

Foreign Law Firms: Implications for Professional Legal Education in Japan

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I. INTRODUCTION

Since the Special Measure Law Concerning the Handling of Legal Business by Foreign Lawyers ("the Law") became effective from 1 April 1987, there is a system in Japan under which foreign lawyers can, after obtaining approval from the Ministry of Justice, register as a "*gaikoku-hô jimu bengoshi*" ("*gaiben*") and perform certain legal functions in relation to foreign law. Since then, major global law firms have established offices in Japan. However, for years since then, their offices were usually small, with not many lawyers. In 1994, about 48 foreign law firms had been opened in Japan¹ but there were only 81 *gaiben*.² The number of *gaiben* was stable in the range of 71 to 84 from 1990 to 1997.³ Some firms have closed their offices. For example, McKenna & Co, Mayer Brown & Platt and Slaughter & May closed their offices in 1995.⁴ High costs⁵ and the slowdown of the Japanese economy⁶ have been pointed out as contributory factors.

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1 D. MORGAN, Is Japan Ready for Multinational Law Practice?, in: *Asia Law* (September 1994) 16.

2 The figure is as of 31 December 1994 (THE JAPAN FEDERATION OF BAR ASSOCIATIONS ("JFBA"), *Bengoshi Hakusho 2004 Nenban* [Bengoshi White Paper 2004] (Tokyo 2004) 38).

3 *Ibid.* (see Figure 1 below).

4 R. QUIST, US Firms in Asia – American Trail, in: *Asia Law* (November 1995) 18.

5 *Ibid.*

6 *Ibid.*, at 13.

There were also comments referring to restrictions in the Law.⁷ *Gaiben* were not allowed to employ or form partnerships with Japanese lawyers (*bengoshi*). This was said to impede foreign law firms' possibility of providing legal service in relation to matters involving Japanese law.

After much lobbying by foreign lawyers, the Law was later amended to permit a special kind of cooperation between *gaiben* and *bengoshi* under an arrangement known as the "specific joint enterprise" (*tokutei kyôdô jigyô*). This is, however, no real partnership. There were not many such specific joint enterprises formed for the first few years after the change in law. In 1998, the fourth year since the amendment came into effect, there were just six such specific joint enterprises, involving 13 *gaiben* and 23 *bengoshi*.⁸

However, as will be elaborated and discussed later below, recent years have seen rapid expansion by foreign law firms of their operations in Japan, as evidenced by, for example, the significant increase in the number of specific joint enterprises established and the number of *gaiben* and *bengoshi* involved. The latest amendment in law in 2003 brought in further deregulation, permitting *gaiben* to employ or form partnerships with *bengoshi*. This amendment in law became effective from 1 April 2005. Further expansion of operations by foreign law firms can be expected.

In this paper, foreign law firms' expansion of operations in Japan will be discussed, followed by an analysis of its impact on the *bengoshi* profession and consequential implications for professional legal education in Japan.

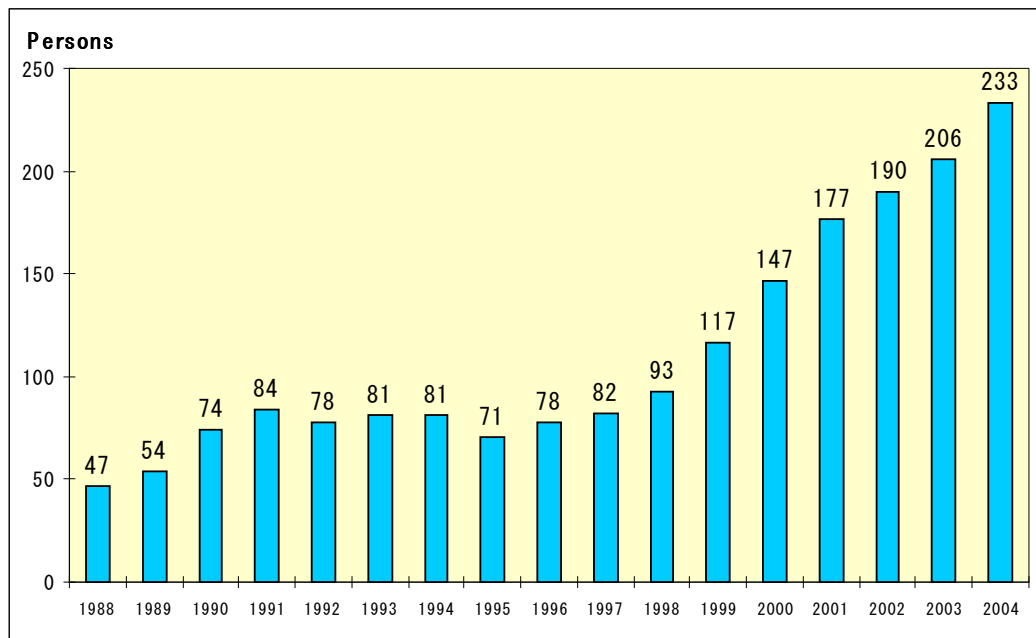
7 A. PAR DIECK, Foreign Legal Consultants: The Changing Role of Lawyer in A Global Economy, in: Indiana Journal of Global Legal Studies 3 (1996) 470-472.

8 Distributed Material No. 2-2.3 at the 2nd Meeting of the Internationalisation Investigation Committee of the Office for the Promotion of Justice System Reform (available at <http://www.kantei.go.jp/jp/singi/shihou/kentoukai/kokusaika/dai2/2siryou2_3.html> [last visited on 17 February 2005]).

II. FOREIGN LAW FIRMS' EXPANSION

Foreign law firms have been rapidly expanding their operations in Japan recently. As shown in Figure 1, there has been a rapid increase in the *gaiben* population since 1999. There was a trend of continuous increase from the 1998 figure of 93 *gaiben* to 233 *gaiben* in 2004, showing a 150.5 per cent increase in six years. The trend of increase is still continuing. As of 1 April 2005, there were 236 *gaiben* registered.⁹ In addition, as shown in Figure 2, after 2000 there was a rapid increase in both the number of specific joint enterprises established and the number of *gaiben* and *bengoshi* involved.

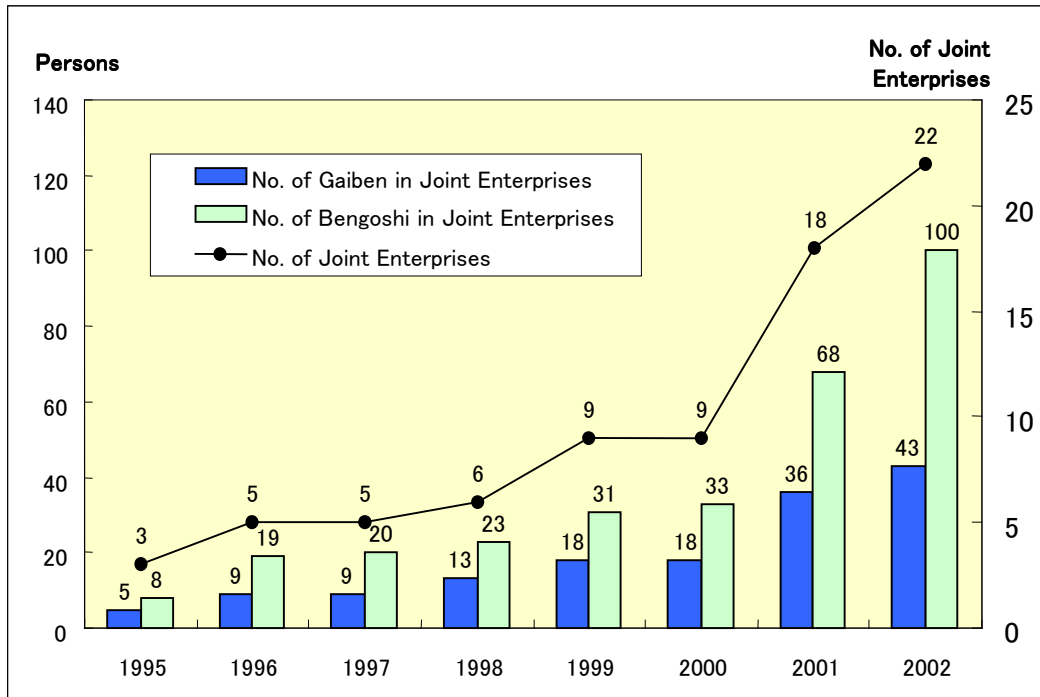
FIGURE 1: Number of *gaikoku-hô jimû bengoshi* (1988-2004)



Source: The Graph is constructed with data obtained from THE JAPAN FEDERATION OF BAR ASSOCIATIONS ("JFBA"), *Bengoshi Hakusho 2004 Nenban* [Bengoshi White Paper 2004] (Tokyo 2004): 38 and home page of JFBA (<<http://www.nichibenren.or.jp/jp/nichibenren/kaiin/kaiin.html>> last visited on 20 December 2004). All figures are as of 31 December of that particular year except for 2004: 1 December.

⁹ JFBA, *Nichibenren no kaiin* [The Members of the Japan Federation of Bar Associations], available at: <<http://www.nichibenren.or.jp/jp/nichibenren/kaiin/kaiin.html>> accessed 10 April 2005.

FIGURE 2: Number of specific joint enterprises (1995 –2002)



Source: This graph is constructed with data obtained from Distributed Material No. 2-2.3 at the 2nd Meeting of the Internationalisation Investigation Committee of the Office for the Promotion of Justice System Reform (available at <http://www.kantei.go.jp/jp/singi/shihou/kentoukai/kokusaika/dai2/2siryou2_3.html> [last visited on 17 February 2005]).

N.B. All figures are as at year-end of the particular year, except: 2002 – as of February.

Examples of recent substantial expansion of operations include White & Case LLP, Morrison & Foerster LLP and other such firms as elaborated in more detail below. A foreign lawyer at White & Case LLP was reported in a 2002 newspapers article to have said that in the five years since he joined the firm in 1997, the number of lawyers in the firm increased from 20 to 60.¹⁰

In recent years, there has been a noticeable increase in the number of *bengoshi* in the Japanese partner firms forming specific joint enterprises with foreign law firms. For

¹⁰ M. NEGISHI, Recession Opens Lucrative Doors for Foreign Lawyers, in: Japan Times, 23 November 2002, available at: <<http://www.japantimes.co.jp>>.

example, Morrison & Foerster LLP established its Tokyo office in 1987.¹¹ A specific joint enterprise was established only recently in 2001. In 2003, its specific joint enterprise *bengoshi* partner firm, Ito & Mitomi, had nine (9) *bengoshi* (4 partners and 5 associates).¹² In 2004, the number increased to 19 *bengoshi* (six partners, one Of-Counsel and 12 associates).¹³ And, there were 42 foreign lawyers¹⁴ (of whom 10 were *gaiben*¹⁵) in Morrison & Foerster LLP's Tokyo office. In other words, there were then more than 60 lawyers in the operation. This can be considered a substantial scale operation in view of the generally small size of Japanese *bengoshi* firms.

Another firm showing recent significant expansion is Paul, Hastings, Janofsky & Walker LLP. It established its Tokyo office in 1988.¹⁶ A specific joint enterprise was formed in 1998 with Taiyo Law Office. A visit to the firm's web site on 21 June 2003 showed a listing of 18 *bengoshi* in Taiyo Law Office.¹⁷ However, a search of the online directory of the Japan Federation of Bar Associations ("JFBA") on 28 October 2004 showed Taiyo Law Office having 27 *bengoshi*, a 50 per cent increase.

A newspaper's article in August 2004 reported that Orrick, Herrington & Sutcliffe LLP¹⁸ hired five *bengoshi* from the then Mitsui Yasuda Wani and Maeda, raising the number of *bengoshi* to eight.¹⁹ The number increased to 11 in 2004.²⁰ The number in Jones Day Horitsu Jimusho, the Japanese firm of the joint enterprise for Jones Day, increased from 15 in 2002²¹ to 22 in 2004.²²

It can be noted from the above that some *bengoshi* partner firms forming specific joint enterprises with foreign law firms have quite a significant number of *bengoshi*. A search of the online directory of JFBA on 26 or 28 October 2004 showed the joint

11 Information is from the firm's web page: <<http://www.mofo.com/office/tokyo/index.cfm>> last visited on 29 October 2004.

12 Information is from the firm's web page: <http://www.mofo.jp/attorney/ito_mitomi/index.html> accessed on 21 June 2003.

13 <http://www.mofo.jp/attorney/ito_mitomi/index.html> last visited on 29 October 2004.

14 <<http://www.mofo.jp/attorney/mofo/index.html>> last visited on 29 October 2004.

15 Counter-checking with the list of *gaiben* obtained by entering "gaikokuhô-jimu-bengoshi" (on 12 October 2004) in the directory-search system available from the web site of the JFBA <<http://www.nichibenren.or.jp>>.

16 Paul Hastings Adds 7 Attorneys to Its Tokyo Office; One of the Largest Firm's in Asia Expands Current Location, in: Business Wire, 6 October 2004.

17 <<http://www.taiyolaw.com/profile/index.html>>.

18 It should technically be Orrick Tokyo Law Offices, the Japanese law firm of the specific joint enterprise formed with Orrick, Herrington & Sutcliffe LLP.

19 U.S. Law Firm to Double Roster of Japanese Lawyers, in: Nikkei Report, 26 August 2004.

20 The figure is obtained from the list of *bengoshi* obtained by entering "bengoshi" and the firm's name (on 28 October 2004) in the directory-search system available from the web site of JFBA <<http://www.nichibenren.or.jp>>.

21 Jones Day Merges with the Showa Law Office in Tokyo, available at the web page of Jones Day: <<http://www1.jonesday.com/news/detail.asp?language=English&newsid=149>> accessed on 26 October 2004.

22 The online directory of JFBA accessed on 28 October 2004.

enterprise partner firms of White & Case LLP, Clifford Chance, Freshfields Bruckhaus Deringer and Paul, Hastings, Janofsky & Walker LLP having 21, 21, 24 and 27 *bengoshi* respectively. It should be noted that, as of May 2004, there were only 12 *bengoshi* firms with more than 30 *bengoshi*.²³

With the increase in the number of lawyers, some firms need to expand their office space as well. Examples include Jones Day²⁴, Coudert Brothers²⁵, Paul, Hastings, Janofsky & Walker LLP²⁶ and Orrick, Herrington & Sutcliffe LLP.²⁷ The increase in the number of lawyers in Japan, together with the expansion of office space, can help in assuring clients of their commitment to the Japanese legal market. This can help in securing Japanese clients' trust and, as a result, expanding the local client base. This is particularly relevant now since, unlike before, foreign firms can operate with a mind not only for foreign-related work, but also domestic work, competing with local firms.²⁸ To strengthen their local law capability, they require an increase in the number of *bengoshi*.

Their expansion into the domestic legal market will be further enhanced since the above-mentioned amendment in the Law came into effect in April 2005. *Gaiben* are now able to partner with and employ *bengoshi*. The U.K. global firm Linklaters has already utilized this new law. In July 2004, it announced its scheduled absorption, effective from 1 April 2005, of 20 to 30 lawyers from the then sixth largest *bengoshi* firm, Mitsui, Yasuda, Wani & Maeda.²⁹ A search of the on-line directory of JFBA on 10 April 2005 showed that the firm had 30 *bengoshi*. Bearing in mind the generally small size of *bengoshi* law firms, this size of 30 *bengoshi* is fairly substantial in scale, particularly in terms of foreign law firms' operations in Japan. Baker & McKenzie has also made use of the new law. It merged with its ex-joint enterprise partner, Tokyo Aoyama Aoki Law Office.³⁰

23 JFBA, *supra* note 2, 44.

24 *Supra* note 21.

25 M. FACKLER / I. FUYUNO, Japan – Legal Eagles Spread Their Wings: The Country Is Opening New Doors to Foreign Lawyers; The Long-Protected Legal Profession and Japan's Cosy Ways of Doing Business May Never Be the Same, in: Far Eastern Economic Review, 23 September 2004.

26 *Supra* note 16.

27 This is according to information from the web page of the firm <<http://www.orrick.com/offices/tokyo/news.asp>> (accessed on 15 April 2005).

28 N. FERGUSON, Seven Japanese Lawyers Set to Join US firm's Tokyo Office. Orrick Boosts Japanese Team, in: FinanceAsia.com, 31 August 2004; Japan: Legal market: Joint Ventures, in: The Asia Pacific Legal 500, available at: <<http://www.legal500.com/as500/edit/ja8.htm>> last visited 6 January 2005.

29 M. SANCHANTA / B. SHERWOOD, Linklaters to Unveil Japan Merger Plan Legal Services, in: Financial Times, 12 July 2004; Japanese Law Firm Mitsui Yasuda to Be Partly Absorbed by Linklaters, in: Kyodo News, 12 July 2004; Major U.K. Law Firm to Absorb Mitsui, Yasuda, Wani & Maeda, in: Nikkei Report, 12 July 2004.

30 This is according to information from the firm's web site <<http://www.taalo-bakernet.com>>

It will be interesting to see how many more mergers or takeovers will follow. There was a report that American and British law firms had merger negotiations with Japanese law firms.³¹ Special attention should be drawn to the specific joint enterprises between TMI Associates and Simmons & Simmons. After the merger between Tokyo Aoyama Aoki Law Office and Baker & McKenzie, the TMI Associates joint enterprise becomes the only joint enterprise formed between a major (albeit not in the top five) Japanese law firm and a global foreign law firm. With the implementation of the new law, it is possible for integration between two such firms (like between Baker & McKenzie and Tokyo Aoyama Aoki Law Office). Such integration will result in TMI Associates becoming part of the global network of Simmons & Simmons, which in turns means further significant penetration by the latter into the Japanese legal market. TMI Associates has recently shown a great increase in size (in terms of *bengoshi* numbers). In 1998, it had 33 *bengoshi*.³² In 2004, there were 84 *bengoshi* in the firm.³³

The aforesaid takeover by Linklaters indicates the possibility of take-over or merger between a foreign firm and a major law firm in Japan. As mentioned above, Mitsui, Yasuda, Wani & Maeda was once the sixth largest firm in Japan. It is true that two of the name partners will not join Linklaters but the fact that the other two name partners join a foreign firm indicates that well-established practitioners may also choose to become part of a global mega-firm rather than remaining as name partners in a well-established local firm. They must consider it more beneficial for them to make the move. Contributory factors to this may be financial, reputation-based, desire for broader exposure or a combination of any of these or others. The intensifying competition from foreign firms can also be a contributory factor.

It should also be noted that the change in law would also encourage new entry of foreign firms to establish branch offices in Japan. On 1 April 2005, the American firm, Greenberg Traurig LLP, announced its plan to open a new office in Tokyo and form an alliance with the *bengoshi* firm Hayabusa Kokusai Law Offices.³⁴ It will be interesting to see how many more foreign law firms will start to establish a presence in Tokyo. Japan is the second largest economy in the world. This, together with the small number

accessed on 20 April 2005.

31 J.S. CHANEN, Konichiwa, Bengoshi!, in: ABA Journal, 1 January 2005.

32 S. NIWAYAMA / K. YAMAGISHI, *Nihon ni okeru kyôdai hôritsujimusho no kanôsei: Kojin jimusho to no sumiwake wa kanô ka?* [The Possibility of Mega Law Firms in Japan: Is it Possible to Coexist with Solo-Practice?], in: Liberty & Justice 49 (11) (1998) 35. At the time of its forming joint enterprise with Simmons & Simmons, TMI had 44 lawyers (C. SMITH, Simmons – TMI joint venture kick starts Japanese expansion plan, in: The Lawyer, 24 September 2001, 13).

33 Obtaining list of *bengoshi* in the firm with the use of the online directory search facility of JFBA on 28 October 2004.

34 Japanese Law Changes: Greenberg Traurig Moves Quickly, available from the web page of Greenberg Traurig LLP at: <<http://www.gtlaw.com/pub/pr/2005/tokyo05a.htm>> accessed on 21 April 2005.

of commercial lawyers in Japan³⁵ and recent reports estimating the Japanese corporate law market to have doubled to about 100 billion yen over the past five years³⁶, can be encouraging to many foreign firms.

In short, there is rapid and extensive expansion by foreign law firms of their operations in Japan, in particular regarding the capability of handling Japanese law related matter.

III. IMPACT ON *BENGOSHI*

1. *Increase in Firm Size*

The expansion of foreign law firms' operations in Japan, be it their own and/or through specific joint enterprises, brings severe pressure on local firms, particularly firms handling business/commercial work. Japanese law firms used to be, and in fact still are, of sizes much smaller than the large law firms in many advanced economies, such as U.S.A., U.K. and Australia. In 1998, the largest firm in Japan had 63 lawyers (see Table 1 below). In comparison, Baker & McKenzie (U.S.A.), Clifford Chance (U.K.), Fidal (France), Mallesons Stephen Jaques (Australia) had 1998, 1402, 1080 and 782 lawyers respectively in 1997.³⁷ And, even the Hong Kong firm Johnson Stokes & Master had 196 lawyers.³⁸

As discussed above, many foreign firms have expanded their operations in Japan. For some of these firms, even just their offices in Japan, not to mention including their large global structure, can pose a serious threat of competition to Japanese firms. When the total number of *bengoshi* and foreign lawyers are taken into account, the operations³⁹ of some foreign firms in Tokyo is of such a scale that can be considered large in the Japanese context. As discussed above, there are foreign firms (or their joint enterprises partner firms) having over twenty *bengoshi*. If the total number of lawyers, local and foreign, is looked at, firms like Morrison and Foerster⁴⁰ and Clifford Chance⁴¹ have 66 and 44 lawyers in their respective Tokyo offices. Linklaters mentioned in its

35 Anderson Mori, Tomotsune & Kimura to Join in Law Firm Merger, in: Nikkei Report, 1 September 2004; NEGISHI, *supra* note 10.

36 International Firms Race to Hire Japanese Lawyers, in: International Financial Law Review 23 (10) (2004). Anderson Mori, Tomotsune & Kimura to Join in Law Firm Merger, in: Nikkei Report, 1 September 2004.

37 P. LEE, Setting the Law Firm Standard, in: International Financial Law Review 16 (11) (1997) 17.

38 *Ibid.*, 20.

39 The word "operations" is used to include foreign firms employing *bengoshi* directly like Linklaters and firms employing *bengoshi* through joint enterprises.

40 Information is from accessing the firm's web page on 15 April 2005.

41 Information is from accessing the firm's web page on 15 April 2005.

web page that it has more than 60 lawyers in Tokyo.⁴² A tally of lawyers listed in the web site (visited on 20 April 2005) of Baker & McKenzie GJBJ Tokyo Aoyama Aoki Law Office shows the firm having 88 lawyers, *bengoshi* and foreign lawyers altogether. As already mentioned above, as of May 2004, there were only 12 *bengoshi* firms having a size of more than 30 *bengoshi*. Mitsui Yasuda Wani & Maeda, before the splitting up of the firm as a result of the takeover by Linklaters, used to be the 6th largest firm in Japan and had about 70 lawyers.

Small as they were, it would be difficult for Japanese firms to compete with foreign firms over lucrative big transactions, the handling of which demands large teams of lawyers. They will also be vulnerable to “takeovers” by foreign firms. In the past, *gaiben* were not permitted to partner with and employ *bengoshi*. Foreign lawyers have been demanding such rights, as supported by their Governmental authorities⁴³, foreign companies⁴⁴, and even the Japanese business sector.⁴⁵ As mentioned above, the Law was changed, effective from 1 April 2005. The move taken by Linklaters as described above proves that the threat of takeover from global firms cannot be underestimated. At the same time, commercial transactions are also becoming more complex and transnational in nature than before. Major law firms not only need to have adequate capability to handle large transactions but also need to demonstrate to their potential clients their capabilities. Size and degree of specialisation become relevant issues. Larger size can help in strengthening capability with different specialisations. In short, an increase in size can help in fending off takeover, strengthening capability or expertise areas, strengthening capability to handle large and complicated transactions, and, at least, raising the firm’s profile in the competition for big corporate clients and large transactions. These factors bring along a pressure on the major Japanese law firms to expand in size.

As a result, recent years see all the top five law firms in Japan having a big increase in size (see Table 1 below). This is through both mergers with smaller practices (see Table 2 below) and/or large intake of newly admitted *bengoshi* (see Table 3 below). For example, Nagashima & Ohno had 69 lawyers at the time of its merger (in 2000) with Tsunematsu Yanase & Sekine.⁴⁶ The latter had 26 lawyers.⁴⁷ Such merger and large

42 Linklaters Launches Japan’s First International and Domestic Law Firm, available at the web site of Linklaters: <<http://www.linklaters.com>> (accessed on 10 April 2005).

43 S. ZAKI, Bartalk: Rises: A Rare Chance for Western Firms to Crack Japan’s Legal Market Is at Hand, in: *The American Lawyer*, 1 October 2002. R. CUNNINGHAM, Overworked and under-staffed: Lawyers Battle to Overcome the Numbers Game, in: *International Financial Law Review*, 19 (6) (2000).

44 ZAKI, *ibid.* NEGISHI, *supra* note 10.

45 ZAKI, *ibid.* B. SHERWOOD/P. STAFFORD, Japanese No Longer A Law unto Themselves – International Legal Firms Can Now Merge with Local Partnerships for the First Time after Years of Pushing for Change, in: *Financial Times*, 5 April 2005, 29.

46 Firm Philosophy, available at the web site of Nagashima Ohno & Tsunematsu: <http://www.noandt.com/e/summary/f_summary.html> last visited 26 June 2002.

47 *Ibid.*

intake of newly hired *bengoshi* facilitated the growth of the merged firm into a size of over 190 lawyers in October 2004 (as shown in Table 1 below). Anderson Mori had 149 *bengoshi* as of October 2004 (as shown in Table 1 below). After the merger with Tomotsune & Kimura on 1 January 2005, the new firm (Anderson Mori & Tomotsune) had 176 *bengoshi* as of February 2005.⁴⁸ Merger can also help in strengthening or enhancing capability in particular areas. For example, the merger scheduled to take place in July 2005 between Mori Hamada & Matsumoto and the intellectual property-focused Max Law Offices⁴⁹ will not only likely propel the former to become the largest firm in Japan but also enhance its intellectual property capability.

The trend of expansion is still continuing among the large law firms in Japan, as evidenced by their large number of recruits from newly admitted *bengoshi* in 2004 and the announced merger agreement between Mori Hamada & Matsumoto and Max Law Offices. The growth and expansion of the major firms in fact is itself supporting the continuation of the trend. In the competitive legal market, there is a race to become bigger. At the same time, large law firms' expansion also has an impact on medium-sized commercial law firms. The gap between the large and the medium-sized firms, in terms of size, widens. That can affect the latter's competitiveness in the legal market. Such pressure on medium-sized firms may be one of the factors facilitating the above-mentioned merger of Max Law Offices with Mori Hamada & Matsumoto and the recently announced alliance to be formed between Greenberg Traurig LLP and Hayabusa Kokusai Law Offices. Both Max Law Offices and Hayabusa Kokusai Law Offices can be considered medium-sized firms by Japanese standards. As of April 2005, they have 13 and 11 *bengoshi* respectively.⁵⁰ It is possible that there will be more mergers of medium-sized firms, with the major firms or among themselves. It is also possible that we will see more alliances or arrangements formed between foreign firms and medium-sized firms. For foreign firms, forming an alliance or taking-over medium-sized *bengoshi* firms is in fact a quick method to establish or expand their presence in Japan. However, their increased presence and expansion in Japan will again bring along further pressure on the major *bengoshi* firms to expand. It is a kind of vicious circle.

The continuing trend of expansion among the major *bengoshi* firms results in a bifurcation of the profession. There are firms with over 100 lawyers. At the same time, there are many small practices. As of May 2004, over 96% of the law firms in Japan have five or fewer lawyers each, amongst which there were 8000 solo practices and

48 The figure is obtained from the online directory search system of JFBA on 4 February 2005.

49 Mori Hamada & Matsumoto, on 28 February 2005, announced its scheduled merger with Max Law Offices in July 2005 (Information is from the web site of the firms accessed on 15 April 2005)

50 The figures are obtained from the online directory of JFBA accessed on 15 and 21 April 2005 respectively.

1643 firms with only two lawyers.⁵¹ With continual expansion of the major firms, the gap (in terms of size) between the large and small firms is widening.

TABLE 1: Number of *bengoshi* in major law firms (1998 & 2004)

1998			2004		
Ranking	Firms	No. of lawyers	Ranking	Firms	No. of lawyers
1	Nishimura & Partners	63	3	Nishimura & Partners	184
2	Nagashima & Ohno	62	1	Nagashima Ohno & Tsunematsu	197
3	Mori Sogo Law Offices	62	2	Mori Hamada & Matsumoto	188
4	Anderson Mori	50	4	Anderson Mori	149
5	Asahi Law Offices	48	5	Asahi Koma Law Offices	136
6	Mitsui Yasuda	36		Mitsui Yasuda & Wani	47*
7	TMI Associates	33	6	TMI Associates	84

Source: Figures for 1998 are from S. NIWAYAMA / K. YAMAGISHI, *Nihon ni okeru kyôdai hôritsu jimusho no kanôsei: Kojin jimusho to no sumiwake wa kanô ka?* [The Possibility of Mega Law Firms in Japan: Is it Possible to Coexist with Solo-Practice?], in: *Liberty & Justice* 49 (11) (1998) 35. Figures for 2004 are obtained by using the searchable *bengoshi* database system offered at the web page of the JFBA <<http://www.nichibenren.or.jp>> on 28 or 29 October 2004 (entering each firm's name to obtain list of *bengoshi* in such firm).

* Part of the firm has merged with Linklaters in April 2005. As at the time of announcement of the arrangement, the firm had about 70 lawyers and was the 6th-largest firm in Japan (Japanese Law Firm Mitsui Yasuda to Be Partly Absorbed by Linklaters, in: *Kyodo News*, 12 July 2004) but subsequent to the announcement, there were departures of *bengoshi* from the firm.

51 JFBA, *supra* note 2, 44.

TABLE 2: Trend of mergers among Japanese firms

Year	Pre-merger firms		Merged firm
1/1/2000	Nagashima & Ohno	Tsunematsu Yanase & Sekine	Nagashima Ohno & Tsunematsu
1/10/2002	Asahi Law Offices	Komatsu Koma & Nishikawa	Asahi Koma Law Offices
1/12/2002	Mori Sogo	Hamada & Matsumoto	Mori Hamada & Matsumoto
1/1/2004	Nishimura & Partners	Tokiwa Sogo Law Offices	Nishimura & Partners
1/1/2005	Anderson Mori	Tomotsune & Kimura	Anderson Mori & Tomotsune

Source: This Table is constructed from information obtained from the firms' respective home pages (accessed on 4 May 2003, 22 April 2004, 28 September 2004, and 4 January 2005).

N.B. It should be noted that Mori Hamada & Matsumoto, on 28 February 2005, announced its scheduled merger with Max Law Offices in July 2005 (Information is from the web site of the firms accessed on 15 April 2005).

TABLE 3: Yearly intake of newly admitted *bengoshi* by the top five firms (2001-2004)

	2001	2002	2003	2004
Nagashima Ohno & Tsunematsu	20	20	26	21
Mori Hamada & Matsumoto	--	--	18	21
Nishimura & Partners	16	17	14	25
Asahi Koma Law Offices	--	22	18	12
Anderson Mori	18	17	16	20

Source: This Table is constructed from information obtained from the firms' respective home pages (visited on 15 October, 24, 25 and 26 November 2004)

2. *Impact on Bengoshi's Lateral Movement*

The number of *bengoshi* specialising in commercial matters is small.⁵² Competition by law firms, foreign and local, for experienced *bengoshi* in this category is, as can be expected, severe. To expand their practice in Japan, foreign firms actively “head-hunt” experienced *bengoshi* from major Japanese law firms.⁵³ The active movement of *bengoshi* to the joint enterprise firms also affects movement between major local firms. In the past, lateral hires were rare⁵⁴ and it was a kind of “job-for-life” attitude⁵⁵, but *bengoshi* are now found moving between firms.⁵⁶ Japanese law firms are also using headhunters to recruit *bengoshi*.⁵⁷ In short, the culture of *bengoshi* has changed and there is active lateral movement in the legal market in Japan now.

At the same time, as mentioned above, major *bengoshi* firms have in recent years been actively recruiting significant numbers of newly admitted *bengoshi* annually to facilitate the growth in size. Newly hired *bengoshi* at major firms are offered high salaries. It was said that first year associates at major law firms had salaries of 10 to 16 million yen⁵⁸ while starting salaries in other *bengoshi* firms ranged from 5 to 8 million yen.⁵⁹ It has also been reported that *shôgai bengoshi* firms (firms handling international commercial matters; the top five firms all being of this category) become

52 Anderson Mori, Tomotsune & Kimura to Join in Law Firm Merger, in: Nikkei Report, 1 September 2004. NEGISHI, *supra* note 10.

53 International Firms Race to Hire Japanese Lawyers, in: International Financial Law Review 23 (10) (2004). CHANEN, *supra* note 31. Examples of *bengoshi's* movement to foreign firms' specific joint enterprise partner *bengoshi* firms can be found in the following articles: FERGUSON, *supra* note 28; Paul Hastings Adds 7 Attorneys to Its Tokyo Office; One of the Largest firm's in Asia Expands Current Location, in: Business Wire, 6 October 2004; Japan: Legal market: Joint Ventures, in: The Asia Pacific Legal 500, available at: <<http://www.legal500.com/as500/edit/ja8.htm>> last visited 6 January 2005.

54 The Asia-Pacific Legal 500 <http://www.icclaw.com/as500/frames/ja_fr.htm> last visited 15 August 2001.

55 Japan: Legal Market: Domestic Firms, in: The Asia Pacific Legal 500, available at: <<http://www.icclaw.com/as500/edit/ja4.htm>> accessed on 16 April 2000.

56 Examples include: Hiroshi Maeda (ex-name partner of Mitsui, Yasuda, Wani & Maeda), and Mariko Hirose; Toshiaki Tashiro; Takeshi Nakae; Toshihiro Takeshita; and Yuko Nihonmatsu (all from Mitsui, Yasuda, Wani & Maeda) joined Nishimura & Partners in October 2004 (information is from the web site of Nishimura & Partners accessed on 2 November 2004); Satoshi Miyagaki, a partner at Anderson Mori, joined the firm in January 2002 as associate from Nakamura & Partners (information is from the web site of Anderson Mori accessed on 25 November 2004); Hideyuki Kiuchi (from Mori Hamada & Matsumoto) and Masato Shibata (Kandabashi Law Offices, the *bengoshi* firm which formed specific joint enterprise with White & Case LLP) joined Anderson Mori in February 2003 (information is from the web site of Anderson Mori accessed on 25 November 2004).

57 H. MATSUURA / M. KODAKI, Lawyer Shortage Has Law Firms Scrambling, in: Nikkei Weekly, 3 November 2003.

58 C.J. MILHAUPT / M. D. WEST, Law's Dominion and the Market for Legal Elites in Japan, in: Law and Policy in International Business 34 (2003) 478.

59 M. MURAKAMI, *Hôka daigakuin* [Law Schools] (Tokyo 2003) 63.

popular career choices for top Legal Training and Research Institute (“LTRI”) trainees.⁶⁰ It should also be noted that some foreign firms (or their joint enterprise partners) are also recruiting relatively junior or newly admitted *bengoshi*.⁶¹ To facilitate the expansion of their operations in Japan, they will need a significant number of *bengoshi*. In addition to experienced *bengoshi*, they can recruit newly admitted and less experienced *bengoshi*. Competition for bright candidates can lead to a rise in salaries. For example, American law firms are said to have offered high salaries for newly qualified associates in their U.K. offices, causing U.K. firms to raise their salary packages.⁶² In addition, foreign firms have the appeal to candidates that there is opportunity to work in other branch offices of their global network. Intensification of competition for *bengoshi* among law firms (local and foreign) can lead to a rise in salary of *bengoshi*, experienced or not. This will have an impact on small to medium firms. It will become more difficult for them to compete with major and foreign firms in attracting and retaining bright candidates. When it is established in people’s minds that the trend is for bright candidates to specialise in commercial matters and work in major firms (and likely foreign firms as well), no matter whether it really is the case, elitism will develop in the profession. Major firms (and likely foreign firms as well) and their *bengoshi* will be considered as the elites in the profession. There will be bifurcation of the profession, not only in terms of size as discussed above but also status.

3. Major Law Firms’ Influence

Bifurcation also exists in terms of influential power within the profession and, since big enterprises are the main clients for the bigger law firms, probably even in the society. As analysed above, intensifying competition from foreign firms facilitates the significant increase in the size of major *bengoshi* firms. It will become increasingly difficult for *bengoshi* firms of smaller size to compete for clients and lucrative work. They may merge to strengthen their capability and therefore competitiveness. In addition, they are likely targets to be absorbed by major *bengoshi* firms or foreign firms. Such absorption is a quick route to expansion in size. There is still pressure on major *bengoshi* firms to expand. Despite the recent increase in size, the major *bengoshi* firms are still much

60 *Shôgai bengoshi gappei kokusaika ... kigyô nîzu senmonka takamaru juyô* [Merger, Internationalisation ... Specialisation of Enterprises’ Needs: Increased Demand on *shôgai bengoshi*], in: Sankei Shimbun, 13 February 2005.

61 For example, information available from web sites (accessed on 26 and 29 October 2004, 16 February and 20 April 2005) of Ito & Mitomi, Taiyo Law Office and Nishikawa & Partners (joint enterprise partners of Morrison & Foerster LLP, Paul, Hastings, Janofsky & Walker LLP, and Sidley Austin Brown & Wood LLP respectively) showed these firms having *bengoshi* admitted in 2004. Ito & Mitomi have also held explanatory sessions for LTRI trainees (information is from the firms’ web site, accessed on 29 October 2004).

62 J. WILSON, Young City Lawyers Pay Price for Salary Rise, in: The Guardian, 7 August 2000.

smaller than the global firms. As shown in Table 1 above, the largest *bengoshi* firm had 197 *bengoshi* in 2004. In comparison, the three largest firms in the world, Baker & McKenzie, Clifford Chance and Freshfields Bruckhaus Deringer, had over 2000 to more than 3000 lawyers.⁶³ The major global firms have also greatly increased in size, and, the race for growth in size and global expansion is still continuing. Recently, the ranking of the largest firms in the world had to be re-arranged due to a tripartite merger. A merger of DLA (London), Gray Cary Ware & Freidenrich LLP (San Diego) and Piper Rudnick LLP (Baltimore and Chicago) was said to create the world's third largest firm (DLA Piper Rudnick Gray Cary), with more than 2700 lawyers.⁶⁴ As discussed above, the recent announcement by Mori Hamada & Matsumoto of its scheduled merger with Max Law Offices in July 2005⁶⁵ further demonstrates the major Japanese law firms' continuing trend of mergers and takeovers.

The vigorous expansion in size among major Japanese law firms could result in the domination of the commercial legal market by a few players. Such a situation has happened in other jurisdictions. For example, it has been said that, in Australia, the top 20 firms occupy 80 per cent of the country's market for commercial legal service.⁶⁶

There also is an increase in the proportion of *bengoshi* in larger-sized firms (as shown in Table 4). The ratio of *bengoshi* in firms of over 30 *bengoshi* rose from the 1998 figure of 2.10 per cent to 5.55 per cent in 2004. There was no firm with over 100 *bengoshi* in 1998. In 2002, there were only two firms of such size, occupying a 1.3 per cent of the *bengoshi* population.⁶⁷ In 2004, 3.71 per cent of the *bengoshi* population were in the five firms with over 100 *bengoshi* each.⁶⁸ This trend of increase is still continuing. Latest figures from the JFBA's web site (visited on 19 April 2005) showed that the top five firms had 881 *bengoshi*.⁶⁹ Japan has a total population of 21,205 *bengoshi* as of 1 April 2005.⁷⁰ In other words, 4.15 per cent of the *bengoshi* population was in the five firms with over 100 *bengoshi* each. The above-mentioned

63 The Lawyer Global 100, in: The Lawyer.com, available at: <http://www.thelawyer.com/global100/tb_1_25.html> last visited 20 December 2004.

64 M. KINSMAN, Local Law Firm Set to Become World Player, in: The San Diego Union-Tribune, 7 December 2004. A. SACHDEV, Chicago's Piper Rudnick, London-based DLA to Merge into A Global Law Firm, in: Chicago Tribune, 5 December 2004. Business Brief: Piper Rudnick LLP: U.S.-based Law Firm to Merge with London-based DLA, in: The Wall Street Journal, 6 December 2004.

65 Information is from the web site of the firms accessed on 15 April 2005.

66 The Hon Justice M. KIRBY, Law Firms and Justice in Australia (A speech given at the Australian Law Awards Function on 7 March 2002), available from the web site of the High Court of Australia at: <http://www.highcourt.gov.au/speeches/kirbyj/kirbyj_award.htm> last visited on 6 January 2005.

67 JFBA, *Bengoshi Hakusho 2002 Nenban* [Bengoshi White Paper 2002] (Tokyo 2002) 41.

68 JFBA, *supra* note 2, 44.

69 The figure is arrived at by adding the respective number of *bengoshi* in the five firms as obtained from the JFBA online directory accessed on 19 April 2005.

70 JFBA, *supra* note 9.

merger between Mori Hamada & Matsumoto and Max Law Offices in July 2005 will raise this ratio further. It will also likely create the first Japanese law firms having 200 or more *bengoshi*. The online directory of JFBA, accessed on 15 April 2005, showed the two firms having 187 and 13 *bengoshi* respectively. This merger may trigger another round of merger/takeover activity for the top five firms in Japan, causing further rapid expansion in their size.

The extensive growth in size among the major law firms will result in an increase in their power and influence within the profession, which may also have an impact on professional legal education, which will be discussed later below.

TABLE 4: Proportion of *bengoshi* in firms of over 30 *bengoshi*

Firm size (No. of <i>bengoshi</i>)	1998	2002	2003	2004
over 100	Nil	1.3%	3.42%	3.71%
51-100	1.11%	2.3%	0.94%	1.26%
31-50	0.99%	0.8%	0.62%	0.58%
Total	2.10%	4.4%	4.98%	5.55%

Source: Figures for years 2002, 2003 and 2004 are from JFBA, *Bengoshi Hakusho 2002 Nenban* [Bengoshi White Paper 2002], *Bengoshi Hakusho 2003 Nenban* [Bengoshi White Paper 2003] and *Bengoshi Hakusho 2004 Nenban* [Bengoshi White Paper 2004], (Tokyo 2002, 2003 and 2004) 41, 40 and 44 respectively. Figure for 1998 is calculated with use of figure on total *bengoshi* population of 16,850 (N. KAWAI (ed) *Asahi Shimbun Japan Almanac 1999* (Tokyo 1998) 237) and figures on number of lawyers in firms of over 31 *bengoshi* (NIWAYAMA / YAMAGISHI, *supra* Source for Table 1, 35).

4. Impact on Major Japanese Law Firms' Operations

In large Japanese law firms, there is a sharp rise in associates-to-partners ratio. Their pursuit of substantial increase in size, through large annual intake of newly admitted *bengoshi*, results in rapid and continuous growth in the pool of young associates in the firms, thereby rapidly inflating the associates-to-partners ratio. Table 5 (below) shows the current partner-to-associates ratio. It is clear that any further substantial intake of associates will greatly affect such a ratio. Before the current junior cohorts become sufficiently experienced to be able to supervise the then junior associates, the task of supervision over junior associates will become a very demanding and heavy burden in view of the comparatively low number of partners and senior associates for the time being (see Table 6 below). This could also have an impact on professional legal education, as will be discussed later below.

TABLE 5: Partner-to-Associates ratio in top 5 firms (2004)

	Partners	Associates	Partner/ Associates ratio
Nagashima Ohno & Tsunematsu	42	145	1 : 3.45
Mori Hamada & Matsumoto	58	123	1 : 2.12
Nishimura & Partners	35	141	1 : 4.03
Asahi Koma Law Offices	41	89	1 : 2.17
Anderson Mori	35	116	1 : 3.31

Source: Number of partners and associates were obtained from information available from respective home pages of the firms (accessed on 20, 22, 23, 26 and 25 November 2004 respectively); figures on ratio were calculated by the author.

TABLE 6: Ratio of recently admitted *bengoshi*

	Associates admitted 2000 - 2004 (A)	Partners & Associates (B)	A/B (%)
Nagashima Ohno & Tsunematsu	113 ¹	187	60.4%
Mori Hamada & Matsumoto	99	181	54.7%
Nishimura & Partners	100 ²	176	56.8%
Anderson Mori	at least 86 ³	151	at least 56.95% ³

N.B. Since not all lawyers in Asahi Koma Law Offices have details on year of admission in the firm's home page, the firm is not included in this Table.

- ¹ One of them was admitted in 2000 but was an ex-prosecutor. Taking him out of category A will result in ratio of 59.9%.
- ² One of them was admitted in 2002 but was an ex-prosecutor. Taking him out of category A will result in ratio of 56.3%.
- ³ Not all *bengoshi* have information about year of admission in the firm's homepage. Only 86 of the associates have information indicating their being admitted not earlier than 2000.

Source: See Table 5.

At the same time, with intensifying competition and significant expansion in size, management of the larger law firms in Japan has become a complicated task. Global law firms are known to be active in marketing. It has been pointed out⁷¹ that in the current “competitive and integrated international legal market”, clients are “more willing to shop around”, and “not asking for business” no longer works. Partners at large firms in the past could rely on “long-established institutional relationships” but now have to “go out and win new clients”.⁷² In Japan, the global law firms are active in campaigning for work (different from the conventional practice of Japanese firms), which is something Japanese clients like.⁷³ Their expansion of penetration into the Japanese legal market brings pressure on Japanese firms to change. *Bengoshi* used to be passive in this respect. They were said to traditionally rely on “word of mouth” and “direct and personal contact with institutional clients” more than many forms of marketing, brochures, websites and advertisements.⁷⁴ Now, there are changes. For example, Nishimura & Partners has public relations staff, which was unthinkable for Japanese law firms a few years ago.⁷⁵ All the top five firms have web sites in Japanese and English. On these web sites, in addition to information about the firms and their practice areas, there is information about their *bengoshi*, such as their expertise, publications and/or educational background.

Due to shortage and severe demand, comparatively less-experienced lawyers may easily be promoted to partnership status or move to another firm to become a partner. At least, in lateral movement, factors other than pure experience or seniority, such as capability, expertise or client-base can become important. This can affect the culture inside the Japanese firms as well. There is comment that the British law firms’ “lock-step” seniority-based system, as compared with the American firms’ “eat-what-you-kill” (merit-based) system, can be more easily accepted by the Japanese mentality.⁷⁶ Brilliant associates, however, can move elsewhere if they are not satisfied with the treatment in their own firm, for example delay in promotion to partnership or dissatisfaction with salary and bonuses etc. This could affect the criteria for promotion, which may become more merit-based than seniority-based. If promotion is already merit-based, there will

71 R. SENGUPTA, When Lawyers Are Rainmakers: Partnerships: Promotion to Equity Partner Brings with It the Responsibility for Finding New Business. Few Are Prepared, in: *Financial Times*, 9 August 2004.

72 *Ibid.*

73 H. SMITH, How a U.S. Firm Figured out Japan; Morrison & Foerster Builds Successful Outpost; Foreign Lawyers Face Obstacles; One Bold Move; Japanese Lawyers Hold Ground, in: *Legal Times*, 24 November 2003.

74 Japan: Marketing, in: *The Asia Pacific Legal 500*, available at: <<http://www.icclaw.com/as500/edit/ja5.htm>> visited on 15 August 2001.

75 Japan: Marketing, in: *The Asia Pacific Legal 500*, available at: <<http://www.legal500.com/as500/edit/ja4.htm>> accessed on 6 January 2005.

76 *Nihon ni okeru sonzaikan o masu igirisukei hôritsu jimusho* [Increased presence of British law firms in Japan], in: *The Lawyers*, September 2004, 19.

be reinforcement of such practice. In any case, even in U.K., it has been said that there is a move from the “reversed” “lock-step” promotional system to the more meritocratic model of the U.S.A.⁷⁷ If promotion becomes more dependent upon merit and performance, competition and rivalry amongst associates within the firm will intensify.

With the expansion in size, the major firms have, in addition to lawyers, a significant number of supporting personnel, like paralegals and secretarial staff. For example, Nagashima Ohno & Tsunematsu, as of 1 April 2005, has 73 paralegals and 135 secretaries.⁷⁸ Paralegals are already commonly found in the large law firms in many advanced countries such as U.S.A. and U.K. Hiring of paralegals can help in raising the “legal” manpower without exorbitantly increasing the cost. With training and years’ experience, some paralegals have fairly substantial knowledge in the area of their specialty. They, however, are generally commanding lower salaries than lawyers. At the same time, competition and development in information technology (IT) can result in major firms employing new categories of staff members, such as public relations staff, IT staff and so on.

The operation of large law firms has become increasingly similar to big enterprises. Management of the firms is becoming more and more complicated. With the increase in the number of paralegals inside the firm, the issue of adequate training and supervision becomes increasingly acute. Management of law firms requires not only special attention but also specialised expertise. This can have an impact on professional legal education.

IV. IMPLICATIONS FOR PROFESSIONAL LEGAL EDUCATION

As discussed above, the substantial increase in size of the larger law firms has led to bifurcation in the profession. The gap is widening, in terms of size of operation, nature of work, profile, income, prestige etc. If the major firms are the priority career choice for newly admitted *bengoshi* (which is likely in view of the difference in starting salary)⁷⁹, what these firms consider as important criteria for recruitment can affect students in their choice of law schools, subjects to study, etc.

While large law firms mainly handle commercial matters, contentious matters are still the major work for most practitioners in Japan.⁸⁰ To date, since the training and education at Legal Training and Research Institute (LTRI) is litigation-oriented⁸¹,

77 SENGUPTA, *supra* note 71.

78 Organization, available from the web site of Nagashima Ohno & Tsunematsu at: <<http://www.noandt.com/english/summary/organization.html>> accessed on 20 April 2005.

79 As discussed above, it has already been reported that *shôgai* firms became popular career choice for bright LTRI trainees (see *supra* note 60).

80 MURAKAMI, *supra* note 59, 54.

81 H. SMITH, Wanted: More Lawyers, in: American Lawyer 25 (11) (2003).

“*shôgai*” firms (firms handling international commercial matters; the top five firms all being of this category) train their newly hired *bengoshi* themselves.⁸² It can be said that, to date, the “large” *shôgai* firms are the main providers of “transnational business legal practice” training to *shôgai bengoshi*. That has been possible so far due to the small number of *shôgai bengoshi* and the rarity, if not absence of, movement between firms. However, the situation has changed. As discussed above, there is a great increase in the number of newly admitted *bengoshi* recruited by the “large” firms. This will likely be the trend, at least in the near future, if they want to strengthen themselves in view of the severe competition from foreign firms. The increase in ratio of less experienced *bengoshi* in firms greatly increases the burden on experienced *bengoshi* in these firms to provide the training and supervision needed. It will reach a point where the number of less experienced *bengoshi* exceeds the amount of training and supervision that experienced *bengoshi* in the firms can provide. In such a case, firms will have to rely on outside training-providers for equipping their less experienced *bengoshi* with the required knowledge and skills. Experienced *bengoshi*’s time will be spent on supervising instead of on training inexperienced *bengoshi*. In addition, as discussed above, there is much more active movement of *bengoshi* between firms than before. Such a development adversely affects the firms’ incentive in providing the training. It may no longer be a worthwhile investment from the firms’ point of view. The running of continuing professional training courses by bar associations and/or law schools could be an option. However, firms may in fact require newly admitted *bengoshi* to be able to work immediately, without the wait for them to be trained. As discussed above, newly hired *bengoshi* at major firms are offered high salaries, and intensification of competition for *bengoshi* among law firms (local and foreign) may lead to further increase in the salary of inexperienced *bengoshi*. That will further heighten the need and demand on law schools to provide such education and training before their students graduate. In other words, specialized training may be required not at post-qualification stage but pre-qualification.

However, not all law school graduates will go into the big firms. Those not joining big firms may not need such education and training. As mentioned above, contentious matters are still the major work for most law firms/practitioners in Japan. To accommodate different needs, programs catering to the needs of “*shôgai*” firms may be concentrated in only a few law schools. In addition, a look at the profiles of the newly recruited *bengoshi* in the large law firms reveals that a high proportion of them are graduates from prestigious universities, particularly University of Tokyo (“Tôdai”). The others are mainly from the other elite universities: Waseda University, Keio University, Chuo University and Kyoto University. Graduates from other universities form a small minority in the large firms. It is true that Tôdai has a very high number of candidates passing the National Legal Examination. However, Tôdai graduates appear to occupy a higher

82 *Ibid.*

proportion of new recruits taken by large firms. For example, they occupied close to 60 per cent of the new recruits at four⁸³ of the top five firms in 2004, as compared with 20.8 per cent of the candidates who passed the Examination in 2002.⁸⁴ Candidates passing the Examination in 2002 and entered into LTRI immediately afterwards would leave LTRI and enter the legal profession in 2004. In short, it can be said that there already seems to be a preference for graduates from prestigious universities (particularly Tôdai). Such an elitist trend will be further enhanced if there is a similar development in Japan as the situation with the Legal Practice Course (“LPC”) in the U.K.⁸⁵ Eight top City firms have designated specific LPC providers for their trainees. The chosen ones devise courses tailored to the needs of these firms. The latest development is that three of these City firms have entered into agreement with one provider, which will run three separate LPC courses for each of these three firms. It is to be seen whether a similar development will occur in Japan. Bearing in mind the continual expansion of the major firms and the possible growth in their power within the profession, their influence may be extended to professional legal education. The concentration of special programs in some law schools for the needs of big law firms, if any, will aggravate the differentiation and “branding” of different law schools, enhancing and facilitating the development of elitism.

This possible development of elitism will be further facilitated by a demand, if any, on some law schools to set up courses to provide practising *bengoshi* of the major law firms with knowledge, skills and insight into (and perhaps also exposure to) foreign and transnational matters. There has been and there still is the practice for “*shôgai*” firms to send their associates overseas (mostly to USA and Britain) to study for LL.M. and have internships at foreign law firms⁸⁶, probably to broaden their view and exposure, improve their legal-English proficiency, acquire (further) knowledge, skill and insight

83 The percentage figure is calculated according to information on the new recruits from the four firms’ respective web sites. No sufficient information in this respect is available from Asahi Koma Law Offices’ web site.

84 Ministry of Justice, <<http://www.moj.go.jp/PRESS/021113/14-2univ.html>> accessed on 24 February 2003.

85 For details about the development, see: G. CHARLES, A Revolution in Legal Education, in: *The Lawyer*, 22 March 2004; C. WRIGHT, College of Law Trumps Arch Rival As Partners’ Favourite Law School, in: *Legal Week*, 8 July 2004; C. SANDERS, College of Law; Student Law, in: *The Times*, 18 May 2004. It started off with the introduction of the so-called City LPC in 2001. Eight City firms designated three provider colleges out of more than 30 providers for their trainees to receive their compulsory vocational training required as part of the solicitors’ qualification step in England and Wales. In 2004, this went further with five of the eight firms decided to run the City LPC from September 2006 exclusively with one provider only and the remaining three firms entered into contract with another provider, which will run specific separate courses for each of these three firms.

86 See MURAKAMI, *supra* note 59, 78-80; SMITH, *supra* note 81; web page of major law firms such as: Mori Hamada & Matsumoto: <<http://www.mhmjapan.com/index.php?p=20410100000000000000000000>> accessed on 1 May 2004.

into foreign and transnational matters. With the large intake of fresh LTRI graduates and the high proportion of junior associates, there will be a sharp rise in costs involved if such a practice is continued. This is irrespective of whether lawyers themselves are reimbursed for study costs and receive salary during the study and internship or not. Firms lose time and manpower, which they have invested in. Also, with more foreign firms determinedly penetrating the Japanese legal market, particularly with the intention of developing or expanding local law capability, there is doubt as to whether these firms will continue to take as interns those *bengoshi* from the Japanese firms, their rivals. Alternatively, they may use this as a route to recruit their own *bengoshi*. There have already been cases of recruiting *bengoshi* from those who have in the past worked with the firms as interns or otherwise.⁸⁷ This may also deter Japanese firms from eagerly sending their associates overseas. As a result, it is possible for a demand on the Japanese law schools to set up courses to provide practising *bengoshi* with knowledge, skills and insight about (and perhaps also exposure to) foreign and transnational matters. That may create a need to recruit foreign legal academics and practitioners, to make internship arrangement with some major foreign law firms, etc. However, any such programs will only be for the few large *shôgai* firms. Concentration of the programs in a small number of law schools is likely. This will facilitate the development of the “elite” image of these few law schools. Such development is self-perpetuating in that, with the “branding” of law schools, it can result in the “elite” law firms recruiting mainly from graduates of these “elite” law schools and having their *bengoshi* attending continuing legal education programs, if any, conducted by these law schools instead of others. This will further aggravate the development of elitism.

Last but not least, law schools may also face a need for developing programs for the management of legal practices. As discussed above, management of major law firms’ practices and operations becomes increasingly complicated. Large global law firms have partners handling business-seeking/development, partners handling management and lawyers really handling the legal work (the so-called “finder”, “minder” and “grinder”). Particularly, in the severely competitive legal market nowadays, skill in “business” and “management” strategy also becomes crucial for professional practice. In addition, in a sizable firm, even senior associates may have only very little client exposure, if any at all.⁸⁸ This will be exacerbated by the intensification of competition and active lateral movement. Firms have more fear and less incentive in providing their senior associates with extensive client exposure and involvement in firm management. When senior associates are promoted to partnership, they may find themselves suddenly

87 For example, Noriko Yao and Jun Usami, associates at Taiyo Law Office (the specific joint enterprise partner of Paul, Hastings, Janofsky & Walker LLP), have both worked at Paul Hastings’ Los Angeles office as foreign associates (information from the web site of the firm accessed on 16 February 2005).

88 This issue has been pointed out in relation to large firms in USA and UK (SENGUPTA, *supra* note 71)

being required to bear the responsibility of “rainmaking” and/or firm management. Conventionally, professional legal education does not involve teaching or training in business and management skill. The expansion and intensification of complication in law firms’ operation creates a need for such education and training. An MBA in legal practice has already been conducted in, for example, the U.K. (Nottingham Law School). The College of Law also runs a diploma in management program.⁸⁹ With the continuing growth in firms’ size, it is possible to have development for such a need in Japan, resulting in a demand on law schools, or at least some of them, to provide such education/training. Business management in legal practice is, however, a new and highly specialised area. Provision of such programs in law schools will require faculty members with the relevant expertise. There may also be a need to recruit experts from overseas.

V. CONCLUSION

In recent years, foreign law firms are actively expanding their operations in Japan. This has had an impact on the *bengoshi* profession, resulting in a change in their culture. Major Japanese law firms have significantly increased in size and become active in marketing. There is active lateral movement of *bengoshi* among firms, foreign and local. Major firms’ continuing growth in size may result in an increase of their power and influence within the profession. Internally, the structure and culture within these firms will also change. The associates-to-partners ratio will rise. Particularly, the proportion of inexperienced *bengoshi* will increase. This brings doubt about the availability of adequate supervision and training for inexperienced *bengoshi* by partners and senior associates. Intensified demand by both local and foreign firms for *bengoshi* associates to facilitate growth may result in a rise in starting salaries. This, together with active lateral movement of associates, will reduce firms’ incentive in providing training to newly admitted *bengoshi*. Japanese law firms’ incentive and/or opportunity of sending associates overseas for study and/or training may also be affected. At the same time, an increase in firm size will bring along with it the need for management knowledge and skill. All these factors will result in the demand on law schools to provide appropriate program(s). However, such program(s) may likely be mainly for major commercial law firms, their *bengoshi*, and students aiming for such a career path. Concentration of the program(s) in a number of law schools will aggravate the differentiation and “branding” of different law schools, enhancing and facilitating the development of elitism.

In short, foreign law firms are expanding their operations in Japan. Such expansion has an impact on the *bengoshi* profession and, as a result, has implications for the professional legal education system in Japan.

89 E. FENNELL, A Manager in Lawyer’s Clothing, in: Times, 13 May 2003.

ZUSAMMENFASSUNG

Mit dem am 1. April 1987 in Kraft getretenen „Gesetz zur Regelung der Tätigkeit ausländischer Rechtsanwälte“ hat Japan einen Rechtsrahmen geschaffen, der es solchen Anwälten seither erlaubt, sich nach Erhalt einer in Ergänzung zu ihrer Heimatzulassung erteilten weiteren Zulassung durch das japanische Justizministerium als „gaikoku jimū bengoshi“ (kurz „gaiben“) registrieren zu lassen und in bestimmten Grenzen zum ausländischen Recht beratend tätig zu werden. Seither haben zahlreiche große internationale Anwaltssozietäten Büros in Japan eröffnet. Diese Büros waren in der Regel allerdings lange Zeit sehr klein. Erst in den letzten Jahren hat sich die Zahl der gaiben deutlich erhöht. Zudem hat auch die Anzahl spezieller gemeinschaftlicher Büros zugenommen, in denen japanischen Rechtsanwälte (bengoshi) und gaiben gemeinsam tätig sind. Einige internationale Sozietäten haben letzthin ihre Büroflächen in Japan im Zuge einer umfassenden Expansion erheblich ausgeweitet und insbesondere Ressourcen in den Aufbau von Kapazitäten zur Beratung im japanischen Recht investiert, die durch Zusammenarbeit mit japanischen Anwälten möglich wurde. Die Präsenz dieser Kanzleien auf dem innerjapanischen Beratungsmarkt hat sich seit einer erneuten Reform des eingangs genannten Gesetzes im April 2005 nochmals verstärkt, da es den gaiben nunmehr erlaubt ist, genuine Partnerschaften mit japanischen Rechtsanwälten einzugehen und bengoshi auch als angestellte Anwälte zu beschäftigen.

Diese Entwicklung hat eine starke Wirkung auf den Berufsstand der japanischen Anwaltschaft gehabt, die sich in einem Wandel ihres Berufsbildes ausdrückt. Der gewachsene Wettbewerb und die Gefahr von „Übernahmen“ haben auf die mittleren und größeren japanischen Sozietäten einen erheblichen Expansionsdruck ausgeübt, die entsprechend massiv expandiert und mit einem aktiven Marketing begonnen haben. Das kontinuierliche Wachsen dieser auf Expansion setzenden Kanzleien hat zu einer Zerteilung des Berufsstandes mit Blick auf Marktanteile, Art der Tätigkeiten, Prestige und Einkommen geführt. Eine künftige Dominanz des japanischen Beratungsmarktes durch die großen Kanzleien ist nicht auszuschließen; ebensowenig ein weiteres Anwachsen ihres Einflusses innerhalb der Berufsstandes. In diesen Sozietäten werden sich tradierte Strukturen und Kultur ändern. Das Verhältnis von angestellten Anwälten zu Partnern wird sich weiter verschlechtern und namentlich die Zahl junger unerfahrener angestellter Anwälte zunehmen. Dies gibt zu Zweifeln Anlaß, ob diese überhaupt noch durch erfahrene Kollegen und Partner ausreichend firmenintern ausgebildet und geleitet werden können. Im übrigen dürfte die gestiegene Nachfrage nach angestellten Anwälten eine allgemeine Erhöhung der Anfangsgehälter nach sich ziehen.

Die Häufigkeit eines Wechsels nicht nur von angestellten Anwälten, sondern auch von Partnern in konkurrierende Büros hat sich jüngst sowohl bei den nationalen wie bei den internationalen Kanzleien drastisch erhöht. Dies hat wiederum negative Auswirkung auf die Bereitschaft der Sozietäten, junge angestellte Anwälte umfassend auszubilden und zu Studiums- und Trainingszwecken ins Ausland zu schicken, wie dies bis-

lang häufig der Fall war. Das Größenwachstum der Kanzleien hat schließlich zu einem Bedarf an firmeninternen Managementkapazitäten geführt.

Alle Faktoren zusammen werden künftig einen starken Druck auf die neuen japanischen Law Schools ausüben, entsprechende Ausbildungsprogrammen bereitzustellen. Gleichwohl könnte es sein, daß diese Programme überwiegend nur auf die großen Sozietäten und deren angestellte Anwälte sowie diejenigen Studenten ausgerichtet sein werden, die eine solche Karriere einschlagen wollen. Dies dürfte langfristig zu einer Spezialisierung einiger weniger Law Schools führen, die derartige Programme anbieten. Eine solche Entwicklung würde eine stärkere Ausdifferenzierung zwischen den Law Schools bewirken, was wiederum eine bislang so nicht gekannte Elitenbildung in der japanischen Anwaltschaft herbeiführen könnte. Mit anderen Worten, die seit einigen Jahren zu beobachtende starke Expansion internationaler Anwaltssozietäten auf dem japanischen Markt hat nicht nur einen stärkeren Einfluß auf den dortigen Berufsstand und das Berufsbild der japanischen Anwälte, sondern wirkt sich auch nachhaltig auf die juristische Ausbildung in Japan aus.

(Deutsche Übersetzung durch d. Red.)