as a Foreign Lawyer in Japan

RECOMMENDATIONS

- ❑ The rule requiring a specific number of post-qualification years of experience should be abolished. At the very least, experience in home jurisdiction law should be recognised regardless of where it has been practised.
- ❑ Continuing focus is needed on accelerating the application procedure for *gaiben* registration to the greatest extent possible.
- ❑ An overhaul of the existing system should be undertaken to enable changes such as the registration of firms, rather than individuals, which would do much to eliminate frustrations with the existing system.





BRANCHES



Branches

YEARLY STATUS REPORT: Reasonable Progress

Reasonable progress, pending enactment of the July 2016 Study Group recommendations.

- Legislation was finally passed in 2014, permitting a *gaiben* law firm to incorporate itself as a *hojin*, and thereby become eligible to open more than one branch.
- However, the new legislation does not permit *gaiben* and *bengoshi* together to establish a *hojin*.
- The effect is to severely limit the usefulness of the new legislation.



Branches

RECOMMENDATION

- ❑ Amend the legislation to permit *gaiben* and *bengoshi* to establish a *hojin* together. Even better, abolish the restriction on branching, which is archaic and does not suit the needs of either domestic or international law firms.

LIMITED LIABILITY

模範民法

Limited Liability

YEARLY STATUS REPORT: No Progress

- ❑ The EBC continues to recommend the introduction of a limited liability structure for lawyers in Japan, in line with the practice in many other countries, for the benefit not only of foreign but also Japanese lawyers.
- ❑ For foreign lawyers, this could be achieved by permitting them to operate through a branch of their home entity, rather than as separate individuals.

RECOMMENDATION

- ❑ A limited liability structure should be made available in Japan for both foreign and domestic law firms, and foreign firms should be able to practise in Japan through branches of their international firms. This could be achieved by an overhaul of the existing *gaiben* system to permit foreign lawyers to operate in Japan through branches of their home entity.

