

On the Professional Activities of the Labor and Social Security Attorney (*sharōshi*) and Competition within the Legal Profession in Japan

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INTRODUCTION

In Japan, a labor and social security attorney (*shakai hoken rōmushi*/社会保険労務士; hereinafter “*sharōshi*”/社労士)¹ is a certified law-related expert (a

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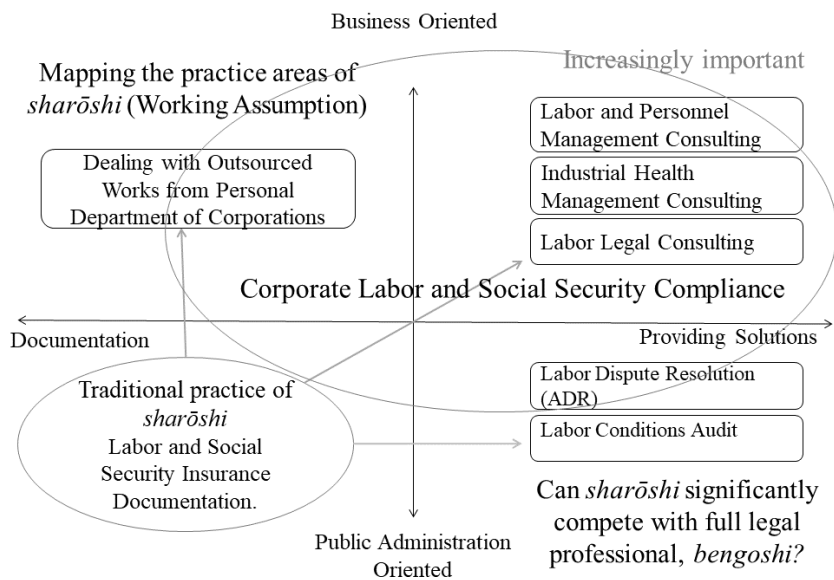
type of paralegal) who is qualified to create application documents for social and labor insurance and to provide labor-law-related consultation, a limited legal professional. This professional holds an important role in corporate labor and social security compliance, especially in small-to-medium-sized enterprises (SMEs). There are also other various limited certified law-related experts in Japan, such as the judicial scrivener (*shihō shoshi* / 司法書士),² the certified administrative procedures specialist (*gyōsei shoshi* / 行政書士),³ the certified public tax accountant (*zeirishi* / 税理士),⁴ and the patent attorney (*benrishi* / 弁理士),⁵ these being in addition to the attorney at law, or fully qualified legal professional (*bengoshi* / 弁護士).⁶ These experts all share the law-related service market in Japan and sometimes compete with each other. This paper is a case study on the competition between these legal professionals in the legal service market. Is this competition cost effective and qualitative? This is our research question.

The *sharōshi* is a relatively new type of law-related expert position that was introduced and certified by parliament-initiated legislation in 1968, when the profession was formally separated from the position of *gyōsei shoshi*.⁷ At the time, the number of labor and social security issues greatly increased and the needs for independent labor and social security experts emerged. Recently, these experts have been rapidly expanding their areas of practice from labor and social security insurance documentation, which had originally been their exclusive area of practice, so as to include consulting in matters such as labor and personal management, industrial health management, labor regulation and labor law consultation, and labor dispute

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- 1 Japan Federation of Labor and Social Security Attorneys' Associations / 全国社会保険労務士会連合会: <http://www.shakaihokenroumushi.jp/>, accessed on 7 December 2020. There is a national certifying examination for *sharōshi*, which is different from the bar exam. Their competence is basically limited to the documentation of social and labor insurance and to the provision of labor-law-related consultation, but it is gradually widening.
 - 2 Japan Federation of Judicial Scriveners' Lawyers' Associations / 日本司法書士会連合会: <http://www.shiho-shoshi.or.jp/>, accessed 12 December 2020.
 - 3 Japan Federation of Certified Administrative Procedures Legal Specialists' Associations / 日本行政書士会連合会: <https://www.gyosei.or.jp/>, accessed 7 December 2020.
 - 4 Japan Federation of Certified Public Tax Accountants' Associations / 日本税理士会連合会: <http://www.nichizeiren.or.jp/>, accessed 7 December 2020.
 - 5 Japan Patent Attorneys' Association / 日本弁理士会: <http://www.jpaa.or.jp/>, accessed 12 December 2020).
 - 6 Japan Federation of Bar Associations / 日本弁護士連合会: <http://www.nichibenren.or.jp/>, accessed 12 December 2020.
 - 7 Certification as *gyōsei shoshi* originally also contained the competence to deal with labor and social security documentation, but this competence was later divided off and assigned to the new profession, the *sharōshi*.

resolution. This has emerged along with the contemporary compliance-oriented corporate society (see Figure 1, below). Our working hypothesis is that, based on the development of their field of practice, the *sharōshi* has come to significantly compete with the full legal professional, or *bengoshi*,⁸ in labor regulation and labor law consultation, as changes have emerged in the legal service market. To demonstrate this hypothesis, this paper highlights some of the results of a survey of *sharōshi*, thereby comparing their present professional status and activities with those of *bengoshi*; it then discusses the competition between these two types of legal professionals.

Figure 1: Mapping the practice areas of *sharōshi*



⁸ Originally, a *sharōshi* was only a labor and social security documentation expert and had no competence as regards dispute resolution whereas a *bengoshi* can deal with all legal matters.

I. 2015 SURVEY OF *SHARŌSHI*

1. Overview of the Survey

Our five-member research group⁹ obtained financial support from the Japan Federation of Labor and Social Security Attorneys' Associations for empirical research¹⁰ and conducted a web-based survey between 1 June and 16 August 2015, done in the form of a questionnaire inquiring about a *sharōshi*'s daily work, required skills, and expected areas of competence. This questionnaire was one of the first full-fledged academic surveys of *sharōshi*.¹¹ The web questionnaire page was linked from the official website of the Japan Federation of Labor and Social Security Attorneys' Associations. We created a password for potential respondents to log onto the web questionnaire page and sent it through the member's association journal. We collected 723 responses (the total number of *sharōshi* in Japan was 39,898 as of 30 September 2015),¹² thereby constituting a sufficient number for statistical analysis. Of the respondents, 72.5% (524) worked in private practice, and 23.5% (170) worked in-house for corporations.¹³ The research group aimed to collect empirical data on matters such as the services they currently provide, business plans for the near future, annual revenue, in-

9 Research Leader: Takenori MISHIBA (Kinki University). Research Member: Minae NISHIMOTO (first author; participated since 2015, at that time affiliated with Ōsaka University, currently at Kwansei Gakuin University), Tsunehiko AMANO (Amano Mental Health Consulting), Kōji MORI (University of Occupational and Environmental Health, Japan), and Kota FUKUI (Ōsaka University).

10 In 2014, the research group received initial financial support from the Sharōshi Research Institute to conduct academic interviews on *sharōshi* and their clients in order to prepare for this survey. We conducted academic interviews with *sharōshi* who were prominent practitioners in their own area of practice, and with their corporate clients (seven corporations); this was done to identify indicators reflecting the contribution of *sharōshi* to corporate compliance, business performance, and the industrial health of SMEs. The results of the research were published in the first year report of the research project of the Sharōshi Research Institute, T. MISHIBA / K. FUKUI et al, *Shakai hoken rōmushi no gyōmu ga chūshō kigyō no konpuraiansu, gyōseki, sangyō hoken ni oyobosu kōka ni kansuru chōsa kenkyū* [Research on the Effects of Sharōshi's Practices on Corporate Compliance, Business Performance and Industrial Health of SMEs] (2015), available at: <http://www.shakaihokenroumushi.jp/organization/tabid/281/Default.aspx>, accessed 7 December 2020.

11 The Sharōshi Research Institute has supported academic research projects since 2007. So far, however, our project is the only full-fledged academic survey of *sharōshi*.

12 <http://www.mhlw.go.jp/stf/houdou/0000103157.html>, accessed 7 December 2020.

13 A *sharōshi* can establish a professional firm and form a group, though a joint law firm venture with a *bengoshi* is not permitted. But most of the *sharōshi* are solo practitioners.

come, and the expected capabilities of *sharōshi* in order to discuss their current professional character.¹⁴

2. *Typical Services Currently Provided by Sharōshi*

Our questionnaire first asked participants about the typical services they currently provide. We presented a list of 19 potential typical services (shown below) and asked participants about the frequency of their work experience. Responses to these questions were scored at 6 levels of frequency: “So far, I do not provide such a service” = 1, “Minimal” = 2, “Relatively minimal” = 3, “Relatively frequent” = 4, “Frequent” = 5, and “It is a common practice” = 6. The total score for each participant was calculated and analyzed.

List of 19 typical services

1. Documentation for enrollment in and entitlement to employment insurance and/or industrial accident insurance for corporations
2. Documentation for enrollment in and entitlement to health insurance and employee pension plans for corporations
3. Documentation for application to public funds
4. Support for the formulation, revision and submission of corporate employment guidelines
5. Payroll accounting
6. Documentation and consultation on legal issues relating to work hours, break time, and days off
7. Consultation and advice on management issues relating to organizing the employee work environment and structure
8. Consultation and advice on pension systems
9. Consultation and advice on labor safety and health
10. Consultation and advice on labor recruiting, employment, and retirement
11. Consultation and advice on planning benefit packages for employees
12. Consultation and advice on mental health issues
13. Training of employees, including new enrollee training
14. Training of middle managers
15. Training on mental health management
16. Education on pension system

14 The results of this survey and related analyses were presented in the final report of the research project of the Sharōshi Research Institute T. MISHIBA / M. NISHIMOTO / K. FUKUI et al., *Shakai hoken rōmushi no gyōmu ga chūshō kigyō no konpuraiansu, gyōseki, sangyō hoken ni oyobosu kōka ni kansuru chōsa kenkyū* [Research on the Effects of Sharōshi’s Practices on Corporate Compliance, Business Performance and Industrial Health of SMEs] (2017), available at: https://www.shakaihokenroumushi.jp/Portals/0/doc/nsec/souken/2017/最終校_社労士調査研究報告書.pdf, accessed 7 December 2020.

17. Labor dispute resolution
18. Quick response support for investigation by and/or direction from the Labor Standards Supervision Office
19. Quick response support for investigation by the Japan Pension Service's Office

Items with answers having an average score [hereinafter abbreviated as "a.s."] of over 3.0 were No. 1, "Documentation for enrollment in and entitlement to employment insurance and/or industrial accident insurance for corporations"; No. 2, "Documentation for enrollment in and entitlement to health insurance and employee pension plans for corporations"; No. 6 "Documentation and consulting on legal issues relating to work hours, break time, and days off" (all three's a.s. 4.4); No. 10, "Consultation and advice on labor recruiting, employment, and retirement" (a.s. 3.9); No. 4, "Support for the formulation, revision and submission of corporate employment guidelines" (a.s. 3.8); No. 7, "Consultation and advice on management issues relating to organizing the employee work environment and structure" (a.s. 3.6); No. 5, "Payroll accounting" (a.s. 3.4); No. 18, "Quick response support for investigation by and/or direction from the Labor Standards Supervision Office" (a.s. 3.3); and No. 19, "Quick response support for investigation by the Japan Pension Service's Office" (a.s. 3.3). The top three items, No. 1, No. 2, and No. 6, concern a *sharōshi*'s traditional area of practice (labor and social security insurance documentation). However, items No. 10 and No. 7 concern typical consultation and advice activities regarding corporate labor and social security compliance. Additionally, No. 18 and No. 19 also concern consultation and advice on corporate labor and social security compliance. No. 4 and No. 5 mainly concern documentation but also include consultation and advice.¹⁵ Accordingly, we can see that the core of a *sharōshi*'s practice consists of traditional labor and social security insurance documentation, but their practice area has also diversified into providing consultation and advice on corporate labor and social security compliance.

3. Composition of a *Sharōshi*'s Annual Rate of Revenue

We asked participants about the annual rate of revenue for typical practice areas in 2014. Participants said that the most lucrative part of their practice is "Labor and social security insurance documentation" (51.6%), which belongs to the traditional *sharōshi* practice realm, while the second is "Consultation and advice on corporate labor and social security compliance" (29.5%), which is developing as an area of practice for *sharōshi*; the third is "Other" (16.6%), and the fourth is "Labor dispute resolution" (2.3%).¹⁶ Ac-

¹⁵ MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 124–125.

¹⁶ MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 128–129.

According to these responses, the *sharōshi*' largest source of revenue is the traditional service of documentation, but the provision of consultation and advice (emerging services) have come to be considerably important. Other sources of revenue, such as instructing on labor management seminars, should also be taken into account. We can read from this result that the main source of annual revenue for *sharōshi*' lies in the provision of traditional services, but their revenue sources are becoming diversified.

4. *Services which Sharōshi Want to Make a Stronger Effort Toward or Trim Down in the Future*

We asked respondents about services that they want to make a stronger effort toward and those that they want to trim down in order to better assess the state of transformation of *sharōshi*' activities. We presented respondents with a list of 20 typical services potentially performed by a *sharōshi* and asked participants about the extent to which they want to make a stronger effort toward performing or toward trimming down each item. The list is almost identical to the list of 19 typical services described above, but a twentieth item, "Resolution of labor disputes at the court," has been added with reference to a recently authorized practice following the revision of the Act on *Sharōshi* in 2014.¹⁷ Respondents scored their answers to the question using five levels of expected value: "Want to trim down" = 1; "Want to relatively trim down" = 2; "Want to maintain the status quo" = 3; "Want to make a relatively stronger effort" = 4; "Want to make a stronger effort" = 5.

The top four answers are, in descending value, No. 4, "Support for the formulation, revision and submission of corporate employment guidelines" (a.s. 4.0); No. 6, "Documentation and consultation on legal issues relating to work hours, break time, and days off" (a.s. 3.8); No. 7, "Consultation and advice on management issues relating to organizing the employee work environment and structure" (a.s. 3.7); and No. 10, "Consultation and advice on labor recruiting, employment, and retirement" (a.s. 3.6). Regarding the top four items, No. 4 belongs to the category of "Labor and Social Security Insurance Documentation," which is within the realm of a *sharōshi*'s traditional typical practice. However, the second to fourth items, No. 6, No. 7, and No. 10, belong to the category of "Consultation and Advice on Corporate Labor and Social Security Compliance," which seems to be emerging recently. Among the top 10 items, five items belong to the category of "Consultation and Advice on Corporate Labor and Social Security Compliance".¹⁸

17 Act to Revise a Part of the Sharōshi Act [*Shakai hoken rōmushi-hō no ichibu o kaisei suru hōritsu*], Act No. 116, 2014.

18 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 131–132.

This result enables an understanding that *sharōshi* in private practice have a strong interest in consulting and advising on corporate labor and social security compliance and want to make a stronger effort to engage in such services. Fifteen items are those having an average score over 3.0, showing that *sharōshi* would in the future like to extend their practice areas as regards consulting and advising on corporate labor and social security compliance.

5. *Expected Competence of Sharōshi*

We also asked participants about the competence that was expected in daily practice. We provided a list of 39 items areas of expected competence for *sharōshi* (one further item, “other”, allowed for a free response) and asked them to select a maximum of five items that they would consider essential to a *sharōshi*'s daily practice. The list of 39 areas of expected competence is as follows:

39 areas of competence

- | | | |
|--------------------------------------|---|----------------------------------|
| 1. Strategic thinking | 15. Sense of responsibility | 29. Activeness |
| 2. Negotiation skill | 16. Precision | 30. Dispute resolution skills |
| 3. Self-check ability | 17. Persuasiveness | 31. Risk assessment skills |
| 4. Skilled at collecting information | 18. Information sharing skills | 32. Foresight |
| 5. Sincerity | 19. Observation skills | 33. Cooperativeness |
| 6. Analytical skills | 20. Self-initiative | 34. Ability to manage schedule |
| 7. Self-development skill | 21. Having vision | 35. Understanding of other areas |
| 8. Awareness about others | 22. Attitude of active listening | 36. Coordination skills |
| 9. Ability to develop others' skills | 23. Creativeness | 37. Flexibility |
| 10. Comprehension skills | 24. Decisiveness | 38. Optimism |
| 11. Resistance to stress | 25. Personal network development skills | 39. Ability to explain clearly |
| 12. Ability to implement change | 26. Leadership | Others |
| 13. Customer orientation | 27. Ability to develop an idea | |
| 14. Compassion | 28. Achievement orientation | |

Seven items were selected by more than one-fifth of respondents: No. 5, “Sincerity” (53.1%); No. 15, “Sense of responsibility” (45.8%); No. 4, “Skilled at collecting information” (35.9%); No. 22, “Attitude of active listening” (24.0%); No. 2, “Negotiation skill” (22.3%); No. 1, “Strategic

thinking” (21.9%); and No. 39, “Ability to explain clearly” (21.1%).¹⁹ This result shows that *sharōshi* believe that competence relating to personal integrity is more expected by client corporations than expert skills. The reason *sharōshi* regard personal integrity as being so important may be that *sharōshi* engaging in private practice are basically small business owners themselves, as they run their own offices. They are, therefore, naturally business-oriented.²⁰

6. Summary and Comment on the Resulting Responses

The results of the survey show that the main focus of *sharōshi* practice remains traditional labor and social security insurance documentation; however, they have been expanding into the provision of consultation and advice on corporate labor and social security compliance. This tendency seems to be driven by advances in information communication technology (ICT) and artificial intelligence (AI) as the documentation practices of *sharōshi* are being rapidly replaced by ICT and AI, which help applicants to create documents by themselves.²¹ The Japanese government is promoting e-government, and most of the labor and social security applications are made online, thus allowing easy access by the applicants themselves. AI technology is accelerating this change. The *sharōshi* have a strong incentive to develop their emerging practices in the field of consultation and advice on corporate labor and social security compliance.

Sharōshi also seem to believe that their competence – as practitioners – in terms of personal integrity is more important for their client corporations than their expert skills. In this result, we can observe the habit of management consultants cozying up to corporate managers rather than behaving in a manner typical of independent professionals who regard the independence of their practice as ethically essential. If it is indeed true that *sharōshi* compete with full legal professionals, *bengoshi*, in the same service market, could it potentially create an ethical problem because of intense competition?

19 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 139–140.

20 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 246.

21 See, for example, C. B. FREY / M. A. OSBORNE, *The future of employment: How susceptible are jobs to computerization* (2013), available at: <http://www.oxfordmartin.ox.ac.uk/downloads/academic/future-of-employment.pdf>, accessed 7 December 2020.

II. FURTHER DATA ANALYSIS: CATEGORIZATION OF *SHARŌSHI* BASED ON THE COMPOSITION OF PERSONAL REVENUE

1. *Four Types of Sharōshi Based on the Composition of Revenues*

We conducted further data analysis to understand the characteristics of how *sharōshi* earn a living and stabilize their livelihood. The ways that *sharōshi* do this appears to constitute an essential factor shaping how a practitioner competes with other professionals. The data analysis was conducted through a cluster analysis, which enabled the identification of categories based on the structure of data composition of their annual revenue in 2014.²² We found that how *sharōshi* earn their living can be generally divided into four categories.

The first and most prevalent category is the “balanced type” (42.2% of respondents) of *sharōshi*. The second category is the “documentation agent type” (27.3% of respondents). The third category is the “consultant type” (19.7% of respondents). Finally, the fourth category is the “side business type” (10.9% of respondents). *Sharōshi* of the “balanced type” are those gaining 60% of their revenue from labor and social security insurance documentation, 30% from consulting and advising on corporate labor and social security compliance, and the remainder from other sources. *Sharōshi* of the “documentation agent type” gain 90% of their revenue from labor and social security insurance documentation. *Sharōshi* of the “consultant type” gain 60% of their revenue from consulting and advising on corporate labor and social security compliance, 20% from labor and social security insurance documentation, and 20% from other sources. *Sharōshi* of the “side business type” gain 80% of their revenue from other sources.²³

Our analysis also shows that the distribution of *sharōshi*’ revenue may be sorted according to these types (see Table below).

Revenue of office in 2014	Balanced type	Documentation agent type	Consultant type	Side business type
Under Yen 3 million	16.7%	28.0%	38.8%	70.2%
From Yen 3 million up to Yen 5 million	14.9%	10.5%	12.6%	8.8%
From Yen 5 million up to Yen 7 million	11.3%	13.3%	15.5%	5.3%
From Yen 7 million up to Yen 10 million	10.9%	14.7%	14.6%	5.3%

²² Regarding the cluster analysis, see https://www1.doshisha.ac.jp/~mjn/R/Chap_28/28.html, accessed 7 December 2020.

²³ MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 221.

From Yen 10 million up to Yen 20 million	17.2%	9.8%	11.7%	5.3%
From Yen 20 million up to Yen 30 million	10.9%	10.5%	1.9%	0.0%
From Yen 30 million up to Yen 50 million	10.0%	10.5%	1.0%	5.3%
From Yen 50 million up to Yen 100 million	5.0%	2.1%	2.9%	0.0%
From Yen 100 million up to Yen 300 million	2.7%	0.7%	1.0%	0.0%
Over Yen 300 million	0.5%	0.0%	0.0%	0.0%

Among the revenue zone of “balanced type” *sharōshi*, over 90% is distributed from “under Yen 3 million” to “from Yen 30 million up to Yen 50 million”.²⁴ The revenue zone “under Yen 3 million” is only 16.7%. On the other hand, the revenue zone of “from Yen 10 million up to Yen 20 million”, which is relatively well positioned, is 17.2%. “Balanced type” *sharōshi* seem generally financially stable. Among the revenue zone of *sharōshi* of the “documentation agent type,” over 10% is also distributed from “under Yen 3 million” to “from Yen 30 million up to Yen 50 million.” However, 28.0% of *sharōshi* of this type earn “under Yen 3 million.” Even then, “documentation agent type” *sharōshi* are still relatively well stabilized financially as they can generate a stable income from documentary work.

Contrary to the two types above, 38.8% of “consultant type” *sharōshi* earn “under Yen 3 million”. Over 90% of their revenue zones are distributed from “under Yen 3 million” to “from Yen 10 million up to Yen 20 million.” Their revenue zones are distributed among the lower half of the revenue scale. “Consultant type” *sharōshi* are not particularly well off financially. Finally, 70% of “side business type” *sharōshi* earn under Yen 3 million. Their main income seems to be earned through additional business activities. It seems likely that they do not earn their living through their *sharōshi* practice and depend on other income.²⁵

24 A Yen is valued at about USD 0.009. Yen 1 million is, therefore, around USD 11,000 (as of 7 December 2020).

25 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 222. A *sharōshi*'s competence is limited to labor and social security documentation and consultation on labor issues. Only within this limited field can they deal with the same matters as a *ben-goshi*. *Bengoshi*, however, can address all legal matters, including a *sharōshi*'s limited field of work.

In analyzing the median value of the annual revenue of the four types of *sharōshi*,²⁶ we see that the “balanced type” earns the highest revenue, with a median value zone at “from Yen 7 million up to Yen 10 million.” The “documentation agent type” earns the second highest amount of revenue, with a median value zone “from Yen 5 million up to Yen 7 million.” The “consultant type” earns less revenue, with a median value zone “from Yen 3 million up to Yen 7 million.” Finally, the “side business type” earns the least revenue, with a median value zone of “under Yen 3 million.”²⁷

Our findings indicate that the primary source of a *sharōshi*'s revenue continues to be labor and social security insurance documentation and that the successful way for a *sharōshi* to run her or his office is to undertake a balance of work as between documentation and consultation. Furthermore, it seems that providing consultation and advice on corporate labor and social security compliance has not yet become an independent source of revenue for *sharōshi*.

2. *Relation Between the Sharōshi's Length of Practice and the Annual Office Revenue*

A further analysis of *sharōshi* annual revenue using Spearman's rank correlation coefficient²⁸ shows that the correlation of ranked values between the practice period and annual revenue is 0.562 (with a significance probability under 0.1%). This confirms that the *sharōshi*'s length of practice has a clearly positive correlation with the annual office revenue.²⁹

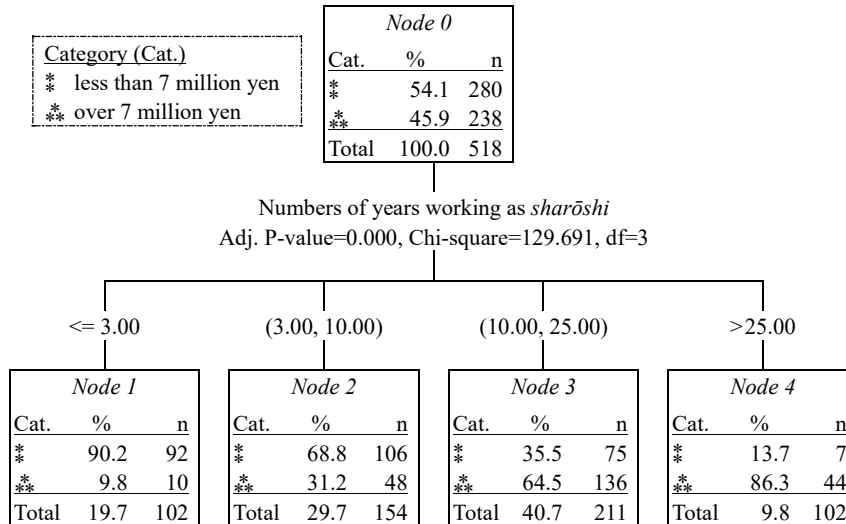
26 The reason we do not use the average value but instead use the median value is that we confirmed in the data a biased distribution of the revenue.

27 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 222–223.

28 Spearman's correlation coefficient is a statistical measure of the strength of a monotonic relationship between paired data. It is denoted by r_s and is, by design, constrained as follows: $-1 \leq r_s \leq 1$. The closer r_s is to ± 1 , the stronger the monotonic relationship; <http://www.statstutor.ac.uk/resources/uploaded/spearmans.pdf>, accessed 21 December 2018.

29 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 219.

Figure 2: Relation between the length of a sharōshi's practice and the annual office revenue



Using a decision tree,³⁰ a correlation becomes evident between annual revenue of over Yen 7 million and the length of practice of *sharōshi* (see Figure 2, above). According to the reported data, 90.2% of respondents who have been in practice for a period of less than three years earn under Yen 7 million in revenue. However, 31.2% of those who have practiced for more than three and less than ten years, 64.5% of those who have practiced for more than ten years and less than 25 years, and 86.3% of those who have practiced for more than 25 years earn over Yen 7 million in revenue. A length of practice of up to three years is the period needed for a *sharōshi* to become established, but after three years of practice, the earnings of those who independently run their own office and of those who are not able to do so gradually diverge. Our analysis suggests that the ability to practice for more than three years with revenue of over Yen 7 million is a rough survival indicator for *sharōshi*, suggesting that they are in a position to function as stable independent practitioners.³¹

30 A decision tree is a visual model consisting of nodes and branches; <http://www.datasciencecentral.com/profiles/blogs/introduction-to-classification-regression-tree-s-cart>, accessed 7 December 2020.

31 MISHIBA / NISHIMOTO / FUKUI et al., *supra* note 14, 219–220.

3. Summary and Comment on the Analysis

In the above analysis, we categorized *sharōshi* into four types based on the composition of their annual office revenue. We found that more than 40% of respondents in private practice are of the “balanced type,” fewer than 30% were of the “documentation agent type,” about 20% were of the “consultant type,” and about 10% were of the “side business type.” The “balanced type,” which is the most prevalent category, is well-established, and the “documentation agent type” is close behind. The “consultant type” is still not particularly well off financially, and the “side business type” cannot earn an independent livelihood as a *sharōshi*. Accordingly, the main source of revenue for *sharōshi* is apparently labor and social security insurance documentation; providing consultation and advice on corporate labor and social security compliance – professional activities in which many respondents have shown increasing interest – is not yet a sustainable source of revenue for *sharōshi*. Moreover, given that it takes three years of practice before a *sharōshi* can be expected to become a stable independent practitioner and given that after this point they generally either run their own independent offices or remain unable to earn enough income through their *sharōshi* practice, it can be concluded from our analysis that three years of practice with an annual revenue of over Yen 7 million is a rough standard of *sharōshi* financial independence.

Three years of practice with an annual revenue of over Yen 7 million constitutes the dividing point between a successful *sharōshi* and an unsuccessful one.

Our analysis indicates that *sharōshi* generally fulfill some of the necessary conditions characteristic of independent professionals and that they are able to compete with *bengoshi*. The current scope of practice has gradually widened from the more specialized, formulaic work of labor and social security insurance documentation to consulting and advising on corporate labor and social security compliance, services to which *sharōshi* bring their specialized perspectives and provide creative solutions. Their main sources of revenue remain in the realm of documentation, but their expertise is becoming considerably more valued in consultation and the provision of advice. We found a pattern under which *sharōshi* successfully earn their livelihood. Specifically, achieving a balance in practice between documentation and consultation after the third year of practice and realizing an annual revenue of over Yen 7 million are important indicators in the quest to become a fully-established *sharōshi*.

III. COMPETITION BETWEEN *SHARŌSHI* AND *BENGOSHI* IN THE LAW-RELATED SERVICES MARKET

1. *Changing Conditions of Competition in the Labor-Law-related Services Market*

Sharōshi have come to be regarded as independent semi-legal professionals whose specialties are limited in scope to the area of labor and social security insurance. Some *sharōshi* also have stable positions in the labor-law-related services market. As the profession of the *sharōshi* has become established as that of independent professionals, their competition with *bengoshi* becomes increasingly intense.

Traditionally, the relationship between *sharōshi* and *bengoshi* has not been competitive because *bengoshi* generally have little interest in labor and social security insurance documentation, an area that they generally regard as trivial and burdensome. They only have interest in labor dispute resolution as representatives for clients. In fact, *bengoshi* and *sharōshi* have long existed in what may be seen as a symbiotic relationship: the *sharōshi* took care of the more “tedious” matters of legal paperwork and procedure that *bengoshi* relied upon, freeing the latter to focus on legal representation.

However, recently, this symbiotic condition has been upset. The basic factor driving this change is the growing number of *bengoshi* in Japan. Since the Justice System Reform in Japan began in 1999, the number of *bengoshi* has grown.³² In 2001, the total number of *bengoshi* was 18,243; as of 1 December 2020, the total number was 42,059.³³ As their ranks have swelled, *bengoshi* have had to develop new areas of practice, especially that of consulting on corporate legal issues in relation to the prevention of disputes, including matters of corporate labor and social security compliance.³⁴ This is a typical trend witnessed in the legal profession not only in Japan but throughout the world.¹⁷

Meanwhile, as discussed above, *sharōshi* are also becoming increasingly interested in corporate labor and social security compliance consultation

32 SHIHŌ SEIDO KAIKAKU SHINGI-KAI, Recommendations of the Justice System Reform Council – for a justice system to support Japan in the 21st century (2001), Chapter III, Part 1, available at: <http://japan.kantei.go.jp/judiciary/2001/0612report.html>, accessed 7 December 2020.

33 See NIHON BENGOSHI RENGŌ-KAI, *Bengoshi hakusho* [White Paper on Attorneys] (2016) 30, and its current number of members, https://www.nichibenren.or.jp/jfba_info/membership/about.html, accessed on 7 December 2020.

34 K. FUKUI / Y. FUKUI, Empirical support for the redefinition of the legal profession and potential new roles for lawyers in Japanese Corporations: Analysing the results of three questionnaire surveys, *The Australian Journal of Law* 12(2) (2010) 273–297, 284–286.

because labor and social security insurance documentation has come to be less and less lucrative due to the development of ICT and AI. Consulting and advising on corporate labor and social security compliance is one of the primary practice areas in which *sharōshi* work.

Additionally, *sharōshi* have since 2007 been qualified to represent a party in a labor dispute at private and administrative dispute resolution proceedings (special permission granted by the Ministry of Health, Labour and Welfare is required) (Arts. 2, 1-4 to 1-6 of the Sharōshi Act³⁶). This qualification was introduced as a measurement to encourage alternative dispute resolution (ADR).³⁷ In other words, *sharōshi* are gaining an increasing number of opportunities to provide consultation services to SMEs, including regarding legal issues. In particular, consultation services in relation to the drafting and revising of working regulations in an SME has become one of most common activities of *sharōshi*.³⁸

Thus far, *bengoshi* have not had widespread success in obtaining legal consultant positions at SMEs because business managers generally regard *bengoshi* as court representatives and also consider *bengoshi*' fees to be too expensive.³⁹ By contrast, a *sharōshi* is regarded as an easy-to-access and reasonably priced labor-law-related practitioner. In some matters of social security law, such as management practice in relation to mental health and labor conditions, *sharōshi* are regarded as more essential than *bengoshi*.

2. Future of the Competition Between Sharōshi and Bengoshi

This study shows that the developing practice areas for *sharōshi* overlap with the increasing practical interests of *bengoshi*. As competition between *bengoshi* and *sharōshi* increases, the long-standing symbiosis between them in Japan's legal profession field is being disrupted. In fact, the annual income (average and median value) of *bengoshi* is decreasing owing to increasing competition in the market for legal and law-related services. A comparison of the income of *bengoshi* between 2006 and 2014 shows that

35 SOLICITORS REGULATION AUTHORITY UK, Research and analysis: The changing legal services market (2016), available at: <http://www.sra.org.uk/risk/resources/changing-legal-services-market.page>, accessed 7 December 2020.

36 *Shakai hoken rōmushi-hō*, Act No. 89/1968.

37 KANTEI, *Kongo no shihō seido kaikaku no suishin ni tsuite* [On the process of the future justice system reform] (2004), <http://www.kantei.go.jp/jp/singi/sihou/kouhyou/041126kongo.html>, accessed 3 January 2019.

38 ZENKOKU SHAKAI HOKEN RŌMUSHI KAI RENGŌ-KAI, *Shakai hoken rōmushi nizu ni kansuru chōsa* [Research on the needs of Sharōshi] (2015) 45, available at: <https://www.shakaihokenroumushi.jp/Portals/0/doc/nsec/senryaku/2016/20160311-3.pdf>, accessed 7 December 2020.

39 FUKUI / FUKUI, *supra* note 34, 280.

the average and the median income of *bengoshi* in 2014 dropped by almost one-half in comparison to 2006.⁴⁰

The competition in the professional market as regards labor law and social security compliance would be profitable if it were a high-value competition. However, it thus far remains only a price competition and it impairs the benefit of consumers by decreasing the quality of service. Whereas high value competition is good and desired, price competition sometimes degrades the level of professional work and impedes the benefit enjoyed by clients. In order to make this competition fairer and more qualitative, the limits on the permissible professional activities of *sharōshi*' professional competence in labor disputes should be reduced. In the future, if such a restriction is eliminated, the services available in the professional market as regards labor law and social security compliance will be much more fruitful, and *sharōshi*, *bengoshi*, and their consumers (SMEs) will (hopefully) all benefit from a high value competition.

IV. CONCLUSIONS

The discussion in this paper is based on data collected from a web questionnaire conducted in 2015 surveying practicing *sharōshi*. As such, the collected data have some biases. First of all, it may be that the respondents of this web survey are overall quite active and successful *sharōshi* members, potentially leaving out a silent majority for whom that is not the case. For the purpose of this research, however, such a bias also has merit because the transformation of *sharōshi* practice is shown clearly among the active and successful *sharōshi*. Active *sharōshi* tend to cultivate new practices in the field of labor and social security compliance, such as supporting SMEs in their employment of more foreign workers, developing rehabilitation programs for workers who encounter health problems, and devising plans to diversify the work culture of SMEs.

Another limitation regards the fact that the office locations of most respondents are concentrated in urban areas. This corresponds to the small number of responses from rural areas. The study thus runs the risk of neglecting the tendencies of *sharōshi* practice in rural areas.

As described, this paper has some limitations, but for our purpose of showing the current transformation of *sharōshi* practice, these limitations do not considerably impair the value of the research. This paper still shows the general trends in *sharōshi* practice as well as the broader picture of

40 NIHON BENGOSHI RENGŌ-KAI, *Bengoshi hakusho* [White Paper on Attorneys] (2015) 163.

service market competition between *sharōshi* and *bengoshi* as it may appear in the near future.

SUMMARY

The labor and social security attorney, shakai hoken rōmushi/社会保険労務士, or abbreviated “sharōshi”/社労士, is a certified limited legal professional who is qualified to complete application documents for social and labor insurance and to offer consultation on labor-law-related matters. Sharōshi play an important role for corporate labor and social security compliance, especially in small to medium-sized enterprises in Japan. Our research group, which is formed of five academic members and is financially supported by the Japan Federation of Labor and Social Security Attorneys’ Associations, conducted a nationwide survey on the daily work of sharōshi’ and on their required skills, talents, credentials and attitude toward their work. The survey was conducted by means of a web questionnaire system from June 1 to August 16 in 2015. Our working hypothesis is that, based on the evolution of their field of practice, sharōshi have come to compete significantly with full legal professionals (bengoshi) and have thereby altered the legal service market. In considering this hypothesis, this paper highlights some of the results of the survey on sharōshi, comparing their situation with that of bengoshi and discussing the competition between the two professions.

ZUSAMMENFASSUNG

Der Rechtsbeistand für arbeits- und sozialrechtliche Angelegenheiten, der shakai hoken rōmushi/社会保険労務士, oder abgekürzt “sharōshi”/社労士, ist ein speziell für diese Tätigkeitsbereiche zertifizierter Rechtsdienstleister. Er ist autorisiert, Anträge im Zusammenhang mit sozial- und arbeitsbezogenen Versicherungen zu erstellen und in arbeitsrechtlichen Angelegenheiten zu beraten. Sharōshi nehmen in diesen Bereichen eine wichtige Rolle für die unternehmerische Compliance insbesondere bei mittelständischen Firmen in Japan wahr. Die Forschungsgruppe der Verfasser, die aus fünf wissenschaftlichen Mitgliedern besteht und von der „Japan Federation of Labor and Social Security Attorneys’ Associations“ finanziell unterstützt wird, hat eine landesweite Untersuchung zur täglichen Arbeit der sharōshi und zu den dazu erforderlichen Qualifikationen und Eigenschaften sowie zu deren Einstellung zu ihrer Tätigkeit durchgeführt. Die Untersuchung wurde vom 1. Juni bis zum 16. August 2015 im Wege einer Online-Befragung ausgeführt. Die darauf gestützte Arbeitshypothese der Verfasser ist, dass die sharōshi durch die Entwicklungen in ihren Tätigkeitsbereichen inzwischen in einen signifikanten Wettbewerb mit den

Rechtsanwälten (bengoshi) als umfassend agierende Rechtsdienstleister getreten sind, und dass sie damit den Markt für Rechtsdienstleistungen in Japan verändert haben. Zur Begründung der Arbeitshypothese stellt der Beitrag zentrale Ergebnisse der Befragung vor, vergleicht die berufliche Situation der sharōshi mit derjenigen der bengoshi und diskutiert ferner den Wettbewerb zwischen diesen beiden Berufszweigen.

(Die Redaktion)