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Hong Kong Special Administrative Region How does It Affect the Shipping Industry?

Clyde & Co

Introduction

The Year of the Ox is epitomised by slow steady reliable progress. For Hong Kong however the Year of the Ox has brought probably the greatest change in its history - the handover of sovereignty over Hong Kong from United Kingdom to China on 1 July 1997. The aim of this article is:-

- 1 to explain in accurate but brief detail the background and a few of the more major implications of the handover; and
- 2 to highlight some of the areas of change which will most affect the shipping industry and to dispel some fears over changes which will not occur.

When was the Handover?

It took place at midnight on the 30 June 1997.

What was Handed Over?

All the territories, comprising not only Hong Kong Island and the southern part of the mainland known as Kowloon, but also the New Territories (including Lantau Island where the new airport will be located and many other islands), which had either been ceded or leased to Britain by China under the terms of Treaties dating back to 1842. The lease on the New Territories and various islands was due to expire in 1997 and it was this looming expiry date which, in the late 1970's and early 1980's focussed the British and Chinese Governments' attentions on the need to address the return of Hong Kong as a whole to China.

Now that the Handover has Taken Place, is Hong Kong Any Different from the Rest of Mainland China?

Yes.

The People's Republic of China decided that, upon China's resumption of sovereignty over Hong Kong, a Hong Kong Special Administrative Region ("SAR") was to be established to "uphold national unity and territorial integrity, maintain the prosperity and stability of Hong Kong and take account of its history and realities". This means that the region is a separate territorial entity with self rule in relation to domestic and economic issues, its own legal system and a high degree of autonomy. Mainland China, however, controls defence and foreign affairs so far as Hong Kong is concerned. Entry to and residence within Hong Kong is not automatic for mainland Chinese residents and the border between Hong Kong and mainland China is heavily guarded. UK citizens, who until the handover could live and work in Hong Kong freely without a visa or work permit, are no longer be able to do so without appropriate documentation, and are therefore treated in the same way as expatriate citizens from other foreign countries.

The operation of Hong Kong as a largely autonomous territory (notwithstanding the resumption of sovereignty over it by mainland China) is often summarised by the phrase (said to have been invented by the late Deng Xiao Ping) "one country, two systems".

The New Chief Executive

The new Chief Executive took over leadership of Hong Kong from the British appointed Governor on 1 July 1997. He is shipping magnate Tung Chee-hwa, the former Chairman of Orient Overseas Lines. Mr Tung was overwhelmingly chosen by a Beijing-selected Committee of 400 on 11 December 1996. A Chief Executive with such a deep and detailed knowledge of the shipping industry can do nothing but good for the confidence of those in the industry.

The Joint Declaration and the Basic Law

The Joint Declaration is the document published jointly by Britain and China in 1984 following their agreement on the terms of the handover. As well as providing for China's resumption of sovereignty it provides for the maintenance of human rights (although this remains a very controversial topic at the moment), the continuing operation of the current common law legal system and the rule of law, the independence of the judiciary and a degree of democracy. The Joint Declaration stipulated that all these factors were to be enshrined in a mini-constitution for Hong Kong known as the "Basic Law" which was drawn up by China with the assistance of Hong Kong advisers and was designed to preserve the capitalist system in Hong Kong for 50 years after the handover. The Basic Law was enacted by China on 4 April 1990 and came into effect on 1 July 1997. It

takes precedence over Hong Kong Statutes (which are known as “Ordinances”). The Ordinances however remain in addition to the Basic Law. Many of the Ordinances are very similar to UK Statutes. English remains an official language, in addition to Chinese, for use by the executive authorities, legislature and judiciary. The Basic Law is broadly considered to fulfil the requirements of the Joint Declaration.

The Hong Kong Court of Final Appeal

Under the previous legal system in Hong Kong limited rights of appeal lay from Hong Kong’s Court of Appeal to the Judicial Committee of the Privy Council in England. This is no longer the case. On 3 August 1995 the Hong Kong Legislative Council (“LEGCO”) enacted domestic legislation to establish the Hong Kong Court of Final Appeal with effect from 1 July 1997. It has a maximum of five judges to hear each case. One of these judges may be selected from a common law jurisdiction overseas and the other four have been appointed from amongst the ranks of the most respected and experienced Hong Kong judges.

Areas of Concern to the Shipping Industry?

As one of the largest ports in the world and a city holding a major concentration of ship owners, charterers, bunker suppliers and many others with close involvement in the shipping industry, the handover of Hong Kong to Chinese control has obviously had some impact. However, it is perhaps easier (and more reassuring) to discuss matters which have not changed as very few specific areas of change have been identified in the shipping world. One of the aims of the Joint Declaration is to maintain Hong Kong’s present system for the next 50 year so what areas have not been affected by the handover?

- 1 The government officials at all levels remain Hong Kong people. There has been and will be no influx of mainland Chinese officials.
- 2 The Hong Kong legal system and legal authorities and courts remain fully independent and use the same common law based system as it has always done. Although no longer binding on the Hong Kong Courts, English case law remains very persuasive.
- 3 The social and economic system in Hong Kong will remain unchanged and rights of freedom are protected by law.
- 4 The status of free port and as a separate customs territory from PRC remains.

- 5 The HKSAR has independent finances and independent fiscal policy. This includes customs and excise.
- 6 The HKSAR maintains mutually beneficial economic relations with the United Kingdom and other countries independent of PRC policy.
- 7 The HKSAR is developing its own economic and cultural relations under the title of "Hong Kong China".

There have been and will be changes - a few to watch for will, for example, be:-

- 1 Governing law clauses in bills of lading will decreasingly use "English law in the Hong Kong courts". They are more likely to move to "Hong Kong law in the Hong Kong courts".
- 2 Arbitration awards made in Hong Kong are no longer enforceable in China under the 1958 New York Convention. This matter is now however being considered by the PRC Ministry of Justice.
- 3 Chinese will be used in documents produced by or for Hong Kong Courts and government bodies (although all documents will still be produced in both English and Chinese).
- 4 Hong Kong ship owners with British flagged ships have had to remove their ships from the British Register or change the ownership.
- 5 There was a ban on direct shipping links between PRC and Taiwan from 1949 until earlier this year. Certain routes have now been authorised between a limited number of ports (Xiamen; Fuzhou and Kaohsiung). However, Taiwanese ships operating these routes may not fly the Taiwanese flag in a PRC port and PRC ships may not fly the PRC flag in a Taiwanese port. As from 1 July 1997, the Hong Kong SAR became a port in the People's Republic of China. Trade will however continue between Taiwan and Hong Kong and similar rules on flags will apply (ie Hong Kong registered ships now fly the PRC flag directly above the Hong Kong SAR flag, but will only fly the Hong Kong SAR flag when entering ports in Taiwan).

Summary

- In accordance with the Joint Declaration and the Basic Law, the laws and legal systems of Hong Kong have been changed only minimally after the restoration of Chinese sovereignty over the territory on 1 July 1997.
- It is the stated intention of the PRC Government that Hong Kong will remain a common law jurisdiction and that the common law will develop in Hong Kong in the same way as it does in all the other common law jurisdictions throughout the world such as India, Australia, New Zealand and Malaysia.
- As a part of that overall picture, the contractual and tortious rights of the individual and of the corporate entity remain largely unaltered.
- The uncertainty in the situation arises because the Beijing government is going to be responsible for a political structure which has never been tried before - "one country, two systems". The political risk of the success or failure of this venture is therefore difficult to assess.
- The commercial pressures on the Beijing government to maintain Hong Kong unchanged are, however, considerable and a successful Hong Kong could form a very important part of the 21st century China.
- The Beijing government is also aware that the successful restoration of the territory of Macau to Chinese sovereignty in 1999 and (the Beijing government hopes) the restoration of Taiwan to Chinese control in the foreseeable future will both be heavily influenced by the success of the present handover of Hong Kong to Chinese sovereignty. If the Chinese are seen to change the law or the institutions of Hong Kong in a way that is not in line with the Joint Declaration and the Basic Law it would severely undermine their ability to negotiate any deals with Taiwan.
- Clyde & Co is confident of the future of Hong Kong and our office is expanding to meet the increasing amount of work both in Hong Kong and in the Asia Pacific Region in general. It is our intention to keep a very active eye on the development of the law and implementation of the Basic Law in Hong Kong. If any readers wish a more detailed brief on the precise changes which will occur in the law in Hong Kong they should contact Mr David Gray/Ms Hiroko Nakamura at Clyde & Co, 15/F Asia Pacific Finance Tower, Citibank Plaza, 3 Garden Road, Hong Kong; telephone (852) 2878 8600; facsimile (852) 2522 5907; e mail clyde@clyde.com.hk. ■

SPECIAL MEASURES LAW CONCERNING THE HANDLING OF LEGAL BUSINESS BY FOREIGN LAWYERS*

Law No. 66 of 1986

Amendment: Law No. 91 of 1989

Law No. 89 of 1993

Law No. 65 of 1994

Law No. 91 of 1995

Law No. 65 of 1996

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* This is a *tentative translation* provided by the Ministry of Justice of Japan.

Chapter I. General Provisions

(Purposes)

Article 1. The purposes of this law are to ensure the stability in relation to international business law affairs and to contribute to the improvement of the handling of legal business concerning Japanese law in foreign countries, by taking such special measures as opening the way whereby a person who is qualified to become a foreign lawyer can handle legal business concerning foreign law in Japan and regulating the handling of such legal business as in the case of a bengoshi.

(Definitions)

Article 2. In this law, the meaning of the terms listed in the following items shall be set forth in the item concerned:

- (1) bengoshi ; this shall mean a bengoshi provided for in the Bengoshi Law (Law No. 205 of 1949).
- (2) foreign lawyer ; this shall mean a person who handles legal business as a profession in a foreign country (in the case of a federal country specified by the Ministry of Justice Ordinance, the term “foreign country” shall mean its constituent unit such as a state, territory and others specified by the Ministry of Justice Ordinance ; hereinafter the same) and who corresponds to a bengoshi above.
- (3) gaikokuho-jimu-bengoshi ; this shall mean a person who has obtained the approval provided for in Article 7 and has obtained the registration in the Register provided for in Article 24.
- (4) country of primary qualification ; this shall mean the foreign country where a person who has been given the approval provided for in Article 7 acquired the qualification to become a foreign lawyer which served as the basis for such approval.
- (5) law of the country of primary qualification ; this shall mean the law which is or was effective in the country of primary qualification.
- (6) legal business concerning the law of the country of primary qualification ; this shall mean the legal business dealing with a legal case the whole or a major portion of which is subject or is to be subject to the application of the law of the country of primary qualification.
- (7) specified foreign country ; this shall mean a specified foreign country other than the country of primary qualification.
- (8) law of a specified foreign country ; this shall mean the law which is or was effective in a specified foreign country.
- (9) designated law ; this shall mean the law of a specified foreign country which is

designated under the provisions of Paragraph 1 of Article 16 for a person who obtained the approval under the provisions of Article 7.

- (10) legal business concerning the designated law ; this shall mean the legal business dealing with a legal case the whole or a major portion of which is subject or is to be subject to the application of the designated law.
- (11) international arbitration case ; this shall mean a case of civil arbitration which is conducted in Japan and all or part of whose parties are persons who have addresses or main offices or headquarters in foreign countries.
- (12) Japan Federation of Bar Associations ; this shall mean the Japan Federation of Bar Associations provided for in the Bengoshi Law.
- (13) bar association ; this shall mean a bar association provided for in the Bengoshi Law.
- (14) in Japan ; this shall mean the place where this law is enforced.

Chapter II. Functions of a Gaikokuho-Jimu-Bengoshi

(Functions)

- Article 3. It shall be the functions of a gaikokuho-jimu-bengoshi to perform the legal business concerning the law of the country of primary qualification at the request of the parties concerned or other interested person, or, upon being entrusted by a public agency. However, the performance of the following legal business shall be excluded:
- (1) representation in regard to procedures before a court, public prosecutor’s office or other public agency in Japan, or the preparation of documents to be submitted to any such agency in regard to such procedures.
 - (2) activities in the capacity of a counsel in a criminal case, activities in the capacity of an attendant in a juvenile protection case before a family court, or legal assistance to a fugitive criminal in an extradition case in connection with a request for the examination of extraditability made with the court.
 - (3) expression of an expert opinion or other legal opinion as regards the interpretation or applicability of other laws than the law of the country of primary qualification.
 - (4) service of documents in regard to the procedures taken for a foreign court or administrative agency.
 - (5) representation in regard to the entrustment of preparation of notarial deeds under Item (5) of Article 22 of the Civil Execution Law (Law No. 4 of 1979).
 - (6) representation or the preparation of documents (excluding written expert opinions; hereinafter the same in this Article) in regard to a legal case whose primary objective is the acquisition or loss or change of rights concerning real property situated in Japan or of industrial property rights, mining rights or other rights arising upon registration thereof with an administrative agency in Japan or rights related to such rights (hereinafter referred to as “industrial property rights, etc.”)
2. Even when it is a legal business that a gaikokuho-jimu-bengoshi may perform within the scope of his or her functions under the provisions of the preceding paragraph, he or she shall be required to perform it jointly with a bengoshi or after receiving written advice from a bengoshi in regard to the following matters:
- (1) representation or the preparation of documents in regard to a legal case other than the legal case mentioned in Item (6) of the preceding paragraph, the purpose of which is the acquisition or loss or change of rights concerning real property situated in Japan or industrial property rights, etc.
 - (2) representation or the preparation of documents in regard to a legal case concerning family relations in which a Japanese national is involved as a party.
 - (3) representation or the preparation of documents in regard to a legal case concerning

a will or contract of gift to become effective at death which involves a property situated in Japan or a legal case concerning the division or administration of estate or other matters of inheritance which involves a property situated in Japan and owned by a person who resided in Japan at the time of death and in which a Japanese national is involved as a party.

(Prohibition against handling legal business outside the scope of functions)

Article 4. A gaikokuho-jimu-bengoshi shall not perform any legal business outside the scope of the functions prescribed in Paragraph 1 of the preceding Article.

(Legal business concerning designated law)

Article 5. A gaikokuho-jimu-bengoshi may, despite the provisions of the preceding Article, perform legal business concerning designated laws if he or she has had such laws designated in accordance with the provisions of Paragraph 1 of Article 16 and had the supplementary registration of such laws made in accordance with the provisions of Paragraph 1 of Article 34. However, the legal business listed in Items (1), (2) and (4) to (6) of Paragraph 1 of Article 3 and the expression of an expert opinion or other legal opinion regarding the interpretation or applicability of any law other than designated laws shall be excluded.

2. The provisions of Paragraph 2 of Article 3 shall apply *mutatis mutandis* in cases where a gaikokuho-jimu-bengoshi performs the legal business concerning designated laws in accordance with the provisions of the preceding paragraph.

(Representation in regard to the procedures for an international arbitration case)

Article 5-2. A gaikokuho-jimu-bengoshi may, notwithstanding the provisions of the preceding three articles, perform representation in regard to the procedures for an international arbitration case (including the procedures for a compromise which accompanies such procedures for an international arbitration case; the same in Article 58-2).

(Application *mutatis mutandis* of Bengoshi Law, etc.)

Article 6. The provisions of Articles 1 and 2 of the Bengoshi Law shall apply *mutatis mutandis* to a gaikokuho-jimu-bengoshi.

2. The provisions of Article 72 of the Bengoshi Law shall not apply to a gaikokuho-jimu-bengoshi.

Chapter III. Qualification to Become a Gaikokuho-Jimu-Bengoshi

Section 1. Approval by the Minister of Justice

(Qualification to become a gaikokuho-jimu-bengoshi)

Article 7. A person who is qualified to become a foreign lawyer may be qualified to become a gaikokuho-jimu-bengoshi only when he or she has obtained the approval of the Minister of Justice.

(Grounds for disqualification)

Article 8. The provisions of Article 6 of the Bengoshi Law shall apply *mutatis mutandis* to the qualification to become a gaikokuho-jimu-bengoshi.

(Application for approval)

- Article 9. A person who intends to obtain the approval provided for in Article 7 (hereinafter referred to as “approval”) shall submit to the Minister of Justice a written application for approval which contains his or her name, date of birth, nationality, address, date of acquisition of qualification to become a foreign lawyer, name of the foreign country in which he or she acquired such qualification, his or her title as such foreign lawyer and such other matters as are to be stipulated by the Ministry of Justice Ordinance.
2. A written application for approval mentioned in the preceding paragraph shall be accompanied by the document verifying the acquisition of qualification to become a foreign lawyer, documents verifying that all the standards set forth in each item of Paragraph 1 of the next Article are met and other documents provided for by the Ministry of Justice Ordinance.
 3. A person who intends to obtain the approval shall pay a fee in the amount which shall be stipulated by the Cabinet Order taking actual expenses into consideration.

(Standards for approval)

Article 10. The Minister of Justice may not give approval to those who make the application in accordance with the provisions of Paragraph 1 of the preceding Article (hereinafter referred to as “applicant for approval”) unless they conform with the standards listed below:

- (1) the applicant is qualified to become a foreign lawyer and has the experience of having engaged in practice as a foreign lawyer in the foreign country where he or she acquired such qualification for five years or more after acquiring it.

- (2) he or she does not come under any one of the following categories:
 - (a) a person who has been sentenced to a punishment under any law or regulation, etc. of a foreign country which corresponds to imprisonment without labor or heavier penalties under Japanese laws.
 - (b) a person who has been given a court decision under any law or regulation, etc. of a foreign country which corresponds to a decision of dismissal by the Impeachment Court under Japanese laws.
 - (c) a person who has been disciplined by a punishment under any law or regulation, etc. of a foreign country which corresponds to a disciplinary action prescribed in Item (3) of Article 6 of the Bengoshi Law, in cases where three years have not passed after the imposition of that punishment.
 - (d) a person who is being treated under any law or regulation, etc. of a foreign country as a person similar to an incompetent or quasi-incompetent or a bankrupt who has not been reinstated under Japanese laws.
 - (3) he or she has the will to perform his or her functions faithfully and has a plan, residence and financial basis for performing such functions properly and steadily and also has the ability to compensate for damages which he or she may cause to his or her clients.
2. In cases where a person who is qualified to become a foreign lawyer was in the employment of a bengoshi or a gaikokuho-jimu-bengoshi in Japan after he or she was qualified to become a foreign lawyer, the provision of his or her services to the bengoshi or to the gaikokuho-jimu-bengoshi, based on his or her knowledge of the law of the foreign country in which he or she acquired the qualification to become such foreign lawyer, shall be regarded as his or her experience of having engaged in practice as a foreign lawyer in the foreign country where he or she acquired such qualification, within the limits of two years in total, for purposes of the application of the provisions of the preceding paragraph.
 3. Even in cases where an applicant for approval meets the standards set forth in all the items of the Paragraph 1, the Minister of Justice may not give approval unless any one of the following situations exists:
 - (1) In cases where a person who is qualified to become a bengoshi can receive in the foreign country mentioned in Item (1) of Paragraph 1 substantially equivalent treatment as accorded by this law.
 - (2) In cases where a person who is qualified to become a bengoshi cannot receive in the foreign country mentioned in Item (1) of Paragraph 1 substantially equivalent treatment as accorded by this law, and the non-approval on this ground violates the sincere implementation of the treaties or other international agreements.
 4. The Minister of Justice shall ask the opinion of the Japan Federation of Bar Associations

before he or she gives the approval.

(Public notice of approval, etc.)

- Article 11. When the Minister of Justice has given his or her approval, he or she shall, without delay, notify in writing the applicant for approval and the Japan Federation of Bar Associations to that effect and put up a public notice in the Official Gazette.
2. The approval shall be effective as from the date of the public notice mentioned in the preceding paragraph.

(Lapse of approval)

- Article 12. In cases where a person who has obtained the approval does not make the request provided for in Paragraph 1 of Article 25 within six months from the day following the date of the public notice provided for in Paragraph 1 of the preceding Article, or within six months from the day following the date of rescission of the registration upon his or her request provided for in Article 29, the approval shall lose its effect.

(Reports, etc.)

- Article 13. The Minister of Justice may, when he or she deems it necessary, demand reports or data from the person who has obtained the approval, on the matters concerning the standards set forth in any of the items of Paragraph 1 of Article 10 or the matters concerning the treatment given by the country of primary qualification to a person who is qualified to become a bengoshi.
2. The Minister of Justice may, when he or she deems it necessary for handling the business concerning approval, refer to and demand information on necessary matters from any public office or public or private organization.

(Rescission of approval)

- Article 14. The Minister of Justice shall, when a person who has obtained the approval comes under any one of the following items, rescind his or her approval:
- (1) when he or she has lost the qualification to become a foreign lawyer in the country of primary qualification.
 - (2) when he or she has come under any one of the items of Article 6 of the Bengoshi Law (except Item (2)) which applies mutatis mutandis pursuant to Article 8 of the Law.
 - (3) when his or her registration has been refused under the provisions of Article 26.
 - (4) when his or her registration has been rescinded under the provisions of Paragraph 2 of Article 30.

2. The Minister of Justice may, when a person who has obtained the approval comes under any one of the following items, rescind his or her approval:
 - (1) when it is found that he or she has made a false statement regarding an important matter or omitted the statement of an important fact in the written application for approval under Paragraph 1 of Article 9 or in a document attached thereto under Paragraph 2 of the same Article.
 - (2) when he or she no longer meets the standards set forth in Item (2) of Paragraph 1 of Article 10.
 - (3) when such rescission is deemed unavoidable to prevent the loss which his or her clients are likely to suffer, due to the marked deterioration of his or her business operations or financial condition.
 - (4) when he or she has failed to submit reports or data under Paragraph 1 of the preceding Article on the matters concerning the standards set forth in each item of Paragraph 1 of Article 10 or submitted a false report or data.
3. In cases where any one of the following situations arises after the approval, the Minister of Justice may, as regards those persons who have obtained the approval with that country as the country of primary qualification, rescind his or her approval for them.
 - (1) In cases where a person who is qualified to become a bengoshi can no longer receive in a foreign country substantially equivalent treatment as accorded by this law, and the rescission of the approval on this ground does not violate the sincere implementation of the treaties or other international agreements.
 - (2) In cases where a person who is qualified to become a bengoshi cannot yet receive in a foreign country substantially equivalent treatment as accorded by this law, and the rescission of the approval on this ground does no longer violate the sincere implementation of the treaties or other international agreements.
4. The provisions of Paragraph 4 of Article 10 and Article 11 shall apply mutatis mutandis to the rescission of approval mentioned in the preceding three paragraphs.

Article 15. Deleted

Section 2. Designation of the Law of a Specified Foreign Country

(Designation)

- Article 16. In cases where a person who has obtained the approval comes under one of the following items, the Minister of Justice may designate the law of a specified foreign country for him or her:
- (1) when such person is qualified to become a foreign lawyer of the specified foreign country.

- (2) when such person has the same level of learning concerning the law of a specified foreign country as a person who is qualified to become a foreign lawyer of that country and has five or more years of practice experience in regard to the handling of legal business concerning such law.
2. The provisions of Paragraph 4 of Article 10 and Article 11 shall apply mutatis mutandis to the designation provided for in the preceding paragraph.

(Application for designation)

- Article 17. In cases where a person who has obtained the approval wants the designation under Paragraph 1 of the preceding Article (hereinafter referred to as "designation") to be made for him or her, he or she shall submit a written application for designation to the Minister of Justice.
2. The written application for designation mentioned in the preceding paragraph shall be accompanied by a document verifying that he or she comes under one of the conditions set forth in each item of Paragraph 1 of the preceding Article and other documents as stipulated by the Ministry of Justice Ordinance.
 3. A person who wants the designation to be made for him or her shall pay a fee, in the amount which shall be stipulated by the Cabinet Order taking actual expenses into consideration.

(Lapse of designation)

- Article 18. In cases where the approval loses its effect or is rescinded, the designation shall lose its effect. It shall also lose its effect in cases where the person who has had the designation made for him or her does not make the request provided for in Paragraph 1 of Article 33 within six months from the day following the date of the public notice under Paragraph 1 of Article 11 which applies mutatis mutandis pursuant to the provisions of Paragraph 2 of Article 16.

(Reports, etc.)

- Article 19. The Minister of Justice may, when he or she deems it necessary, require that the person who has had the designation made for him or her should submit reports or data on the matters concerning the conditions set forth in each item of Paragraph 1 of Article 16.
2. The provisions of Paragraph 2 of Article 13 shall apply mutatis mutandis to the handling of the business concerning designation.

(Rescission of designation)

- Article 20. The Minister of Justice shall, when a person who has had the designation

made for him or her has lost the qualification mentioned in Item (1) of Paragraph 1 of Article 16, rescind the designation.

2. The Minister of Justice may, when a person who has had the designation made for him or her comes under any one of the following items, rescind the designation:
 - (1) when it is found that he or she has made a false statement regarding an important matter or omitted the statement of an important fact in the written application for designation under Paragraph 1 of Article 17 or in a document attached thereto under Paragraph 2 of the same Article.
 - (2) when he or she has failed to submit reports or data under Paragraph 1 of the preceding Article or submitted a false report or data.
3. The provisions of Paragraph 4 of Article 10 and Article 11 shall apply *mutatis mutandis* to the rescission of designation provided for in the preceding two paragraphs.

Chapter IV. Registration, Practice and Supervision of a Gaikokuho-Jimu-Bengoshi

Section 1. General Provisions

(Objectives of Bar Associations and the Japan Federation of Bar Associations, etc.)

Article 21. A gaikokuho-jimu-bengoshi shall be regarded as a bengoshi for purposes of the application of the provisions of Paragraph 1 of Article 31, Article 41 and Paragraph 2 of Article 42 of the Bengoshi Law (including the cases where this paragraph applies mutatis mutandis pursuant to the provisions of Article 50 of the same Law) and also Paragraph 2 of Article 45, Article 48 and Article 49 of the same Law.

(Special provisions to be included in the Regulations of Bar Associations)

Article 22. The regulations of Bar Associations shall provide for the following matters in accordance with the regulations of the Japan Federation of Bar Associations, in addition to those listed in each item of Paragraph 2 of Article 33 of the Bengoshi Law:

- (1) matters listed in Items (3), (9), (15) and (16) of Paragraph 2 of Article 33 of the Bengoshi Law as are applied to a gaikokuho-jimu-bengoshi.
- (2) provisions concerning the maintenance of discipline of a gaikokuho-jimu-bengoshi.
- (3) provisions concerning the recommendation of a gaikokuho-jimu-bengoshi to a public agency or others.
- (4) provisions concerning the mediation of disputes as regards the practice of a gaikokuho-jimu-bengoshi.
- (5) provisions concerning a request for the taking of disciplinary action against a gaikokuho-jimu-bengoshi.
- (6) other necessary provisions concerning a gaikokuho-jimu-bengoshi.

(Special provisions to be included in the Regulations of the Japan Federation of Bar Associations)

Article 23. The regulations of the Japan Federation of Bar Associations shall provide for the following matters, in addition to those listed in each item of Paragraph 2 of Article 46 of the Bengoshi Law:

- (1) matters listed in Items (1) to (3) of the preceding Article.
- (2) provisions concerning registration, transfer of registration and rescission of registration in the Register of Gaikokuho-Jimu-Bengoshi.

- (3) provisions concerning the Gaikokuho-Jimu-Bengoshi Registration Screening Board.
- (4) provisions concerning the discipline of a gaikokuho-jimu-bengoshi, the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee and the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee.
- (5) other necessary provisions concerning a gaikokuho-jimu-bengoshi.

Section 2. Registration of a Gaikokuho-Jimu-Bengoshi

Sub-Section 1. Register of Gaikokuho-Jimu-Bengoshi

(Registration)

- Article 24. A person who is qualified to become a gaikokuho-jimu-bengoshi shall be required, for becoming a gaikokuho-jimu-bengoshi, to obtain registration of his or her name, date of birth, nationality, name of the country of primary qualification, address in Japan, office, name of the bar association to which he or she belongs and other matters as are to be stipulated by the regulations of the Japan Federation of Bar Associations, in the Register of Gaikokuho-Jimu-Bengoshi kept by the Japan Federation of Bar Associations.
2. Registration in the Register of Gaikokuho-Jimu-Bengoshi shall be made by the Japan Federation of Bar Associations.

(Request for registration, etc.)

- Article 25. A person who intends to obtain registration under the provisions of the preceding Article (hereinafter referred to as “registration”) shall submit a written request for registration to the Japan Federation of Bar Associations through the bar association to which he or she intends to be admitted.
2. The written request for registration mentioned in the preceding paragraph shall include statements on the following matters and shall be accompanied by a document verifying that he or she is qualified to become a gaikokuho-jimu-bengoshi and other documents as are to be stipulated by the regulations of the Japan Federation of Bar Associations:
 - (1) the matters to be registered.
 - (2) the date on which approval was obtained.
 - (3) honors and punishments, if any, which he or she has received as a foreign lawyer, and evaluation of his or her professional career as a foreign lawyer by the supervisory organ of his or her practice.
 - (4) other matters as are to be stipulated by the regulations of the Japan Federation of

Bar Associations.

3. The bar association which has received the submission of a written request for registration mentioned in Paragraph 1 shall promptly transmit it to the Japan Federation of Bar Associations.
4. The bar association mentioned in the preceding paragraph may express its opinions to the Japan Federation of Bar Associations as regards the request for registration provided for in Paragraph 1 (hereinafter referred to as “request for registration”).

(Refusal of registration)

Article 26. In cases where it is feared that a person who has made a request for registration would damage the order or reputation of the bar association or the Japan Federation of Bar Associations or where he or she comes under one of the following items and it is feared that it would be inappropriate to permit him or her to practice as a gaikokuho-jimu-bengoshi, the Japan Federation of Bar Associations may refuse his or her registration, based on the decision of the Gaikokuho-Jimu-Bengoshi Registration Screening Board:

- (1) when he or she is mentally or physically handicapped.
- (2) when he or she has made the request after the lapse of three years from the date when he or she was subject to the action stipulated in Item (3) of Article 6 of the Bengoshi Law which applies mutatis mutandis pursuant to the provisions of Article 8.

(Notice on registration)

Article 27. In cases where the Japan Federation of Bar Associations has received a request for registration, it shall notify in writing the person who has made the request for registration, the bar association which has transmitted it and the Minister of Justice to the effect that his or her registration has been made or that it has been refused, together with the reason for refusal, as the case may be.

(Request for transfer of registration, etc.)

Article 28. In cases where a gaikokuho-jimu-bengoshi intends to change the bar association to which he or she belongs, he or she shall submit a written request for the transfer of registration to the Japan Federation of Bar Associations through the bar association to which he or she intends to be admitted anew.

2. When a gaikokuho-jimu-bengoshi makes a request for the transfer of registration under the provisions of the preceding paragraph (hereinafter referred to as “request for the transfer of registration”), he or she shall report such fact to the bar association to which he or she now belongs.

3. The provisions of Paragraphs 3 and 4 of Article 25 and the preceding two Articles shall apply mutatis mutandis to a request for the transfer of registration.

(Request for rescission of registration)

Article 29. In cases where a gaikokuho-jimu-bengoshi intends to cease his or her practice, he or she shall make a request to the Japan Federation of Bar Associations for the rescission of his or her registration through the bar association to which he or she belongs.

(Rescission of registration)

Article 30. The Japan Federation of Bar Associations shall rescind the registration of a gaikokuho-jimu-bengoshi when he or she comes under any one of the following items:

- (1) he or she has come to fall under any item (except Item (2)) of Article 6 of the Bengoshi Law which applies mutatis mutandis pursuant to the provisions of Article 8 of this Law.
 - (2) he or she has made a request for the rescission of registration in accordance with the provisions of the preceding Article.
 - (3) he or she has received an order of secession.
 - (4) the approval has been rescinded because of coming under Item (1) of Paragraph 1 or any one of the items of Paragraph 2 of Article 14, or pursuant to the provisions of Paragraph 3 of the same Article.
 - (5) he or she has died.
2. The Japan Federation of Bar Associations may rescind the registration of a gaikokuho-jimu-bengoshi, based on the decision of the Gaikokuho-Jimu-Bengoshi Registration Screening Board in cases where he or she has made a false statement as regards any of the matters mentioned in each item of Article 26 or he or she has violated the provisions of Article 48.
 3. In cases where the Japan Federation of Bar Associations has rescinded the registration under the provisions of Items (1) to (4) of Paragraph 1 or of the preceding paragraph, it shall notify in writing the gaikokuho-jimu-bengoshi concerned, the bar association to which he or she belonged until then and the Minister of Justice, to that effect, together with the reasons therefor.

(Reporting the grounds for the rescission of registration)

Article 31. In cases where a bar association finds that there are grounds for rescinding the registration of a gaikokuho-jimu-bengoshi who belongs to it, it shall report such fact promptly to the Japan Federation of Bar Associations.

(Public announcement of registration, etc.)

Article 32. In cases where the Japan Federation of Bar Associations has effected registration, transfer of registration or rescission of registration, it shall publicly announce such fact in the Official Gazette promptly.

(Request for supplementary registration of designated law)

Article 33. In cases where a gaikokuho-jimu-bengoshi intends to have the designated law registered as a supplement to his or her registration, he or she shall submit a written request for the supplementary registration of the designated law to the Japan Federation of Bar Associations through the bar association to which he or she belongs.

2. The written request for the supplementary registration of the designated law mentioned in the preceding paragraph shall include statements on the matters stipulated by the regulations of the Japan Federation of Bar Associations and it shall be accompanied by a document verifying that the designation has been made.
3. The provisions of Paragraph 3 of Article 25 shall apply mutatis mutandis to the transmission of the written request for the supplementary registration of the designated law mentioned in Paragraph 1.

(Supplementary registration of designated law)

Article 34. The Japan Federation of Bar Associations shall, upon receipt of the request provided for in the preceding Article, promptly register the designated law concerned as a supplement to the registration of the gaikokuho-jimu-bengoshi concerned.

2. The provisions of Article 27 shall apply mutatis mutandis to the supplementary registration made in accordance with the provisions of the preceding paragraph.

(Deletion of supplementary registration of designated law)

Article 35. The Japan Federation of Bar Associations shall delete the supplementary registration of the designated law concerned in cases where the registration has been rescinded.

(Public announcement of supplementary registration of designated law, etc.)

Article 36. The provisions of Article 32 shall apply mutatis mutandis to the supplementary registration of a designated law and the deletion of such registration.

Sub-Section 2. Gaikokuho-Jimu-Bengoshi Registration Screening Board

(Establishment)

Article 37. There shall be established the Gaikokuho-Jimu-Bengoshi Registration Screening Board within the Japan Federation of Bar Associations.

2. The Gaikokuho-Jimu-Bengoshi Registration Screening Board shall, upon request of the Japan Federation of Bar Associations, conduct necessary examination concerning requests for the registration of gaikokuho-jimu-bengoshi, requests for the transfer of registration, requests for the rescission of registration provided for in Article 29 and the rescission of registration provided for in Paragraph 2 of Article 30.

(Organization)

Article 38. The Gaikokuho-Jimu-Bengoshi Registration Screening Board shall be composed of a president and thirteen members.

2. The president shall be designated by the President of the Japan Federation of Bar Associations from among the Vice-Presidents of the Japan Federation of Bar Associations.
3. The President of the Japan Federation of Bar Associations shall commission eight members from among bengoshi, three from among judges, public prosecutors and persons of learning and experience, with one from each, and two from among government officials. However, the members who are a judge, public prosecutor or government officials shall be commissioned on the recommendation of the Supreme Court, the Prosecutor General or the Minister of Justice, respectively, and the other members, on the decision of the organ of the Japan Federation of Bar Associations stipulated by the regulations of the Japan Federation of Bar Associations.
4. The term of office of a member shall be two years. However, the term of office of a member appointed to fill a vacancy shall be the remaining term of office of his or her predecessor.
5. The Gaikokuho-Jimu-Bengoshi Registration Screening Board shall have thirteen reserve members.
6. The provisions of Paragraphs 3 and 4 above and Paragraph 3 of Article 53 of the Bengoshi Law shall apply mutatis mutandis to the reserve members mentioned in the preceding paragraph.
7. The provisions of Article 54 of the Bengoshi Law shall apply mutatis mutandis to the president of the Gaikokuho-Jimu-Bengoshi Registration Screening Board and the provisions of Paragraph 2 of the same Article, to the members and reserve members of the Gaikokuho-Jimu-Bengoshi Registration Screening Board.

(Procedure of examination)

Article 39. The provisions of Paragraph 1 of Article 55 of the Bengoshi Law shall apply *mutatis mutandis* to the procedure of the examination conducted by the Gaikokuho-Jimu-Bengoshi Registration Screening Board.

2. In cases where the Gaikokuho-Jimu-Bengoshi Registration Screening Board makes a decision approving the refusal of a request for registration or for the transfer of registration or approving the rescission of registration provided for in Paragraph 2 of Article 30, it shall notify the party concerned to that effect beforehand and give him or her an opportunity to make an explanation and submit data on the matter.

Sub-Section 3. Admission to and Secession from Bar Association and the Japan Federation of Bar Associations**(Admission to and secession from a bar association and the Japan Federation of Bar Associations)**

Article 40. A person who has had the registration made for him or her shall be admitted to the bar association concerned and the Japan Federation of Bar Associations as of the time of his or her registration.

2. A person who has had the transfer of his or her registration made for him or her shall be admitted to the bar association concerned as of the time of the transfer of his or her registration and thereby secede from the bar association to which he or she belonged until then.
3. A person who has had his or her registration rescinded upon his or her request in accordance with the provisions of Article 29 shall secede from the bar association to which he or she belongs and the Japan Federation of Bar Associations as of the time of the rescission.

Article 41. In cases where bar associations are merged, a gaikokuho-jimu-bengoshi who belongs to the bar association which is dissolved for the merger shall automatically be admitted to the bar association which continues to exist after the merger or is established by the merger.

2. The provisions of Paragraph 1 of Article 28 shall apply *mutatis mutandis* in the case of the preceding paragraph.

(Obligation to observe regulations)

Article 42. A gaikokuho-jimu-bengoshi shall be required to observe the provisions concerning gaikokuho-jimu-bengoshi set forth in the regulations of the bar association to which he or she belongs and of the Japan Federation of Bar Associations.

(Voting right of a gaikokuho-jimu-bengoshi)

Article 43. In cases where the bar association to which a gaikokuho-jimu-bengoshi belongs or the Japan Federation of Bar Associations convenes a general meeting to deliberate on the establishment, revision or abolition of its regulations, in regard to the matters listed in each item of Article 22 or Article 23, the gaikokuho-jimu-bengoshi may attend such meeting, express his or her opinions and participate in the voting.

Section 3. Rights and Obligations of a Gaikokuho-Jimu-Bengoshi**(Indication of status as a gaikokuho-jimu-bengoshi)**

Article 44. A gaikokuho-jimu-bengoshi shall use the title of a gaikokuho-jimu-bengoshi when he or she performs his or her business and append to such title the name of the country of primary qualification.

(Gaikokuho-jimu-bengoshi's office)

Article 45. The office of a gaikokuho-jimu-bengoshi shall be named gaikokuho-jimu-bengoshi-jimusho.

2. The name of the office of a gaikokuho-jimu-bengoshi shall not use the name of any other individual or organization. However, a gaikokuho-jimu-bengoshi may use the name of juristic person, partnership or other business entity of his or her country of primary qualification which has as its object the conduct of legal business and to which he or she belongs (hereinafter referred to as "a business entity to which a gaikokuho-jimu-bengoshi belongs"), only in the following cases:
 - (1) when there is no other gaikokuho-jimu-bengoshi who uses the name of the business entity concerned to which he or she belongs.
 - (2) when he or she has his or her office in common with another gaikokuho-jimu-bengoshi who is already using the name of the business entity concerned to which he or she belongs.
3. Notwithstanding the provisions of the preceding two paragraphs, a gaikokuho-jimu-bengoshi may use the name of the office of a bengoshi when he or she is employed by the bengoshi.
4. The office of a gaikokuho-jimu-bengoshi shall be established within the district where the bar association to which he or she belongs is situated.
5. A gaikokuho-jimu-bengoshi may not establish more than one office, under any name, in Japan.

(Indication of the law of the country of primary qualification and of designated laws)

Article 46. A gaikokuho-jimu-bengoshi shall be required to display a sign indicating the law of the country of primary qualification and designated laws, if any, at a place easily visible to the public inside his or her office, under the provisions of the regulations of the Japan Federation of Bar Associations.

2. Besides the display of a sign under the preceding paragraph, necessary matters concerning the indication of the law of the country of primary qualification and of designated laws shall be stipulated by the regulations of the Japan Federation of Bar Associations.

(Use of the title of a foreign lawyer, etc.)

Article 47. A gaikokuho-jimu-bengoshi may, in performing his or her business, use the title of a foreign lawyer in his or her country of primary qualification, only when he or she appends it to his or her title of gaikokuho-jimu-bengoshi and the name of his or her country of primary qualification.

2. A gaikokuho-jimu-bengoshi may, besides in cases where he or she may use the name of the business entity to which he or she belongs under the proviso of Paragraph 2 of Article 45, use the name in performing his or her business, only when he or she appends it to his or her name or the name of his or her office in cases set forth in all the items of the same paragraph.

(Obligation of residence)

Article 48. A gaikokuho-jimu-bengoshi shall be required to stay in Japan for not less than a hundred and eighty days per year.

2. In cases where a gaikokuho-jimu-bengoshi leaves Japan and is at a place outside Japan due to his or her own or his or her relative's injury or illness or other unavoidable circumstances, the period for which he or she is at such place outside Japan shall be regarded as the period of his or her stay in Japan for purposes of the application of the provisions of the preceding paragraph.

(Prohibition of employment of a bengoshi, etc.)

Article 49. A gaikokuho-jimu-bengoshi shall not employ a bengoshi.

2. A gaikokuho-jimu-bengoshi shall not, under a kumiai contract or other kind of contract, run a joint enterprise with a specific bengoshi which has as its object the conduct of legal business, or receive a share of the fees or other profits which a specific bengoshi gains for the performance of legal business.

(Specific joint enterprise)

Article 49-2. A gaikokuho-jimu-bengoshi may, notwithstanding the provisions of Paragraph 2 of the preceding Article, only in cases where he or she does so with a specific bengoshi who has experience of having engaged in practice as a bengoshi for five years or more, run, under a kumiai contract or other kind of contract, a joint enterprise which has as its object the conduct of legal business except the following:

- (1) legal business listed in Items (1),(2),(4) and (5) of Paragraph 1 of Article 3.
 - (2) legal business which deals with legal cases (except legal cases all or part of whose parties are persons who have addresses or main offices or headquarters in foreign countries and legal cases committed by a company fifty percent or more of whose stocks issued or capital invested is owned by persons who have addresses or main offices or headquarters in foreign countries) the whole portion of which is subject or is to be subject to the application of the law which is or was in force in Japan (except treaties or other international laws) and whose handling does not require knowledge of a law other than such law.
2. For purposes of the application of the provisions of the preceding paragraph, handling of legal business or provision of services concerning legal business based on knowledge of law in a foreign country after being registered in the Register of Bengoshi (the maximum total shall be limited to two years), or experience as a judge or a public prosecutor after being qualified to become a bengoshi shall be regarded as experience of having engaged in practice as a bengoshi.
 3. When a gaikokuho-jimu-bengoshi runs a joint enterprise provided for in Paragraph 1 (hereinafter referred to as “a specific joint enterprise”), he or she shall not unduly participate in legal business or other business which the bengoshi who runs the specific joint enterprise performs by himself or herself.

(Notification of a specific joint enterprise)

Article 49-3. When a gaikokuho-jimu-bengoshi intends to run a specific joint enterprise, he or she shall notify beforehand the Japan Federation of Bar Associations of the name and office of the bengoshi who intends to run the specific joint enterprise with him or her, the scope of legal business to be dealt with in the specific joint enterprise and other matters which shall be stipulated by the regulations of the Japan Federation of Bar Associations. In this case, the documents which shall be stipulated by the Japan Federation of Bar Associations shall be attached.

2. The Japan Federation of Bar Associations shall, upon receipt of the notification in accordance with the provisions of the preceding paragraph, register the matters of which it was notified and which shall be stipulated by the regulations of the Japan Federation of Bar Associations as a supplement to the registration of the gaikokuho-

jimu-bengoshi concerned.

3. In cases where the gaikokuho-jimu-bengoshi who has made notification in accordance with the provisions of Paragraph 1 intends to modify the scope of legal business to be dealt with in the specific joint enterprise or other important matters which shall be stipulated by the regulations of the Japan Federation of Bar Associations, he or she shall notify beforehand the Japan Federation of Bar Associations of such modification.
4. When a notification is made in accordance with the provisions of the preceding paragraph, the Japan Federation of Bar Associations shall correct, on the basis of such notification, the matters registered as a supplement to the registration of the gaikokuho-jimu-bengoshi concerned in accordance with the provisions of Paragraph 2.
5. In cases where a gaikokuho-jimu-bengoshi who had made the notification in accordance with the provisions of Paragraph 1 has ceased to run the specific joint enterprise, he or she shall notify the Japan Federation of Bar Associations of such fact without delay.
6. When a notification is made in accordance with the provisions of the preceding paragraph, the Japan Federation of Bar Associations shall delete the matters registered as a supplement to the registration of the gaikokuho-jimu-bengoshi concerned in accordance with the provisions of Paragraph 2.
7. When a notification is made in accordance with the provisions of Paragraphs 1, 3 or 5, the Japan Federation of Bar Associations shall give a written notice of matters of which it was notified to the bar association to which the gaikokuho-jimu-bengoshi concerned belongs and the bar association to which the bengoshi who intends to run, runs or ran the specific joint enterprise concerned belongs.

(Indication of a specific joint enterprise)

Article 49-4. A gaikokuho-jimu-bengoshi who made the notification in accordance with the provisions of Paragraph 1 of the preceding Article shall append to the name of his or her office the fact that a specific joint enterprise is run and the name of the office of the bengoshi who runs the specific joint enterprise concerned.

(Application mutatis mutandis of the Bengoshi Law, etc.)

- Article 50. The provisions of Articles 23 to 30 of the Bengoshi Law shall apply mutatis mutandis to a gaikokuho-jimu-bengoshi.
2. The provisions of Paragraph 2 of Article 74 of the Bengoshi Law shall not apply to a gaikokuho-jimu-bengoshi.

Section 4. Discipline of a Gaikokuho-Jimu-Bengoshi

Sub-Section 1. Disciplinary Action

(Grounds for disciplinary action and the organ empowered to take disciplinary action)

- Article 51. A gaikokuho-jimu-bengoshi shall be subject to disciplinary action in cases where he or she violates this Law or any of the provisions pertaining to a gaikokuho-jimu-bengoshi set forth in the regulations of the bar association to which he or she belongs or of the Japan Federation of Bar Associations, or damages the order or reputation of the bar association to which he or she belongs or of the Japan Federation of Bar Associations, or misbehaves himself or herself in a manner impairing the dignity of a gaikokuho-jimu-bengoshi, whether in the conduct of his or her business or not.
2. Disciplinary action shall be taken by the Japan Federation of Bar Associations, based on the decision of the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee.

(Kinds of disciplinary action)

Article 52. There shall be four kinds of disciplinary action as follows:

- (1) reprimand
- (2) suspension of practice for not more than two years
- (3) order to secede from the bar association
- (4) disbarment

(Requests for disciplinary action, investigation and examination)

- Article 53. Any person who believes that there are grounds for disciplining a gaikokuho-jimu-bengoshi may make a request for disciplinary action to the Japan Federation of Bar Associations through the bar association to which the said gaikokuho-jimu-bengoshi belongs, attaching thereto an explanation of such grounds.
2. In cases where a bar association believes that there are grounds for disciplining a gaikokuho-jimu-bengoshi who belongs to it or where there has been a request under the preceding paragraph, it may cause its discipline maintenance committee established under the provisions of Paragraph 1 of Article 70 of the Bengoshi Law to make an investigation. If, in this case, the discipline maintenance committee deems it appropriate to discipline the gaikokuho-jimu-bengoshi, the bar association shall make a request for disciplinary action to the Japan Federation of Bar Associations, attaching thereto the results of the investigation made by the committee and its opinions.
 3. In cases where the Japan Federation of Bar Associations believes that there are grounds for disciplining a gaikokuho-jimu-bengoshi or where it has received a request under

Paragraph 1, it shall cause the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee to make an investigation of the matter. However, this need not apply in cases where investigation is being made under the preceding paragraph as regards the same ground.

4. The Japan Federation of Bar Associations shall, when the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee has found after the investigation under the preceding paragraph that it would be appropriate to discipline a gaikokuho-jimu-bengoshi or when the request under Paragraph 2 has been made, refer the matter to the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee for its examination.
5. In cases where the Japan Federation of Bar Associations disciplines a gaikokuho-jimu-bengoshi who is the object of the request under Paragraph 1 or 2 or where it has decided not to discipline the gaikokuho-jimu-bengoshi, it shall notify the person who has made the request under Paragraph 1 or the bar association which has made the request under Paragraph 2 to that effect.
6. The provisions of Paragraph 1 of Articles 55 of the Bengoshi Law shall apply *mutatis mutandis* to the procedure of investigation made under Paragraphs 2 and 3.

(Application *mutatis mutandis* of the Bengoshi Law)

Article 54. The provisions of Article 63 of the Bengoshi Law shall apply *mutatis mutandis* to a gaikokuho-jimu-bengoshi who has been subject to disciplinary action and the provisions of Article 64 of the same Law, to the procedure for disciplining a gaikokuho-jimu-bengoshi.

Sub-Section 2. Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee and Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee

(Establishment of Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee)

- Article 55. There shall be established the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee within the Japan Federation of Bar Associations.
2. The Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee shall, upon request of the Japan Federation of Bar Associations, conduct necessary examination concerning the disciplinary action to be taken against a gaikokuho-jimu-bengoshi.

(Organization)

- Article 56. The Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee shall be composed of fifteen members.
2. The President of the Japan Federation of Bar Associations shall commission eight

members from among bengoshi, six from among judges, public prosecutors and government officials, with two from each, and one from among persons of learning and experience. However, the members who are judges, public prosecutors or government officials shall be commissioned on the recommendation of the Supreme Court, the Prosecutor General or the Minister of Justice, respectively, and the other members, on the decision of the organ of the Japan Federation of Bar Associations stipulated by the regulations of the Japan Federation of Bar Associations.

3. The Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee shall have a chairperson, who shall be elected by mutual vote from among its members.
4. The provisions of Paragraph 4 of Article 38 shall apply mutatis mutandis to the term of office of the members of the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee.
5. The Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee shall have fifteen reserve members.
6. The provisions of Paragraph 2 above and Paragraph 4 of Article 38 of this Law and Paragraph 3 of Article 53 of the Bengoshi Law shall apply mutatis mutandis to the reserve members mentioned in the preceding paragraph. In this case, the word “president” in Paragraph 3 of the same Article shall read “chairperson”.
7. The provisions of Article 54 of the Bengoshi Law shall apply mutatis mutandis to the chairperson of the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee and the provisions of Paragraph 2 of the same Article, to the members and reserve members of the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee. In this case, the word “president” in the same Article shall read “chairperson”.

(Procedure for examination)

Article 57. The provisions of Paragraph 1 of Article 55, Paragraphs 1 and 2 of Article 67 and Article 68 of the Bengoshi Law shall apply mutatis mutandis to the procedure for examination by the Gaikokuho-Jimu-Bengoshi Disciplinary Actions Committee.

(Establishment of Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee, etc.)

Article 58. There shall be established the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee within the Japan Federation of Bar Associations.

2. The Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee shall conduct the investigations mentioned in Paragraph 3 of Article 53.
3. The Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee shall be composed of several members.
4. The members shall be commissioned by the President of the Japan Federation of Bar

Associations from among bengoshi, judges, public prosecutors, government officials and persons of learning and experience. However, the members who are judges, public prosecutors or government officials shall be commissioned on the recommendation of the Supreme Court, the Prosecutor General or the Minister of Justice, respectively, and the other members, on the decision of the organ of the Japan Federation of Bar Associations stipulated by the regulations of the Japan Federation of Bar Associations.

5. The Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee shall have a chairperson, who shall be elected by mutual vote from among its members.
6. The provisions of Paragraph 4 of Article 38 shall apply *mutatis mutandis* to the term of office of the members of the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee.
7. The Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee shall have several reserve members.
8. The provisions of Paragraph 4 above and Paragraph 4 of Article 38 of this Law and Paragraph 3 of Article 53 of the Bengoshi Law shall apply *mutatis mutandis* to the reserve members mentioned in the preceding paragraph. In this case, the word “president” in Paragraph 3 of the same Article shall read “chairperson”.
9. The provisions of Article 54 of the Bengoshi Law shall apply *mutatis mutandis* to the chairperson of the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee and the provisions of Paragraph 2 of the same Article, to the members and reserve members of the Gaikokuho-Jimu-Bengoshi Discipline Maintenance Committee. In this case, the word “president” in the same Article shall read “chairperson”.

Chapter V. Miscellaneous Provisions

(Representation by a foreign lawyer in regard to the procedures for an international arbitration case)

Article 58-2. A person who is a foreign lawyer (excluding a person who is a gaikokuhojimu-bengoshi) and is engaged in legal business, on the basis of the qualification to become such foreign lawyer, in a foreign country (excluding a person who is employed and is providing services in Japan, based on his or her knowledge of foreign law) may, notwithstanding the provisions of Article 72 of the Bengoshi Law, perform representation in regard to the procedures for an international arbitration case which he or she was requested to undertake or undertook in such foreign country. However, this shall not apply when he or she is under suspension of practice by an action under any law or regulation, etc. of a foreign country which corresponds to a disciplinary action prescribed in Item (2) of Article 52 of this Law or Item (2) of Article 57 of the Bengoshi Law.

(Exclusion from application of the Administrative Procedure Law)

Article 58-3. The provisions of Chapters 2 and 3 of the Administrative Procedure Law (Law No. 88 of 1993) shall not apply to a disposition made by the Japan Federation of Bar Associations and bar associations under this Law.

(Restriction of complaints)

Article 59. Any complaint under the Law concerning the Examination of Complaints against Dispositions made by Administrative Organs (Law No. 160 of 1962) may not be filed, in regard to a disposition made by the Japan Federation of Bar Associations under this Law.

(Filing of lawsuit)

Article 60. A person who has had his or her registration refused under the provisions of Article 26, a person who has had the transfer of his or her registration refused under the provisions of Article 26 which applies mutatis mutandis pursuant to Paragraph 3 of Article 28, a person who has had his or her registration rescinded under the provisions of Paragraph 2 of Article 30, or a person who has been subject to disciplinary action under the provisions of Article 51 may file a suit with the Tokyo High Court for the rescission of the disposition concerned.

2. A person who has made a request for registration or for transfer of registration may file a suit as stipulated in the preceding paragraph, regarding his or her registration

or transfer of registration as refused, in cases where the Japan Federation of Bar Associations does not make any disposition of his or her request even after the lapse of five months from the day following the date of his or her request.

(Prohibition of false representation by a person who is not a gaikokuho-jimu-bengoshi)

Article 61. A person who is not a gaikokuho-jimu-bengoshi shall not post a sign indicating, or indicate in writing, that he or she is a gaikokuho-jimu-bengoshi or that his or her office is a gaikokuho-jimu-bengoshi-jimusho.

(Delegation to Ministry of Justice Ordinance)

Article 62. Besides the matters provided for in this Law, the procedures concerning approval and rescission thereof, and designation and rescission thereof and other matters required for the enforcement of the provisions of Chapter III shall be stipulated by the Ministry of Justice Ordinance.

Chapter VI. Penal Provisions

Article 63. In cases where a gaikokuho-jimu-bengoshi performs any of the legal business listed in the following items, in connection with his or her practice, he or she shall be punished by imprisonment with labor for not more than two years or a fine not exceeding 1,000,000 yen:

- (1) representation in regard to procedures, for a lawsuit (except a criminal case), a noncontentious case, a family court case concerning family affairs, a case involving execution related to civil matters, a case involving security related to civil matters or other civil cases, in court in Japan.
- (2) representation in regard to procedures for a criminal case, activities in the capacity of a counsel in a criminal case, activities in the capacity of an attendant in a juvenile protection case before a family court or assistance to a fugitive criminal in an extradition case in connection with a request for the examination of extraditability made with the court.
- (3) representation in regard to procedures for a case of a complaint against an administrative agency in Japan, such as a statement of objections, or a demand for investigation.
- (4) giving an expert opinion in writing in regard to the interpretation or applicability of a law which is or was effective in Japan (excluding the treaties or other international laws which are contained in the law of the country of primary qualification or in designated laws).

Article 64. A person who, by a fraudulent or other unjust means, has had the registration made in the Register of Gaikokuho-Jimu-Bengoshi or had the supplementary registration of designated laws made in it, shall be punished by imprisonment with labor for not more than two years or a fine not exceeding 1,000,000 yen.

2. An attempt of the offences mentioned in the preceding paragraph shall be punished.

Article 65. A person who violates the provisions of Article 26 of the Bengoshi Law which applies *mutatis mutandis* pursuant to Article 50 of this Law shall be punished by imprisonment with labor for not more than three years.

Article 66. A person who violates the provisions of Article 27 or 28 of the Bengoshi Law which applies *mutatis mutandis* pursuant to Article 50 of this Law shall be punished by imprisonment with labor for not more than two years or a fine not exceeding 1,000,000 yen.

Article 67. In cases where a person who is or was a gaikokuho-jimu-bengoshi discloses, without due reason, another person’s secret which has come to his or her knowledge in the course of his or her practice, he or she shall be punished by imprisonment with labor for not more than six months or a fine not exceeding 100,000 yen.

2. The offence mentioned in the preceding paragraph shall be prosecuted only upon complaint.

Article 68. A person who violates the provisions of Article 61 shall be punished by a fine not exceeding 200,000 yen.

Supplementary Provisions (Law No. 66 of 1986)**(Date of enforcement)**

1. This Law shall come into force as from the date which shall be fixed by a Cabinet Order within the limits of two years from the date of its promulgation.
(It came into force as from April 1, 1987 by Cabinet Order No. 29 of 1987.)

(The rest is omitted.)

Supplementary Provisions (Law No. 91 of 1989.)**(Date of enforcement)**

1. This Law shall come into force as from the date which shall be fixed by a Cabinet Order within the limits of two years from the date of its promulgation.
(It came into force as from January 1, 1991 by Cabinet Order No. 283 of 1990.)

(The rest is omitted.)

Supplementary Provisions (Law No. 89 of 1993)**(Date of enforcement)**

1. This Law shall come into force as from the date when the Administrative Procedure Law (Law No. 88 of 1993) comes into force.
(Date of enforcement: October 1, 1994)

(The rest is omitted.)

Supplementary Provisions (Law No.65 of 1994)**(Date of enforcement)**

1. This Law shall come into force as from the date which shall be fixed by a Cabinet Order within the limits of one year from the date of its promulgation.
(It came into force as from January 1, 1995 by Cabinet Order No. 392 of 1994.)

(The rest is omitted.)

Supplementary Provisions (Law No. 91 of 1995)

(Date of enforcement)

1. This Law shall come into force as from the date when twenty days have passed after its promulgation.

(The rest is omitted.)

Supplementary Provisions (Law No. 65 of 1996)

(Date of enforcement)

1. This Law shall come into force as from the date which shall be fixed by a Cabinet Order within the limits of three months from the date of its promulgation.

(Transitional measures concerning penal provisions)

2. In regard to the application of penal provisions to an act performed before the enforcement of this Law, the old Law shall still apply.

(Transitional measures concerning disciplinary actions)

3. In regard to a disciplinary action to a gaikokuho-jimu-bengoshi based on the facts which arose before the enforcement of this Law, the old Law shall still apply.



JSE Issued Nippon Grain Charter Party

Documentary Committee

Background

The volume of Japan's imported wheat from around the world has recently been in the range from 6 to 8 million tons per year. Of the total, a substantial portion has been imported by the Japanese traders from the West Coast of North America on the basis of the Baltimore Form C Grain Charterparty (Form C), which was last revised in 1974 and is not always in line with the practice of that Japanese trade.

For example, there is no provision regarding Japanese discharging ports on the Form C so that the parties have had to delete irrelative clauses or add new ones reflecting the custom especially in counting laytime for discharge.

The members of the Import Cargo Transport Council, a carriers' organization in Japan, requested early in 1995 that the Documentary Committee of The Japan Shipping Exchange, Inc. issue a new charter party for the carriage of wheat cargo from the West Coast to Japan.

Subcommittee Meetings

Early in 1996 the Documentary Committee organized a subcommittee consisting of experts from leading Japanese firms engaged in such business.

The Subcommittee was chaired by Mr. H. Masuda, former president of Yamamizu Shipping Co., Ltd. He managed 11 meetings for deliberation from May to November 1996. The Subcommittee had thoroughly studied the Form C used among the traders and drafted up a new charter party on an FIO basis with a code name "NIPPONGRAIN" in November, 1996.

The Documentary Committee held on March 19, 1997 approved the draft NIPPON GRAIN Charter Party and announced its issue on the same day.

Features of "NIPPONGRAIN"

Part I - Front Box

Each box on the front contains a brief description of the item and refers to relevant clauses in the Part II of the Charter.

“(See clause):” in Boxes 6 and 7 indicates that numbers of attached clauses should be

listed in case, due to limited space, all notify parties Vessel is required to give notice to cannot be named here when Vessel to load or discharge at more than one port.

Part II - Clauses

- Cl. 1 Preamble : Vessel is to proceed to a named port or "so near thereto."
- Cl. 2 Separations : Cargo separations to be for Charterers' account. This indicates that the Nippon Grain Charter is based on the FIO terms. Also see Cl. 7.
- Cl. 3 Advice of Readiness, Loading Port Orders : (a)15/10 days notice of arrival to be given and port orders to be declared latest 96 hours prior to Vessel's arrival. (b)Saturdays at the loading port are treated as non-working days. See also Cl. 8(a).
- Cl. 4 Vessel Inspection, Destination, Discharging Port Orders : (b)Discharging ports to be in geographical rotation. (c)Charterers to give first discharge port orders within 48 hours of Vessel's application for same.
- Cl. 5 Freight : (a)Full freight to be prepaid in Tokyo in US currency. (b)For more than one discharging port, extra freight to be paid upon declaration thereof. (c)Freight to be non-returnable.
- Cl. 7 Stevedores : FIO terms. Charterers are to employ stevedores.
- Cl. 8 Laytime at Loading : (a)Saturdays are regarded as non-working days.
- Cl. 9 Demurrage/Despatch : (c)Settlement to be made within 30 days of completion of each loading and discharging.
- Cl.10 Notice of Readiness : Clearly states Owners are entitled to give NOR before the laydays date. Laytime at loading / discharge ports to commence at 0700 hours. (e)At second and third ports time to count upon Vessel's arrival. (f)Owners are also eligible to give NOR outside the port limits. (h)Shifting time not to count.
- Cl.12 Cancelling Date : (a)The right to cancel to accrue at 1600 hours on the cancelling date. (b)Owners are not responsible for any charges/expenses incurred by Charterers.
- Cl.13 Berths : (a)Charterers to have the option of two loading berths at a US port and three berths at a Canadian port (excluding Prince Rupert). Shifting time to count. (b)Charterers also to have the option of two discharging berths at each port but time for shifting to count. (c)Shifting out from and back to the same berth to count as two.
- Cl.14 Securing : (a)Securing required by authorities to be for Owners' account. (b)Expenses and time needed for securing due to unusual stowage factors to be shared equally between Owners and Charterers.
- Cl.15 Discharge Terms : Saturdays are treated as normal working days here.
- Cl.17 Overtime : (b)Overtime ordered by Port Authorities or Elevators to be for

Charterers' account.

- Cl.19 Lighterage : Time for lighterage to count as laytime.
- Cl.20 Agents : Owners are to employ agents both at loading and discharge.
- Cl.21 Removal of Beam : Opening and closing of hatches are basically for Charterers' account.
- Cl.24 Lien : Owners also have a lien on subfreight.
- Cl.25 Assignment : (b)Owners have the same privilege as do Charterers in assigning this Charter.
- Cl.26 General Average : General Average is to be adjusted and settled in Tokyo.
- Cl.28 Arbitration : Any dispute between the parties to be filed with TOMAC (Tokyo Maritime Arbitration Commission) for arbitration.
- Cl.31 Strike : (d)Clearly states that demurrage continues to accrue if Vessel is already on demurrage. (e)Neither Owners nor Charterers are responsible for other consequences caused by strikes than listed here. ■

Issued March 19, 1997

The Documentary Committee of The Japan Shipping Exchange, Inc.

NIPPON GRAIN CHARTER PARTY

Place & Date		CODE NAME: "NIPPONGRAIN" PART I	
1. Owners/Chartered Owners/Disponent Owners (Cl. 1)		2. Charterers (Cl. 1)	
3. Vessel (name/GT/DW)(Cl. 1)		4. Cargo (also state quantity)(Cl. 1, 3(a))	
5. Laydays/Cancelling date (Cl. 10(a), 11, 12)			
6. Loading port (Cl. 1) Notice to be given to (Cl. 3(a)(c)(d), 10(a)): (See clause):		7. Discharging port (Cl. 1, 4(b)) Notice to be given to (Cl. 4(c), 10(a)): (See clause):	
8. Freight rate/ Payment (Cl. 5)			
9. Laytime (loading) (Cl. 8)		10. Laytime (discharging)(state average rate in m.t.)(Cl. 15)	
11. Demurrage (Cl. 9(a))		12. Despatch money (Cl. 9(b))	
13. Broker (Cl. 22)		14. Brokerage Com. (Cl. 22)	15. Address Com. (Cl. 23)
16. Original Charter Party to be held by:			
17. Numbers of additional clauses attached:			

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Part I and Part II of this Charter Party. In the event of conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict but no further.

Signature (Owners)

Signature (Charterers)

"NIPPONGRAIN" Charter Party (PART II)

1. Preamble	1	licence issued by the U.S. Department of Agriculture pursuant to the U.S.	93
It is agreed between the party named in Box 1 as the Owners, Chartered	2	Grain Standards Act, or other official body customarily issuing such	94
Owners, or Disponent Owners (hereinafter referred to as "the Owners") of the	3	certificate(s).	95
Vessel named in Box 3 of the GT indicated in Box 3 and carrying about the	4	ii in Canadian ports:	96
number of metric tons of deadweight capacity all told on summer loadline	5	1) Certificate of Readiness for all Cargo Compartments issued by the	97
stated in Box 3, being tight, staunch and strong, and in every way fit for the	6	Port Warden,	98
voyage, and the party named in Box 2 as the Charterers that the Vessel shall,	7	2) Certificate that all Cargo Compartments are free of insect infestation	99
with all convenient speed, proceed to the loading port stated in Box 6, or so	8	and objectionable odours, issued by a Grain Inspector employed by	100
near thereto as she may safely get and lie always afloat, and there load a full	9	the Canada Department of Agriculture or other official body	101
and complete cargo stated in Box 4, in bulk, and being so loaded the Vessel	10	customarily issuing such certificate(s) (and/or U.S. Grain Inspector if	102
shall, with all convenient speed, proceed to the discharging port stated in	11	loading U.S. grain in a Canadian port)	103
Box 7 or so near thereto as she may safely get and lie always afloat and	12	and also confirmation, in the notice of readiness that the Vessel's gear	104
there deliver the said cargo in the customary manner, as ordered.	13	certificate as required by U.S. Department of Labor, or any similar	105
		authority, where applicable, is in order.	106
2. Separations	14	(c) Laytime at loading port shall commence at 07:00 hours on the next	107
Cargo separations other than the Vessel's compartment, if any, shall be for	15	business day after notice of readiness is given in such manner as	108
the Charterers' account, risk and time.	16	described above, whether in berth or not.	109
3. Advice of Readiness, Loading Port Orders	17	(d) Laytime at discharging port shall commence at 07:00 hours on the next	110
(a) The Vessel shall give the party stated in Box 6 the notice of the expected	18	business day after notice of readiness is given, whether in berth or not.	111
date of arrival at the loading range when the Vessel sails last port on the	19	(e) At the second and third ports of discharge, if used, time shall count on the	112
previous voyage or 15 days prior to arrival at the loading port, whichever	20	Vessel's arrival, whether in berth or not.	113
earlier, with approximate quantity of the cargo stated in Box 4, and also	21	(f) In case there is no anchorage in the discharging port limit and the Vessel	114
ten days notice of arrival.	22	is forced to wait for discharging turn outside of the port limit due to port	115
(b) If the day of the 15 days notice and/or ten days notice falls on Saturday,	23	congestion or any other reason, the Vessel shall have the right to give the	116
Sunday or Holiday at the loading port, such notice shall be given from	24	notice of readiness on her arrival at the point where vessels usually wait	117
08:00 to 17:00 hours on the preceding working day.	25	in such cases.	118
(c) The Vessel shall notify the party stated in Box 6 of any change in the	26	(g) If such port or ports as mentioned at (f) above is/are used as the second	119
Vessel's expected time of arrival at loading range, whilst on passage.	27	and/or third discharging port(s), time shall commence on the Vessel's	120
(d) The Vessel shall apply by radio to the party named in Box 6 for the first or sole	28	arrival at the waiting point as mentioned at (f) above.	121
loading port orders to be declared latest 96 hours prior to the Vessel's arrival	29	(h) Time shifting from the waiting point to the discharging port shall not count	122
		as laytime or for demurrage if the Vessel is on demurrage.	123
4. Vessel Inspection, Destination, Discharging Port(s) Orders	30	11. Laydays	124
(a) The Vessel shall load under inspection of National Cargo Bureau, Inc.,	31	Laytime for loading, if required by the Charterers, shall not commence	125
and a Grain Inspector holding a licence issued by the United States	32	before the laydays date stated in Box 5.	126
Department of Agriculture pursuant to the U.S. Grain Standards Act, in	33		
United States ports, or of the Port Warden and a Grain Inspector	34	12. Cancelling Date	127
employed by the Canada Department of Agriculture, in Canadian ports,	35	(a) Should the notice of readiness at the loading port not be given as per	128
at her expense, and comply with their rules, not exceeding what she can	36	Clause 10 at or before 16:00 hours on the cancelling date stated in Box	129
reasonably stow and carry over and above her cabin, tackle, apparel,	37	5, the Charterers shall, at any time thereafter, but not later than the	130
provisions, fuel and furniture.	38	presentation of notice of readiness together with the required certificates	131
(b) The discharging ports shall be always in geographical rotation from north	39	at the Charterers' or their nominees' office, have the option of cancelling	132
to south or from south to north at the Charterers' option.	40	this Charter Party.	133
(c) The Vessel shall apply by radio to the party named in Box 7 for the first	41	(b) The Owners shall not be responsible for any charges and/or expenses	134
discharging port orders 96 hours before the Vessel is off Japan. The	42	whatsoever incurred to the Charterers which may result from the Vessel's	135
Charterers shall give the first discharging port declaration within 48 hours	43	missing the cancelling date.	136
from the Vessel's application for the first discharging port order. Second	44		
or second and third discharging port(s) shall be declared upon arrival at	45	13. Berths	137
the first discharging port.	46	(a) At the loading port the Charterers shall be entitled to use up to two	138
5. Freight	47	loading berths in the Columbia River including Portland Oregon or in	139
(a) Full freight at the rate stated in Box 8 shall be prepaid in Tokyo, in US	48	Puget Sound; or up to three loading berths in British Columbia excluding	140
Currency on Bill(s) of Lading weight confirmed through telegraphic	49	Prince Rupert, or at the Charterers' option up to two loading berths at	141
advance on signing Bill(s) of Lading.	50	Prince Rupert, free of expense to the Charterers, but all time used for	142
(b) In case second or second and third discharging port(s) used, extra	51	shifting shall count.	143
freight shall be paid upon declaration of each additional discharging port.	52	(b) At each discharging port the Charterers shall have the option of two	144
(c) Freight shall be deemed earned on cargo as taken on board the Vessel,	53	discharging berths, free of expense to the Charterers, but all time used	145
and shall be non-returnable, the Vessel and/or cargo lost or not lost.	54	for shifting shall count.	146
6. Signing of Bills of Lading	55	(c) In case the Vessel is ordered by the Charterers, their agent and/or Port	147
The Master shall call at the Charterers', or their Agents' office as requested,	56	Authorities, to shift out from the loading or discharging berth on the way	148
and sign Bills of Lading as presented in the form customary for grain cargoes,	57	of loading or discharging, and afterwards is ordered again to shift back	149
without prejudice to this Charter Party.	58	to the same berth to continue additional loading or discharging, as the	150
		case may be, such transaction shall be considered as two berths loading	151
7. Stevedores	59	or discharging.	152
Stevedores at loading and discharging ports shall be employed and paid by	60	(d) The Vessel shall be left in seaworthy trim to the Master's satisfaction for	153
the Charterers.	61	shifting between loading and/or discharging berths.	154
8. Laytime at Loading	62	14. Securing	155
(a) The cargo shall be loaded within the number of weather working days of	63	(a) Any securing (bagging or strapping, etc.) required by the Master,	156
24 consecutive hours each as indicated in Box 9, Saturdays, Sundays	64	National Cargo Bureau or Port Warden for safe trim/stowage shall be	157
and Holidays excepted, unless used, if used, actual working time shall	65	supplied and paid for by the Owners and time used shall not count as	158
count as laytime.	66	laytime.	159
(b) Laytime for loading and discharging shall be non-reversible.	67	(b) However, in case such securing is required due to a variance between	160
9. Demurrage/ Despatch	68	the stowage factor of the cargo actually being loaded and the standard	161
(a) The Charterers shall pay demurrage to the Owners at the rate agreed in	69	stowage factor for wheat cargo of 41CFT to 44CFT/metric ton (or 48CFT	162
Box 11 per day or pro rata for any part of a day, for all time in excess of	70	to 54CFT/metric ton for barley cargo), expenses incurred and time used	163
laytime at the loading and/or discharging ports.	71	thereby shall be shared equally between the Charterers and the Owners.	164
(b) If sooner despatched, the Owners shall pay despatch money to the	72	15. Discharge Terms	165
Charterers at the rate of half of demurrage as stated in Box 12 per day or	73	The cargo shall be discharged at the average rate of number of metric tons	166
pro rata for any part of a day for laytime saved at loading and/or	74	stated in Box 10 per weather working day of 24 consecutive hours each,	167
discharging ports.	75	Sundays and Holidays excepted, unless used, if used, actual working time	168
(c) Demurrage or despatch money shall be paid within 30 days after	76	shall count as laytime.	169
completion of loading and discharging respectively.	77	16. Seaworthy Trim	170
10. Notice of Readiness	78	If ordered to discharge at two or three ports, the Vessel shall be left in	171
(a) Notification of the Vessel's readiness to load or discharge at the first or	79	seaworthy trim to the Master's satisfaction to proceed between ports.	172
sole loading or discharging port shall be given to the Charterers or their	80	17. Overtime	173
nominees named in Box 6 or 7 at the loading or discharging port	81	Overtime at loading or discharging ports shall be for account of the party	174
respectively at or before 16:00 hours on any normal business day or at or	82	ordering the same.	175
before 12:00 hours on Saturday, unless Saturday is a holiday, whether in	83	(b) If ordered by Port Authorities and/or Elevators, the same shall be for the	176
berth or not. The Vessel shall have the right to give notice of readiness	84	Charterers' account.	177
before the laydays date stated in Box 5.	85	(c) Overtime for the Vessel's officers and crew shall always be for the	178
(b) At the loading port the Vessel shall also have been entered at the Custom	86	Owners' account.	179
House, accompanied by:	87	18. Winches, Power and Lights	180
i in United States Ports:	88	(a) If required, the Master shall give free use of the Vessel's winches and	181
1) Certificate of Readiness for all Cargo Compartments issued by the	89	power to drive the gear, runners, ropes and slings as on board, and	182
National Cargo Bureau, Inc.,	90	winchmen from the crew.	183
2) Certificate that all Cargo Compartments are free of insect infestation	91	(b) If shore regulations do not permit the crew to operate winches, then	184
and objectionable odours, issued by a Grain Inspector holding a	92	shorewinchmen shall, if used, be for the Charterers' account at loading	185

"NIPPONGRAIN" Charter Party

and discharging ports.	186	if the Vessel had discharged at the port or ports of discharge to which	275
(c) The Master shall also give free use of the Vessel's lighting as on board, if	187	she was originally ordered.	276
required, for night work.	188	(b) The Vessel shall have liberty to comply with any orders or directions as to	277
19. Lighterage Clause	189	departure, arrival, routes, ports of call, stoppages, destination, delivery or	278
Should the Vessel be ordered to discharge at a place where there is not	190	otherwise howsoever given by the Government of the Nation under	279
sufficient water for her to get the first tide after arrival without lightening, and	191	whose flag the Vessel sails or any department thereof, or by any other	280
lie always afloat, laytime shall count as per Clause 10 at the time when the	192	Government or any department thereof or any person acting or	281
Vessel shall arrive at a safe anchorage for similar vessels to wait for	193	purporting to act with the authority of such Government, or of any	282
lightening and any lighterage incurred to enable her to reach the place of	194	department thereof, or by any committee or person having, under the	283
discharge shall be at the expense and risk of the Charterers, Time occupied	195	terms of the War Risks Insurance on the Vessel, the right to give such	284
in lightening shall count as laytime.	196	orders or directions and if by reason of and in compliance with any such	285
20. Agents	197	orders or directions anything is done or is not done, the same shall not	286
The Owners' agents shall be employed at loading and discharging ports.	198	be deemed a deviation, and delivery in accordance with such orders or	287
21. Removal of Beam	199	directions shall be a fulfilment of the contract voyage and the freight shall	288
Opening and closing of hatches at the loading and discharging ports shall	200	be payable accordingly.	289
be for the Charterers' account and time used shall count as laytime, except	201	31. Strike Clause	290
for the first opening and the last closing of hatches at each port.	202	(a) If the cargo cannot be loaded by reason of riots, civil commotions or of a	291
22. Brokerage Commission	203	strike or lock-out of any class of workmen essential to the loading of the	292
A brokerage commission at the rate stated in Box 14 on the freight, dead	204	cargo, or by reason of obstructions or stoppages beyond the control of	293
freight and demurrage is due to the brokers mentioned in Box 13, by the	205	Charterers caused by riots, civil commotions or a strike or lock-out on	294
Owners.	206	the railways, or in the docks, or other loading places, the time for loading	295
23. Address Commission	207	shall not count during the continuance of such causes, provided that a	296
An address commission at the rate stated in Box 15 on gross freight, dead	208	strike or lock-out of the Shippers' men shall not prevent demurrage from	297
freight and demurrage is due to the Charterers on shipment of the cargo, the	209	accruing if by the use of reasonable diligence they could have obtained	298
Vessel lost or not lost, the Charterers having the right to deduct such	210	other suitable labour at rates current before the strike or lock-out.	299
commission from payment of freight.	211	(b) If the cargo cannot be discharged by reason of riots, civil commotions, or	300
24. Lien	212	a strike or lock-out of any class of workmen essential to the discharge,	301
The Owners shall have a lien on the cargo and all subfreight payable in	213	the time for discharging shall not count during the continuance of such	302
respect of the cargo for all freight, dead freight, demurrage, general average	214	causes, provided that a strike or lock-out of the Charterers/ Receivers'	303
and salvage.	215	men shall not prevent demurrage from accruing if by the use of	304
25. Assignment	216	reasonable diligence they could have obtained other suitable labour at	305
(a) The Charterers shall have the privilege of transferring or assigning all or	217	rates current before the strike or lock-out.	306
part of this Charter Party to others, guaranteeing to the Owners the due	218	(c) For the purpose of settling despatch accounts, any time lost by the Vessel	307
fulfilment of this Charter Party.	219	through any of the above causes at loading port(s) and/or discharging	308
(b) The Owners shall have the privilege of transferring or assigning all or part	220	port(s), as the case may be, shall be counted only as time used in	309
of this Charter Party to others, guaranteeing to the Charterers the due	221	loading and/or in discharging.	310
fulfilment of this Charter Party.	222	(d) In case of any delay by reason of the above causes (except the Vessel	311
26. General Average	223	being already on demurrage), no claim for damages or demurrage shall	312
General Average shall be adjusted and settled in Tokyo according to the	224	be made by the Charterers/Receivers of the cargo, or the Owners.	313
York/Antwerp Rules, 1994 or any modification thereof.	225	(e) Except for the cases described in the above subclauses (a) through (d),	314
27. New Jason Clause	226	neither the Charterers nor the Owners shall be responsible for the	315
Where the adjustment is made in accordance with the law and practice of	227	consequences of any strikes or lock-outs preventing or affecting the	316
the United States of America, the following clause shall apply:	228	actual loading or discharging of the cargo.	317
In the event of accident, danger, damage or disaster before or after	229	32. P&I Bunker Clause	318
the commencement of the voyage, resulting from any cause	230	The Vessel shall have the liberty as part of the contract voyage to proceed to	319
whichever, whether due to negligence or not, for which, or for the	231	any port(s) at which bunker oil is available for the purpose of bunkering at	320
consequences of which, the carrier is not responsible, by statute,	232	any stage of the voyage whatsoever and whether such ports are on or off	321
contract or otherwise, the goods, shippers, consignees or owners of	233	direct and/or customary route or routes between any of the ports of loading	322
the goods shall contribute with the carrier in general average to the	234	or discharge named in this Charter Party and may there take oil bunkers in	323
payment of any sacrifice, losses or expenses of a general average	235	any quantity in the discretion of the Owners even to the full capacity of fuel	324
nature that may be made or incurred and shall pay salvage and	236	tanks and deep tanks and any other compartment in which oil can be	325
special charges incurred in respect of the goods.	237	carried, whether such amount is or is not required for the chartered voyage.	326
If a salving ship is owned or operated by the carrier, salvage shall	238	33. Both to Blame Collision Clause	327
be paid for as fully as if the said salving ship or ships belonged to	239	if the liability for any collision in which the Vessel is involved while performing	328
strangers. Such deposit as the carrier or his agents may deem	240	this Charter Party fails to be determined in accordance with the laws of the	329
sufficient to cover the estimated contribution of the goods and any	241	United States of America, the following clause shall apply:	330
salvage and special charges thereon shall, if required, be made by	242	If the Vessel comes into collision with another ship as a result of the	331
the goods, shippers, consignees or owners of the goods to the	243	negligence of the other ship and any act, neglect or default of the	332
carrier before delivery.	244	Master, mariner, pilot or the servants of the Owners in the navigation	333
and the Charterers shall procure that all Bills of Lading issued under this	245	or in the management of the Vessel, the owners of the goods	334
Charter Party shall contain the same clause.	246	carried hereunder will indemnify the Owners against all loss or	335
28. Arbitration	247	liability to the other or non-carrying ship or her owners in so far as	336
Any dispute arising from this Charter Party shall be submitted to arbitration	248	such loss or liability represents loss of or damage to or any claim	337
held in Tokyo by the Tokyo Maritime Arbitration Commission (TOMAC) of The	249	whatsoever of the owners of the said goods, paid or payable by the	338
Japan Shipping Exchange, Inc. in accordance with the Rules of TOMAC and	250	other or non-carrying ship or her owners to the owners of the said	339
any amendment thereto, and the award given by the arbitrators shall be final	251	goods and set off, recouped or recovered by the other or non-	340
and binding on both parties.	252	carrying ship or her owners as part of their claim against the Vessel	341
29. Exceptions Clause	253	or the Owners.	342
It is mutually agreed that the Owners shall not be liable for loss or damage	254	The foregoing provisions shall also apply where the owners,	343
occasioned by causes beyond their control, by the perils of the seas or other	255	operators or those in charge of any ship or ships or objects other	344
waters, by fire, from any cause, wheresoever occurring, by barratry of the	256	than, or in addition to, the colliding ships or objects are at fault in	345
Master or crew, by enemies, pirates or robbers, by arrest and restraint of	257	respect to a collision or contact.	346
Princes, rulers, or people, by explosion, bursting of boilers, breakage of	258	and the Charterers shall procure that all Bills of Lading issued under this	347
shafts or any latent defect in hull, machinery or appurtenances, by collisions,	259	Charter Party shall contain the same clause.	348
stranding or other accidents of navigation of whatsoever kind (even when	260	34. Paramount Clause	349
occasioned by the negligence, default or error in judgment of the pilot,	261	It is also mutually agreed that this Charter Party shall be completed and	350
Master, mariners or other servants of the Owners, not resulting, however, in	262	susperised by the signing of Bills of Lading which shall be deemed to	351
any case, from want of due diligence by the Owners or any of them, or by	263	incorporate the above clauses as well as containing the following additional	352
the Ship's Husband or Manager).	264	clause(s):	353
30. War Risks Clause	265	[U.S.A. Clause Paramount, delete if inapplicable]	354
(a) No Bills of Lading shall be signed for any blockaded port and if the port of	266	This Bill of Lading shall have effect subject to the provisions of the	355
discharge is declared blockaded after Bills of Lading have been signed,	267	Carriage of Goods by Sea Act of the United States, approved April 16,	356
or if the port to which the Vessel has been ordered to discharge either on	268	1936, which shall be deemed to be incorporated herein, and nothing	357
signing Bills of Lading or thereafter is one to which the Vessel is or shall	269	herein contained shall be deemed a surrender by the Owners of any of its	358
be prohibited from going by the Government of the Nation under whose	270	rights or immunities or an increase of any of its responsibilities or liabilities	359
flag the Vessel sails or by any other Government, the Owner shall	271	under said Act. If any term of this Bill of Lading be repugnant to said Act	360
discharge the cargo at any other port covered by this Charter Party as	272	any extent, such term shall be void to that extent but no further.	361
ordered by the Charterers (provided such other port is not a blockaded	273	[Canadian Clause Paramount, delete if inapplicable]	362
or prohibited port as above mentioned) and shall be entitled to freight as	274	This Bill of Lading, so far as it relates to the carriage of goods by water,	363

Japanese Sentiment, Today and Tomorrow

- Seniority -

Takao TATEISHI - *Editor*

Suppose you are a manager at a Japanese company in Tokyo. When you take issue with your staff about the way they do their job, you must not only effectively exhibit your righteousness in suggesting another method but avoid sounding as if you are attributing the defect to their character, although I am not saying you are actually not. Such is the force of the structure and/or phraseology of Japanese as a language of emotion, that Japanese people tend to feel, when objected, like being denied of their own personality and become despondent offhandedly even when the objection accrues from mere differences of opinion. You will then be tempted to suppress your urge to scold your subordinates for fear that they take revenge or quit work.

Bigaku or paradigm of beauty, a Japanese ramification of Confucianism, the original of which was politically promoted during the *Edo* era, has dominated the sense of self-discipline in Japanese society and always called for *tatema*e or ostensible values, like “seniors should chaperone juniors,” as guidelines. On the other hand, *ishin-denshin*, a supernatural communication tool which obviates any verbal code, was a handy excuse for not revealing *honne* or true feelings. “You have to think of your superior’s feelings” was the latent message in this case. But the youth of today abhor *tatema*e and take to *honne* desire outright. Superiors are now more likely to shut up at the sight of the alienness of a new wave. The dearth of authority as seniors looks like beefing up the necessity of a meritocracy in many of Japanese companies.

Seniority system and lifetime employment were vigorously adopted by Japanese industry shortly after World War II with an eye for securing the work force and reviving the devastated economy. The then active labour movement rapidly cooled down as Japan geared up into high economic growth which started with the *Jimmu-keiki* boom in 1954 and persisted until the oil crisis prevailed in 1973. The Japanese economy picked up again in 1974, though “moderately” at 4.8% per year, and began to bubble in 1986 as featured by the skyrocketing prices of both land and stocks, leaving Japanese companies to speculatively expand their investment and activities. Trade unions apparently lost their fangs when the bubble economy caused chronic labour shortages and workers readily enjoyed a hefty increase in salary, although at the sacrifice of their time and even life - many died a *karo-shi*, a death from exhaustion after working hard for too long.

After the economy burst in 1991 many Japanese companies resolved to shake up their management and came up with a meritocracy as well as a big shift from life employment. In this sense, the post-WWII era is finally to rest. It now seems hard for Japanese workers

to keep simultaneously the double benefits - seniority system and a brisk pay cheque. Instead, thanks to the two stock option-related bills passed by the Diet in May this year, the subject how to raise morale and peg down the work force is rising high on the agenda for executive meetings. Departure from evil equality and approach toward triage appears to be taking shape to revitalise Japan's economy from the inside. ■



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