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apan Foreign Lawyers Agreement (1987)

Agreement on Foreign Lawyers

Feb. 27, 1987

EMBASSY OF APAN

WASHINGTON, D.C.

February 27, 1987

Dear Ambassador Yeutter:

I would like to refer to the foreign lawyer issue and state the following upon instruction from my home Government:

The Governments of apan and the United States have conducted a series of consultations, including those between Justice Vice-Minister Kakei and Ambassador Smith, regarding the implementation of the system of accepting foreign attorneys. Based on the results of these consultations, the Government of apan intends to implement the system in line with the attached guidelines.

We appreciate your continued assistance and understanding as we work to implement a foreign lawyers system that is appropriate both domestically and internationally.

Sincerely yours,

[signature]

Nobuo Matsunaga

Ambassador of apan

The Honorable

Clayton Yeutter

U.S. Trade Representative

Washington, D. C. 20506

Attachment One to the

GO Letter to the USG dated

February 27, 1987

1. Date of enforcement of the Law

The Government of apan is making all possible efforts so that the Law will come into force as from April 1, 1987.

2. Scope of practice J

A gaikokuho jimu-bengoshi qualified under a specific U.S. jurisdiction (all states, territories, and the District of Columbia) as the country of primary qualification is required to follow the necessary procedures stipulated in J

Articles 7 of the Law in order to practice laws of other U.S. jurisdictions. In view of the realities in the United States, however, the relevant documents to verify that he falls under Item 2, Paragraph of Article of the Law, written statements prepared by himself and by the law firm to which he belongs (or its equivalent) concerning the points listed below will suffice. Therefore, he need not prove his practicing experience concerning laws of each other jurisdiction, unlike in the case of the application for designation of laws of other third countries. This is based on the assumption that the U.S. Government will issue formal written statements to the Japanese Government which () expresses that in view of the legal education, background, legal system and legal practice in the United States, the lawyer of U.S. jurisdiction is generally possessed with basic capabilities and has been sufficient trained to deal with legal matters concerning other U.S. jurisdictions, (b) states that strict professional ethics is established in each jurisdiction that the lawyer should not handle legal matters where he is not confident of his expertise and knowledge, and (c) requests that the application for designation for other U.S. jurisdictions should be treated based on these realities in the United States.

() Contents of written statement by the applicant

- statement that he has competence to handle matters concerning laws of other U.S. jurisdictions by outlining his past practicing experience as well as the scale and contents of business of the law firm to which he belongs.

- statement that he has so far observed such professional ethics of his jurisdiction of primary qualification as corresponds to that described in the above formal statement of the U.S. Government and pledge that he will observe such ethics dealing with matters concerning laws of other designated U.S. jurisdictions in Japan as *gikokuho jimu-be goshi*, namely that where he is not confident of his expertise and knowledge about laws of other jurisdictions he will refrain from handling such matters or deal with them with the advice of others with expert knowledge.

(2) Contents of written statement by the law firm (or its equivalent)

- statement that to the best of its knowledge and belief the contents of the written statement by the applicant are accurate and he has so far observed the professional ethics of his jurisdiction of primary qualification such as mentioned above and will observe it dealing with matters regarding laws of other designated U.S. jurisdictions in Japan as *gikokuho jimu-be goshi*.

So long as these requirements are fulfilled, the Minister of Justice will grant the applicant the designation of laws of other U.S. jurisdictions based on the application unless there exists compelling reasons.**

3. Five-year experience requirement

() Experience as attorney in federal, state or local government shall be deemed as "experience of handling legal practice as foreign lawyer" as provided for in Article 10 ();

(2) A lawyer from open state cannot his experience from other open states toward the five-year experience requirement in the home jurisdiction ;

(3) As long as the relevant exists that open state lawyer's experience outside open states or the United States can be deemed as experience in his home jurisdiction, that experience will count toward the five-year experience requirement;

(4) The legal experience of attorney from open state obtained while working for the U.S. Federal Government will be counted toward the five-year experience requirement in his home jurisdiction, regardless of the location of such experience.

4. Entry to Japan of foreign lawyer without qualification as foreign lawyer

Entry to Japan of foreign lawyer without qualification as foreign lawyer whom *gikokuho jimu-be goshi* employs will be subject to normal immigration control. There will be, however, no restriction limiting the number of such trustees to specific number per *gikokuho jimu-be goshi*, and the number of such foreign lawyers admitted to Japan will be evaluated solely in terms of the necessity and replacement of their services. y

5. Quali i a i a d regis ra i pr edures

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De ails he pr edures will be explai ed he par ies er ed i ludi g U.S. Embassy i T ky whe he spe i i s appli a i rms a d her d ume s are i alized. I rmal s ree i g shall be s ar ed r m as early i Mar h as p ssible, a d i s spe i i da e shall be i rmed he U.S. G over me hr ugh he dipl ma i ha el.

6. O hers

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() The G over me Japa has i e i require a appli a a umula e i adva e e year's pera i g expe ses (see he ABA le er addressed Ambassad r Yeu er). Misu ders a di g his p i , i a y, sh uld be dispelled.

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I ase he Mi is er Jus i e reques s, r mpelli g reas s, ha a appli a r m a jurisdi i wh se legal sys em d es u ilize mmo law pri ples (i he eve ha su h jurisdi i be mes pe) demo s ra e his lear i g a d experie e er i g he laws her U.S. jurisdi i s, he Mi is er Jus i e will give due sidera i he reali y he p si i su h jurisdi i i he legal sys em he U i ed S a es.

A a hme Two he

GOJ Le er he USG da ed

February 27, 1987

The ll wi g are he views he G over me Japa regardi g he ha dli g he experie e a lawyer a pe s a e as me i ed i paragraph () A a hme 1.

I em 1, Paragraph 1 Ar i le 10 Spe ial Measures Law C er i g he Ha dli g Legal Busi ess by F reig Lawyers pr vides as a quali i a i requireme ha " he appli a is quali ed be me a reig lawyer a d has he experie e havi g e gaged i pra i e as a reig lawyer i he reig u ry where he a quired su h quali i a i r ive years r more a er a quiri g i ." I evalua i g he ul illme his quali i a i requireme , we a by mea s g bey d wha he Law s ipula es, bu i e d apply he pr visi s he 3

Law as filed as possible within its framework, giving due consideration to the reality of legal practice in the United States.

From this standpoint, we are of the opinion, as mentioned in the above

Attachment, that as long as the real tests that determine of a lawyer of an open state a lawyer whose home jurisdiction has adopted rules licensing foreign attorneys outside open states or the United States can be deemed to determine in his home jurisdiction, the determination will be counted toward the five-year requirement. It is not conceivable to make evaluation on all possible cases and judgement has to be made on a case-by-case basis in applying the standard. The following, however, can be pointed out as illustrative cases:

1. When a lawyer of an open state whose headquarters or base office is situated in an open state engages in practice at another office of the same firm located in a closed state a jurisdiction which has no rules licensing foreign attorneys or a third country, his determination while working at such other office will be counted toward the five-year requirement.
2. When a lawyer from an open state engages in practice at an office of a law firm located in a closed state or third country, the Minister of Justice will determine whether his determination should be counted for purposes of the five-year requirement taking into account, inter alia, the following factors: 1) the lawyer's personal contacts with the open state; 2) the nature of the actual legal work performed by the lawyer; 3) the change of legal information; and 4) work with an attorney of the home jurisdiction.
3. With respect to a lawyer from an open state who is employed in the legal counsel's office of a corporation, the Minister of Justice will render him the same treatment as that accorded to a lawyer belonging to a law firm, unless there are compelling reasons involving the corporate lawyer's work, status, reasons for it as a lawyer, and method of supervision.
4. Determination in Japan of the so-called "trainees" and "clerks" or U.S.-licensed attorneys working for corporations or organizations in Japan cannot be counted toward the five-year requirement. Legal determination abroad called for in the home jurisdictions while stationed in Japan, however, can be counted toward the determination requirement.

Paragraph 2 of Supplementary Provisions of the Law permits determination of a "trainee" or a "clerk" employed in a law firm in Japan to be counted toward the five-year requirement up to two years in total. When there exists the reality that a U.S. licensed attorney working for a corporation or an organization in Japan is employed** in a law firm, his remedial provisions shall be applied mutatis mutandis.

**When a corporate lawyer is directly supervised and reports to a law firm in Japan, the Minister of Justice will consider such situation to constitute the reality of employment in a law firm.

THE UNITED STATES TRADE REPRESENTATIVE

WASHINGTON

20506

February 27, 1987

Ambassador Norio Matsunaga

Embassy of Japan

2520 Massachusetts Avenue, N.W.

Washington, D.C. 20008 (

Dear Norio:

This is to acknowledge your letter and attachments of February 27 regarding the foreign attorneys issue. (

First, I think it is opportunity to tell you and your Government for your efforts over the past five years to resolve this long-standing issue between our two countries. The efforts of the Ministry of Justice and Ministry of Foreign Affairs were especially crucial during the past year and half of intensive consultations following your Government's announcement in the July 1985 Action Program to address this issue.

My government regards this understanding on foreign trade issues as significant step forward in the liberalization of the Japanese legal services market. That is, however, the law contains several restrictive provisions that are troubling. For most among the () the prohibition for retention of partnerships between foreign trade and (b) the prohibition on the employment of foreigners by foreign trade, and (c) the exclusion of legal training experience in Japanese credit toward the five-year experience requirement.

My Government finds that some of the restrictions in the Japanese law to be regrettable. Because of these reservations, I want to clarify that my Government does not view this arrangement - particularly with regard to the reciprocity provision - as setting precedent for future discussions on the liberalization of trade in services.

We expect that in the near future, the new system is put into place, we can revisit these issues. In the meantime, we look forward to your Government's flexible implementation of the law taking full account of both the reality of U.S. legal practice and the concerns expressed to your side by the U.S. Government over the past year and half.

As indicated by the Japanese delegation, problems regarding the new system go into operation. In this regard, we welcome your Government's plan to consult with us to ensure smooth implementation of the law. I suggest that we use the occasion of the next U.S.-Japan Trade Committee meeting scheduled for early September for the first for a review of the system. Of course, if there are serious difficulties that arise in the interim, we reserve the right to bring them to the attention of your Government and expect a reciprocal solution.

Tell you again, Nobuo, for your cooperation in bringing this issue to successful solution. In the past, I now we can count on you to ensure that the law is implemented in a manner consistent with the right-opening spirit of the Government of Japan's Action Program.

Sincerely,

Clifton Yuttir

OFFICE OF THE UNITED STATES

TRADE REPRESENTATIVE

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON

20506

March 31, 1987

Mr. Tsunishi ^{mi}zu

Director General

Judicial System and Resources Department

Ministry of Justice

1-1-1 Kasugai ^{mi}

Chiyoda-ku, Tokyo 100

Japan

Dear Mr. S ^{mi}zu: A

I am writing to your Government to request for a statement to the reality of legal practice in the United States for the purpose of determining the appropriateness of practice that the Government of Japan will permit American attorneys qualified as for in-law attorneys ("aio uho jimu-b o hi") under the Social Measuring Law concerning the Handling of Legal Business by Foreign Lawyers.

We are of the view that -- especially with regard to American attorneys who will establish offices in Japan -- the reality of legal practice is such that, as stated in the attached letter from the Chairman of the Section of International Law and Practice of the American Bar Association, it is "early impossible for American lawyers to discharge their duties to clients without advising with respect to the laws or other Statute."

An attorney admitted to the bar or a young U.S. jurist, in a general rule, capable of dealing with legal issues concerning other U.S. jurists. This can be demonstrated, in other words, by the following:

(1) The basic educational policy of law schools in the United States is to train students to practice as attorneys of a young U.S. jurist. A graduate of an accredited law school, therefore, is generally able to deal with legal issues concerning other U.S. jurists by referring to relevant laws, regulations, and judicial precedents.

(2) Admission requirements do not vary substantially among U.S. jurists. Bar examination in the United States, especially those of common law jurists, are of similar character and subject matter. A sample in the wide range of the Multistate Bar Examination (MBE) and Multistate Professional Responsibility Examination (MPRE) by the vast majority of U.S. jurists. In addition, most states have rules in effect that allow a lawyer licensed in a other jurisdiction to waive in whole or in part requirements for admission as an admitted attorney.

(3) Many legal business transactions in the United States are conducted in a manner that involves the laws of more than one jurisdiction. Moreover, there is a large and growing body of law derived from the U.S. Constitution, federal law, and a large body of judicial decisions that is common to all U.S. jurists. In addition, a growing number of state laws are based on uniform or model codes adopted in a number of jurisdictions. Finally, almost all U.S. jurists base their legal systems on common law principles of interrelationship and adjudication.

(4) It is common practice in the United States for an attorney to render legal advice on laws of other jurisdictions and, in a appropriate case, to appear before courts of other jurisdictions for argument.

In dealing with the laws of other jurisdictions, American attorneys must meet the standard of competent and diligent advice on legal matters to which they hold themselves out as competent. The standard for foreign law is the laws of each State concerning practice in that State, the character of professional conduct adopted by the judicial authorities of that State, and common law standards over which the professional responsibility of lawyers. The ABA letter states that "[t]he standard is generally uniform throughout the United States and follows the Model Code of Professional Responsibility adopted by the ABA. With regard to the responsibility of practice, the standard does not vary materially from State to State."

We expect that the Government of Japan will allow the provision in the Social Measuring Law for designation of the laws of other States in a manner that fully meets the reality of legal practice in the United States.

Sincerely,

[Signature]

John A. Matney

Assistant United States Trade

Representative for Japan and China

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